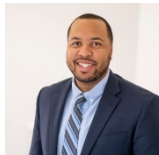




# Workplace Coronavirus Response Plans Must Comply with Applicable Employment Laws



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U.S. employers recognize that COVID-19 (commonly referred to as the coronavirus) presents a potential hazard to the well-being of their employees, and many have already taken practical steps to reduce the risk of transmitting the disease in the workplace. All employers are encouraged to review guidelines recently published by the Centers for Disease Control and Prevention (CDC) (available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>) for employer-specific strategies to combat the coronavirus.

While physically preparing workplaces and instructing employees about best practices is vitally important, employers should also consider and plan for legal challenges that may result from the potential spread of the coronavirus. This includes understanding how many of the same federal and state employment laws that employers routinely encounter in other contexts may be implicated by employer efforts to mitigate the risk of the coronavirus in the workplace. Generally speaking, employees remain entitled to protections that they normally receive under the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), and the Family and Medical Leave Act (FMLA) even when employers are attempting to prevent the spread of a communicable disease.

Below are a few questions that we have already received from employers related to workplace coronavirus response plans:

Q: Can I ask an employee whether they have recently traveled to China?

A: Yes. Employers may inquire whether an employee has recently traveled to China (or any place with a coronavirus outbreak). Keep in mind, though, that treating employees differently based on Asian national origin or ancestry is prohibited under Title VII.

Q: Would an employee be permitted to utilize FMLA leave to care for a family member who has contracted the coronavirus?

A: Almost certainly. Given the nature of the coronavirus, it will be considered a serious health

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## WORKPLACE CORONAVIRUS RESPONSE PLANS MUST COMPLY WITH APPLICABLE EMPLOYMENT LAWS

condition in most cases. Accordingly, go through the FMLA process for employees who take time away from work to receive treatment for the coronavirus or to care for a family member who has contracted the coronavirus. This includes reinstatement at the conclusion of FMLA leave.

Q: Can I require an employee to undergo a medical examination to ensure that they do not have the coronavirus? (Keep in mind that something as simple as taking an employee's temperature constitutes a medical examination under the ADA.)

A: In most circumstances, employers covered by the ADA are prohibited from requiring employees to undergo medical examinations unless they can show that the examination is job-related and consistent with a business necessity. In certain situations, employers may be able to meet this requirement by showing that an employee, due to a medical condition, poses a direct threat to other employees. Currently, employers covered by the ADA are likely prohibited from requiring employees to undergo medical examinations related to the coronavirus. This may change if the coronavirus is declared a pandemic, which would allow employers to more easily show that the coronavirus poses a direct threat to their workforce. More information on this topic is available from the EEOC: [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html). To date, the coronavirus has not been declared a pandemic.

Additionally, employers should carefully review attendance, sick leave, short-term disability, and other applicable policies to ensure compliance with internal procedures in the event of a coronavirus outbreak. This includes, but is not limited to, determining the following information:

Do I have an obligation to compensate employees who are absent from work due to the coronavirus?

Should I permit employees who have exhausted their sick leave to nonetheless stay home from work if they feel unwell?

Under what circumstances will I allow employees to work remotely?

Employers should remain flexible and anticipate that responding to the coronavirus may necessitate deviations from normal workplace policies. But, in doing so, employers must also be sensitive to the fact that deviations from policies may influence employee expectations moving forward. Balancing these considerations is important in developing and implementing an effective coronavirus response plan.

If you have questions about your coronavirus response plan, or would like assistance analyzing specific coronavirus situations, please contact a member of our Labor & Employment team linked below.

### **Published articles regarding COVID-19:**

["Pending Legislation Would Require Job-Protected Leave and Paid Benefits for Absences Related to COVID-19"](#)

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Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our [COVID-19 Response Resources](#) page.