

Ebola Worries and the Workplace – What Can Employers Do?

Article By:

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With the current Ebola outbreak leading the news, employers may be considering what steps can and should be taken in the event that an employee has recently traveled to an area that is experiencing a significant rate of infection. First, employers should know that the World Health Organization has stated the “risk of a tourist or businessman/woman becoming infected with Ebola virus during a visit to the affected areas and developing disease after returning is extremely low, even if the visit included travel to the local areas from which primary cases have been reported.” Nevertheless, employers understandably want to ensure a safe workplace. Employer action plans to protect their employees from health risks presented by pandemics or other diseases should take into account guidance from appropriate sources of information such as the Centers for Disease Control (CDC) as well their obligations under laws such as the Americans with Disabilities Act (ADA). In an informative article in today’s [New York Times](#) by Dave Philipps, Dr. Thomas R. Frieden, director of the CDC commented on his frustration with parents in Dallas who were keeping their children out of school indicating that “he expected that type of reaction among uneducated people in developing countries, but not in the United States.” Employers should not act like these parents, and their action plans for dealing with Ebola should not be formulated based on fear and misinformation.



Action plans for disease prevention may include business travel restrictions, dissemination of information to employees and even provision of hand sanitizer.

While some aspects of action plans are easy to develop, questions often arise about protocols for dealing with specific employees who are suspected to or actually do pose a risk to others. Questions include:

- Can an employer ask about exposure to infectious disease?
- Can an employer require the employee to be cleared by a doctor before returning to work after traveling to an area where there is an outbreak of a contagious disease or only after an employee is actually returning from sick leave?

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- Can an employer send an employee who is exhibiting symptoms home and require medical clearance before returning?

The EEOC has addressed most of these questions in its 2009 Guidance on [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) released in the wake of the H1N1 flu pandemic. Though it does not discuss Ebola, the Guidance addresses questions about the permissible scope of employer health-related inquiries and requests for medical examinations during significant infectious disease outbreaks and provides useful direction for employers faced with an employee returning from one of the West African nations (currently Liberia, Guinea, and Sierra Leone) for which the CDC has issued non-essential [travel advisories](#). Key take-aways from this guidance are:

Employers need not wait until an employee exhibits symptoms of a widespread illness before inquiring into potential exposure during travel, including personal travel.

- Questions about place of travel are not considered disability-related and are lawful under the ADA. This is especially so when government agencies and officials have recommended that people who have traveled to specified locations remain at home for several days until it is clear they do not have pandemic illness symptoms.
- While Ebola has not been categorized as a pandemic, the CDC has issued monitoring recommendations for individuals who have traveled to outbreak locations regardless of potential exposure or symptoms. These recommendations would support an employer asking employees to report travel to the locations identified by the CDC and potential exposure.

Employers are more restricted in the extent to which they may require clearance from a doctor before returning to work.

- The ADA permits an employer to request medical information or order a medical examination when the employer has a reasonable belief, based on objective evidence, that an employee will pose a “direct threat” because of a medical condition. The EEOC’s Pandemic Guidance states that an employer must take direction from the CDC or state/local public health authorities in determining whether an illness is a direct threat, and cannot make that assessment “on subjective perceptions . . . [or] irrational fears.”
- The CDC has issued recommended [monitoring guidelines](#) for individuals who have traveled to a country experiencing an Ebola outbreak. Recently returning individuals exhibiting symptoms consistent with Ebola, regardless of any known exposure, are advised to seek medical evaluation and potentially limit their movement during a period of observation.
- Individuals who do not exhibit any symptoms and who have had no known exposure are recommended to self-monitor for symptoms for a 21-day period after leaving an outbreak area, during which time the [CDC states](#) an individual “may continue [his or her] normal activities, including work. The CDC notes that transmission of Ebola only occurs when an individual is exhibiting symptoms. Thus, there is no need to require medical clearance of employees who have returned from travel to a specified location who report no Ebola-like symptoms and no exposure to individuals with Ebola according to the CDC. Nevertheless, employers should continue to monitor the CDC’s website to remain apprised of

any changes in monitoring recommendations or workplace restrictions for recent travelers.

- In contrast, employers may require employees who have traveled to the specified locations and who report possible contact with an infected individual and/or Ebola-like symptoms to stay home until medically cleared to return to work. Likewise, if such an employee develops Ebola-like symptoms at work, an employer may send the employee home until medically cleared to return to work.

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National Law Review, Volume IV, Number 283

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