

HEALTH & WELFARE PLAN LUNCH GROUP

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1. *A&B Advisory* (February 28, 2020): The Coronavirus: Employer and Workplace Considerations



Labor & Employment and Health Care ADVISORY ■

FEBRUARY 28, 2020

The Coronavirus: Employer and Workplace Considerations

"All sections of our society – including businesses and employers – must play a role if we are to stop the spread of this disease." – [World Health Organization](#)

The World Health Organization has declared the 2019 novel coronavirus (also known as COVID-19) a "[public health emergency of international concern](#)." As of February 28, 2020, the virus has killed more than 2,800 people and infected more than 80,000 worldwide, including at least 15 confirmed cases in the U.S. While the majority of deaths are in mainland China, at least 11 European countries have now confirmed coronavirus infections, with a recent spike in reported cases in Italy and South Korea. The coronavirus has now spread to every continent except Antarctica. With these rapidly evolving public health issues, what do employers need to keep in mind about the coronavirus?

During a White House press conference on February 26, 2020, the Trump Administration stated that the immediate risk to the American public remains low. However, health officials at the conference noted that Americans should prepare for the possible spread of the coronavirus in communities across the country. These officials presented [several key takeaways and recommendations](#):

- The degree of risk has the potential to change quickly, and "we can expect to see more cases in the United States."
- Businesses, health care systems, universities, and schools should "look at their pandemic preparedness plans, dust them off, and make sure that they're ready."
- Since the coronavirus is a respiratory virus that spreads in a similar way to the common cold or influenza, people should take the same prevention measures, such as "staying home when you're sick, and washing your hands."
- While the National Institute of Allergy and Infectious Diseases at the National Institutes of Health is working on a vaccine, it will not be available for approximately "a year to a year and a half." A number of antiviral drugs are also being tested.

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These comments echo previous guidance from the Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA). Workplace guidance was also issued by the World Health Organization on February 27, 2020.

Companies should take steps now to confirm they will be able to maintain normal business operations if the coronavirus continues to spread. Managing a disease outbreak presents a variety of challenges and implicates a multitude of legal obligations. For example, under the Occupational Safety and Health Act and similar state laws, employers have a duty to provide a safe and healthy work environment and to not place their employees in situations that are likely to cause serious physical harm or death. Additionally, an employer's coronavirus initiatives should of course be fair and apply to all, without regard to race or national origin.

Actions taken by employers now can help promote business continuity, minimize business disruption, and help stop or slow the spread of the coronavirus in the workplace. For example, companies should consider the following steps:

1. *Assess the company's current occupational health resources and preparedness/response plans for a pandemic (e.g., widespread illness among employees)*
 - Does the company have an occupational health physician or nurse to help keep up with evolving updates from public health officials and to serve as a liaison in communicating with employees?
 - When were the company's preparedness/response plans last updated?
 - Do key personnel understand their roles and responsibilities, including communicating with employees and how to respond to reports of illness?
 - What measures are in place for the workplace to be regularly cleaned, including with disinfectant for commonly used surfaces?
 - Are hand-washing stations available to employees? Could sanitizing dispensers be placed in prominent areas of the workplace?
 - What measures are in place for prompt reporting of illness to public health officials as appropriate while also maintaining employee privacy?
2. *Open lines of communication with employees*
 - Companies should communicate to employees fact-based information on the following:
 - The coronavirus, its symptoms, and safety precautions (based on information provided by the CDC).
 - Duration of the monitoring period for those who either traveled from China in the past 14 days or came into close contact with an individual who did.
 - Contact information for self-reporting the illness to designated personnel at the company and appropriate public health authorities (such as the CDC or state Department of Public Health).
 - The company's current travel policies (e.g., if there are restrictions on nonessential travel to certain areas due to the coronavirus).

- Remote or flexible work arrangements and sick/leave policies for employees who are being treated for the coronavirus, either at home, by medical professionals, or in quarantine.
 - Companies should encourage those who are or may be sick to stay at home and seek treatment from a licensed health care provider and to take the same preventive measures they would for influenza or a cold.
3. Assess the company's employee travel policies
- Companies should consider reducing or canceling all nonessential travel for work to affected areas, particularly China. Assess whether business can be conducted by alternative means, such as videoconference or telephone.
 - The CDC currently recommends avoiding nonessential travel to China. The U.S. Department of State has also issued a [Level 4 "Do Not Travel" advisory](#) for travel to China. Most commercial air carriers have suspended/reduced routes to and from China.
 - Companies should continue to monitor the CDC website for updates on guidance for travel to specific locations other than China. The coronavirus infections have been reported in numerous countries, with a recent spike in Italy and South Korea. Information is rapidly evolving.
 - For employees who are traveling, consider encouraging them to travel with small bottles of alcohol-based rub/sanitizer to facilitate hand washing (watch for airplane restrictions on size and content).
4. Assess the company's policies and practices concerning the workplace environment
- Consider obtaining a health and travel declaration from all employees on whether they have traveled to China recently (including a layover in China) or if they have any upcoming travel plans to China.
 - Watch for updates from the CDC about travel/return for areas other than China. The coronavirus data continues to evolve, and the coronavirus is spreading in other countries.
 - Because the coronavirus incubation period can be 2–14 days after exposure and the virus can reportedly be transmitted to others before symptoms appear, employers should consider developing policies based on CDC guidance to ask employees to work from home for up to 14 days if they recently returned from an infected area or were in close contact with someone else who did.
 - Consider posters that promote hand washing, summarize the coronavirus and its symptoms, and summarize when to stay home.
 - Consider adopting flexible work arrangements, such as telecommuting and teleconferencing, to allow employees to work from home as a voluntary precaution themselves or to monitor and treat ill family members.
 - Consider developing or updating your written policy for return-to-work criteria, such as obtaining a doctor's note.
 - Consult with a labor attorney regarding salary, wages, leave, Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and other related labor and employment issues.

- Consult with a privacy attorney about how information about an infected employee should be handled, including as an employer, to a health plan, to health care providers, to public health authorities, and in other scenarios.

Conclusion

Alston & Bird stands ready to assist employers with coronavirus issues. For your convenience, we have listed below key websites for you to consider since information about the coronavirus is rapidly changing.

Additional Resources

For continued updates on the coronavirus outbreak, please see the following sources on the coronavirus:

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

World Health Organization: <https://www.who.int/health-topics/coronavirus> (FAQs and mythbusters)

OSHA: https://www.osha.gov/SLTC/novel_coronavirus/

HHS: <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

Presidential proclamation on novel coronavirus: <https://travel.state.gov/content/travel/en/traveladvisories/ea/Presidential-Proclamation-coronavirus.html>

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If you have any questions or would like additional information, please visit our [Labor & Employment](#) or [Health Care](#) groups or contact any of the following:

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CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Ave. ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
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LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
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