

Ebola--How Should Employers Respond?

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With the constant news coverage of Ebola quarantines and the CSI-like tracking of the potential whereabouts of potentially infected healthcare workers, it is understandable if employers are concerned about their legal obligations regarding Ebola exposure or quarantine issues. Generally, Ebola is only transmitted by close contact with bodily fluids of an infected individual. However, the virulent nature of the disease as well as the high mortality rate (between 50-90 percent) has caused a media frenzy regarding the potential for an epidemic once the first case of domestically transmitted Ebola was confirmed. There are a number of federal and state laws which might impact an employer in responding to employee exposure events or the hysteria of an Ebola epidemic which might affect their workforce.

[OSHA has created a webpage](#) which provides information on the medical background of Ebola, hazard recognition, applicable legal standards as well as potential safeguards for those employees most likely to experience exposure to infected individuals as a part of their job duties. Healthcare workers, mortuary workers and airline/travel personnel are the individuals most likely to encounter Ebola as part of their work duties. An employer has an overall duty to provide a safe workplace free from known hazards pursuant to OSHA's general duty clause.

There are a number of ways in which your employees may be exposed to Ebola: a) your employees are required to travel to African countries with known outbreaks (Guinea, Liberia and Sierra Leone), b) you have employees who have visited relatives in those countries; c) your employees are healthcare workers who have been actively caring for Ebola infected patients; and most recently, d) your employees may have had contact with some of the individuals who have been infected with Ebola in the United States prior to their hospitalization (i.e., rode on the same plane as the nurse who was diagnosed with Ebola).

While an employer has an obligation to provide a safe workplace, it would be potentially unlawful to immediately discharge an employee who may have been exposed to Ebola. An employee who has been exposed or is believed to have been exposed could claim that such treatment is unlawful discrimination on the basis of a disability as prohibited by the ADA. Even an employee who does not have the condition can claim that he or she is "regarded as" having a disability and thus would be covered. An employer must have more than simply a suspicion or fear of infection to utilize the defense that the employee poses a "direct threat" to the health and safety of the employee or others in order to terminate them. If the employee has been exposed to Ebola but is not symptomatic, to the extent that the employer concludes that providing a leave of absence during the 21-day incubation

period is the appropriate course of action based on all the facts and circumstances, consider providing a paid administrative leave during that period. Of course, should the individual develop symptoms, he/she would be off work pending confirmation and treatment, and this leave time would likely be covered under the FMLA as well.

Employers need to be careful not to react too quickly without sufficient medical information. As we have seen with the nurse in Maine, even where a state asserts that a [mandatory quarantine is required as a matter of public safety](#), it has been rejected when the nurse had no symptoms and tested negative for the Ebola virus.

The notice that one of your employees has potentially been exposed to an infected individual may cause your other non-exposed employees to refuse to report to work. If other employees refuse to work with that employee, terminating those employees based on their fear of catching Ebola could be an unfair labor practice if the actions taken by multiple employees are deemed to be “protected concerted activity” under the National Labor Relations Act for the mutual aid and protection of the workforce as a whole. If the potentially infected employee is put out on some form of administrative leave, then other employees would not have cause to refuse to come to work.

Employers face myriad legal issues surrounding the Ebola outbreak and would be well-advised to seek legal counsel before taking action against either an employee suspected of being infected or other employees reacting to such news.

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