

KD Alert - Coronavirus: What Should Employers Do?

The 2019 Novel Coronavirus (2019-nCoV) outbreak has in a short amount of time, rattled the global economy, disrupted manufacturing and supply chains and wreaked havoc on the U.S. stock market. According to the Director General of the World Health Organization, Tedros Adhanom Ghebreyesus, the outbreak has pandemic potential. During this time of panic and uncertainty, especially given the very real possibility that the virus may hurl the world into a global recession, calm and preparation is key.

What is COVID-19?

Coronaviruses are a large family of viruses that are common in humans and animals, including camels, cattle, cats, and bats that cause a range of respiratory illnesses from the common cold to more dangerous conditions like Severe Acute Respiratory Syndrome. Rarely, can animal coronaviruses infect people and spread. However, like MERS-CoV and SARS-CoV, the virus that causes COVID-19 first spread from an animal-to-person and is now spreading from person-to-person. The disease is highly infectious and there is currently no known vaccine or anti-viral medication. From the time the disease was first reported from Wuhan, China on December 31, 2019 until the time of this writing, there are 100,702 confirmed cases worldwide in every continent except Antarctica in a total of 95 different countries globally, and it has resulted in the death of more than 3,412 people. There are 73 cases in the U.S. with 12 confirmed deaths. To put these numbers in perspective, Covid-19 has killed nearly 3 times as many people in 8 weeks as the Severe Acute Respiratory Syndrome did in 8 months in 2003.

Business Exposures

Given the impact the virus has already had on the Chinese economy, (the world's second largest economy), one of the largest manufacturers and suppliers to the U.S., it is evident that the virus has the potential to disrupt or shut down businesses in the U.S. Certain U.S. companies are already scrambling to find costly alternatives to avoid production disruptions (i.e. Disney, Starbucks, Apple, Tesla, FedEx, and Nike to name a few).

In the meantime, employers are grappling with the question of how to protect their employees from the spread of the virus in the workplace. The U.S. Occupational Safety and Health Act (OSHA) requires that employers maintain a safe working environment.

Employers should be cognizant of risks from the coronavirus outbreak to the following areas of their businesses:

- (1) Business Interruption - business closures due to contamination of office, facility or warehouses;
- (2) Commercial General Liability - third-party bodily injury claims resulting from exposure to the infection in the workplace or at a worksite,
- (3) Employment Practices - potential liability from employees who allege they were subject to discrimination or mistreated because they were disabled or perceived as disabled because they exhibited symptoms suggestive of having contracted coronavirus or because they belonged to certain races or nationalities where the virus is more prevalent;
- (4) Directors & Officers - liability because the employer failed to properly develop and activate a contingency plan; and

(5) Cyber-Security - more threats as employers consider telework and remote conferencing options.

We provide below a summary of the best practices to prepare for the Coronavirus Outbreak.

Preparation

To mitigate against these risks in the community settings, employers should implement the following steps to reduce exposure, i.e.:

- (1) actively encourage sick employees to stay home per the company's leave of absence policy or to work remotely from home;
- (2) social distancing/telework; keep employees from congregating in tight workspaces or in meetings to slow the spread of the virus;
- (3) post signs and encourage proper respiratory and sneezing etiquette and hand washing hygiene;
- (4) perform regular environmental cleaning; and
- (5) implement a contingency plan.

(1) Actively Encourage Sick Employees To Stay Home Per The Company's Leave Of Absence Policy Or Work Remotely From Home;

Per the U.S. Center for Disease Control, it is recommended that for employees who have symptoms of acute respiratory illness (i.e. shortness of breath, cough, fever), they should be separated from other employees and sent home immediately if they are sick. It is recommended that they not return to work until they are free of fever or signs of a fever (100.4° F [37.8° C] greater using an oral thermometer), and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (i.e. cough suppressants).

Employers who enforce attendance policies to the point of hardship amid rising fear of a potential health scare could risk further spread of the disease as employees may not disclose their travels or whether they exhibit signs of the illness. If the employer has adopted a lenient and non-punitive flexible leave policy, employees will likely consider staying home and not risk infecting others. Keep in mind that confidentiality is key. Certain statutes, such as the Family and Medical Leave Act, mandate that medical records relating to approved leaves of absence must be kept confidential. State laws may impose similar restrictions. Offer the employee the ability to telework or place the employee on an administrative leave (paid or unpaid) for up to 14 days to ensure the employees does not show symptoms of the virus. Consider filing any workers' compensation claims necessary if the condition was contracted at work or in relation to a work-related activity (business travel).

The employer should also draft a written communicable illness policy and response plan that covers the coronavirus and other communicable diseases to address:

- i. What illnesses or exposures to disclose to the employer, when, to whom, and how;
- ii. Advise that the employee must stay home when ill and to return only when a medical provider has provided clearance to return to work;
- iii. Identify circumstances in which the employer may require a quarantine of ill employees;
- iv. List all benefits available to employees: In many states, there is no requirement that employees who are put on an involuntary leave of absence be paid for such leave.
- v. Travel limitations, if any. Best practices dictate the suspension of travel to "hot-spot" or outbreak regions. Check the CDC website for up to date travel information for guidance.

(2) Social Distancing/Telework

It is recommended that individuals stand at least six feet apart. If possible, the employer should cancel group gatherings or meetings and opt for email, video or telephone conferences. As long as the technological infrastructure and security compliance

considerations support remote work and collaboration, employers should actively encourage their employees to work remotely from home. In China, the outbreak has put millions of people under lockdown thrusting the country into a mass experiment where people are working remotely.

(3) Post Signs And Encourage Proper Respiratory And Sneezing Etiquette And Hand Washing Hygiene

Employers should encourage best hygiene practices by posting signs in visible areas of the workspace (i.e. reception, lunchroom, conference rooms, library, bathroom, entry and exit ways). Employers should encourage employees to avoid close contact with others, especially with those who are sick. Employees should wash hands often with soap and water for at least 20 seconds and if soap and water are not available, to use an alcohol-based hand sanitizer with at least 60% alcohol. People should avoid touching their eyes, nose, and mouth with unwashed hands. Employees should be reminded to cover coughs or sneezes with a tissue and to throw the tissue in the trash. Trash receptacles should have touchless access.

(4) Perform Regular Environmental Cleaning

While there is typically no need to perform special cleaning or decontamination of work environments, employers should routinely clean and disinfect all frequently touched surfaces in the workplace, such as workstations, keyboards, countertops, telephones and doorknobs.

(5) Business Travel

As stated above, employers should require employees to limit all non-essential travel to affected regions.

Check the Centers for Disease Control and Prevention website for the latest updates on travel advisories. It is recommended that any employees who have been to level 3 infected areas work from home or self-quarantine for up to 14 days before returning to work.

(6) Implement a Contingency Plan

Employers should plan to be able to respond in a flexible way to varying levels of severity and be prepared to refine their business response plans as needed. Identify a coordinator or team with defined roles and responsibilities for preparedness and response planning. The coordinator or team should be responsible for activating and terminating the response plan triggers, altering business operations, and transferring business knowledge to key employees.

Employers should consult with their human resources department or public health department for more information on how to help reduce the chances of exposure to the coronavirus, and what steps to take in the event an employee is infected. Legal counsel should also be consulted for advice on proactive and responsive legal requirement, including on the implementation of a contingency plan. The attorneys at Kaufman Dolowich & Voluck LLP are available to assist. *Please contact Keith Gutstein, Esq. or Rashmee Sinha, Esq. by email at kgutstein@kaufmandolowich.com, or rsinha@kaufmandolowich.com or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group.*

This KD alert is the first in a series of KD alerts which will be published in the coming days and weeks as the situation develops, including in particular the possible legal ramifications of COVID-19 in the workplace.