Health Care Employers: How to Prepare for the Impact of COVID-19 on Your Workforce

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On March 11, 2020, the [World Health Organization](#) declared that the 2019 novel coronavirus (known as "COVID-19") is now a pandemic. The effects continue to be felt in the United States, which currently has well over 1,000 cases of COVID-19. As of March 12, 2020, 19 states have declared a state of emergency to ensure there are resources to address the coronavirus, and President Trump has announced a ban on travel to and from Europe for 30 days starting on Friday, March 13, 2020, which was extended to the United Kingdom and Ireland on March 15th. Additionally, on March 13, 2020 President Trump declared a national emergency. Given the prevalence of the coronavirus in the United States and the growing numbers of cases globally, health care employers should take extra precaution with their employees. As all public health communications are making clear, efforts to limit the spread of COVID-19 will not only prevent illness, but they will also reduce the pandemic's potential to overwhelm critical health care resources.

This article provides guidance for health care employers on responding to the COVID-19 pandemic.

8 Steps That Health Care Employers Should Take

The [Interim Guidance for Healthcare Facilities](#) from the Centers for Disease Control and Prevention (CDC) provides multiple suggestions and guidance for health care employers. Based on CDC guidance and information from other sources, health care employers should consider the following:

1. *Communicate regularly with staff.* Meet with staff to educate them on preparing for potential COVID-19 cases, including educating staff on how COVID-19 spreads, clinical management of individuals that potentially have coronavirus, and best practices for infection prevention.

2. *Designate coronavirus-ready staff.* Designate staff members responsible for treating suspected or known coronavirus patients. For employees working with suspected or known COVID-19 patients, health care providers should make their employees aware of recommended work restrictions and monitoring for potential staff exposure.

3. *Encourage sick employees to stay home.* Monitor employees and ensure maintenance of staff operations by making employees aware of sick leave policies and encouraging employees to stay home if they are ill (particularly with respiratory symptoms).

4. *Develop a plan for screening employees for COVID-19 symptoms.* If widespread transmission becomes a concern, the CDC permits facilities to consider screening staff for fever or respiratory systems prior to allowing staff to enter the building or treat patients. Generally, taking the body temperature before entering the facility or asking employees to self-report to ensure that the employee has not developed a fever provide a method for facilities to actively monitor employees.

5. *Create contingency plans for potential staffing shortages.* Health care facilities cannot rely on telework. Thus, as the COVID-19 outbreak may increase absenteeism, health care facilities should create a contingency plan to ensure appropriate staffing levels, which might include extending hours, cross-training current employees, or hiring temporary workers.

6. *Train employees to properly don and doff personal protective equipment (PPE).* A particularly important aspect of preparing for COVID-19 is ensuring that employees are aware of the appropriate PPE to use while treating patients who have or are suspected to have COVID-19. Recently, a federal employee filed a whistleblower action claiming that the Department of Health and Human Services sent its employees to Travis and March Air Force Bases in California without proper protective gear or training regarding the appropriate safety measures to assist quarantined Americans evacuated from China after the start of the outbreak. Employees should be trained on the proper procedures regarding PPE to use while treating patients suspected or known to have COVID-19.

7. *Perform drills.* Consider performing drills and trainings to ensure that employees, particularly those in emergency units or care for critically ill, are fully aware of the proper procedure for treating patients with COVID-19 and have the appropriate protective equipment.

8. *Encourage good personal hygiene.* Inform employees of the need to (i) frequently wash their hands with soap and water for at least 20 seconds; (ii) avoid touching their eyes, nose, or mouth with unwashed hands; and (iii) avoid close contact with people, unless treatment of the patient requires it.

Can a Health Care Employer Take Employees' Temperatures?

Particularly now that COVID-19 has been designated a pandemic, many health care employers are struggling with whether and how to screen their employees. Any employee that raises a concern about exposure to COVID-19 and exhibits potential symptoms should be encouraged to seek emergency assistance and contact the state and local health department(s). Many health care providers, however, are asking whether they can take and record the body temperatures of their staff prior to their shifts. The Equal Employment Opportunity Commission (EEOC) has made clear that, under normal circumstances, measuring an employee's body temperature constitutes an improper medical examination under the Americans with Disabilities Act (ADA). Pursuant to the EEOC pandemic preparedness guidance, however, employers may measure body temperature if symptoms become more severe or if the disease becomes widespread in the community as assessed by state or local health authorities or the CDC. For instance, health care providers in Westchester County and other locales where cases have been identified likely have a justifiable reason to take the

temperature of their employees to further prevent the spread of the outbreak in those communities.

Additionally, during a pandemic, taking an employee's body temperature may be job-related and consistent with business necessity. Health care providers treating vulnerable patient populations in particular have a stronger argument that taking their employees' temperatures to screen for fever is job-related and consistent with business necessity, particularly for employees who treat or have direct contact with patients. Employers concerned about potential ADA violations may instead consider the alternative of requiring their employees to take their own temperatures and stay home if they determine they have a fever (100.4 degrees or higher).

Employers who do take temperatures of their employees should develop a plan to minimize legal risk. In consideration of privacy implications, employers should attempt to avoid screening all employees at the same time and in the same place. Further, all records containing temperature or other medical information should be treated as confidential and kept separate from employee personnel files. To avoid future wage and hour claims, employers should be prepared to track time spent waiting for and being screened, and to pay employees for this time to the extent required by applicable wage and hour laws. Finally, employers should be prepared to handle objections from employees. Staff who object on religious or disability grounds may require reasonable accommodation under Title VII or the ADA, and groups of employees who refuse to participate in screening may be engaging in protected concerted activity under the National Labor Relations Act. Employers with union-represented work forces should also be prepared to address these issues with their employees' collective bargaining representatives.

How Do We Manage Work Shortages, and Should Sick Employees Be Paid?

In the health care environment, most employees cannot work remotely, and health care providers often employ numerous hourly workers who are non-exempt under the Fair Labor Standards Act. As stated above, to manage potential work shortages, employers should consider extending work hours, cross-training employees in case they need to cover for absent coworkers, and creating teams that can backup absent or overworked employees.

While exempt employees must be paid their regular salaries any time they work any portion of a workweek, non-exempt employees need be paid only for the time they work and for times deemed compensable under such employers' policies and procedures. Non-exempt employees who are out sick or to care for a relative may be entitled to use paid sick time or other paid time off (PTO), such as vacation, personal days, etc. Note that additional paid sick leave may be required under legislation that has been passed by the House of Representatives and is awaiting action in the Senate.

There are also a variety of means employers may compensate non-exempt employees who cannot work and do not have available paid time off, including (i) providing discretionary paid administrative leave, (ii) allowing coworkers to share or donate PTO with others, and (iii) advancing future PTO. Additionally for those non-exempt employees who have some work duties that can be done remotely, employers may extend telework options to those staff members, provided they have a way to track and record remote work time.

Given the rapid pace of developments in connection with COVID19, health care employers should remain mindful of additional action by federal, state, and local governments impacting these matters.

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