

**RJO Employment Law Alert**  
**- Addressing COVID-19 Concerns in the Workplace -**  
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All of a sudden, employers large and small are facing a daily barrage of questions, concerns, and decisions about the effect of the novel coronavirus (COVID-19) on the workplace. While navigating the issues, employers should *regularly* monitor the guidance being [provided by the CDC](#) and by state and local public health agencies. Employers should promptly communicate with employees who may be ill, and be mindful that their actions in the face of this evolving situation may have unintended legal consequences given the patchwork of state and federal laws that exist to protect employee rights.

The following is designed to address some of the basic issues employers are likely to encounter in the near future.

Please keep in mind that this Alert is based on currently available information that changes on a daily, if not hourly, basis, and is not a substitute for legal advice and analysis of the specific facts and circumstances. Government agencies charged with enforcing employment related laws, such as the EEOC, state and federal OSHA, state agencies such as the California Division of Labor Standards Enforcement and EDD, and local agencies such as the San Francisco Office of Labor Standards Enforcement, are beginning to offer interim guidance to employers, but there will still be many unanticipated questions that will arise. Employers should consult with counsel before making decisions that might materially impact employees and their working arrangements.

**What Should You Do Now?**

- Disseminate information consistent with [CDC guidance](#), provide recommendations that employees can follow to protect their health and those around them and instruct employees on what to do if they or others around them are sick.
- Strongly encourage employees to voluntarily disclose if they have tested positive for COVID-19, suspect that they may have it, or have been in close contact with anyone known or suspected to have it.
  - Keep in mind that demanding the disclosure of a COVID-19 diagnosis may run afoul of applicable disability and discrimination laws. The same is true of requiring medical tests, including something as simple as taking a temperature.
  - While employers will need to take action in the workplace upon learning an employee (or other person) has contracted COVID-19, care should be taken to not identify any affected employee: employers have an obligation to maintain confidentiality and not identify an employee who tests positive.

- Review and, if necessary, update your Injury and Illness Prevention policies (required by many state OSHA laws). For the most part, these policies should have a safety plan that addresses how to respond to infectious disease exposures.
- Ensure that your sick leave and medical leave of absence policies are compliant with applicable law.
  - California (and several other states) require that employers provide paid sick leave to all employees. Several cities also have sick leave laws that are more generous than state law. Make sure your policies are compliant and keep in mind that most sick leave laws allow employees to use paid sick to care for sick family members or for self-quarantine if it is recommended by government authorities.
  - The Family and Medical Leave Act (FMLA) and similar state laws, such as the California Family Rights Act (CFRA), may come into play for eligible employees who miss work due to a serious medical condition or to care for a family member with a serious medical condition. These laws generally don't allow employees to take time off to avoid becoming sick. Make sure your medical leave policies comply with applicable laws and that your documentation processes are up to date.
  - Remember that employees who miss work due to their own or a family member's illness may be eligible for disability or paid family leave benefits from the state or under company insurance policies. Be sure to provide employees with any required information.
  - Some employers have leave obligations under collective bargaining agreements or their own policies. Make sure you know the extent of these obligations.
- When making decisions regarding office closures and work-from-home arrangements, check your local public health department's website to see if they have provided guidance on this issue.
  - Evaluate your business' capacity for remote work, including whether appropriate technology is in place. Options such as staggering remote work schedules to decrease the number of employees in the office at the same time may also be useful.
  - Even if you do not anticipate an officewide closure, you should have a policy for evaluating individual requests for remote work. Requests should be evaluated and documented using uniform criteria as discrimination claims may result from treating requests in a haphazard manner.

- Remember, if an employee has an underlying condition which makes the employee more susceptible to complications from COVID-19, a remote work arrangement may be required as an accommodation of a disability.
- Under California and other state wage and hour laws, remote work arrangements may require expense reimbursements to employees (e.g., for phone and internet usage).
- If you are closing your office or canceling shifts, be aware of wage and hour issues for employees who cannot telework, for example:
  - The FLSA and most state laws require exempt employees to be paid their full salary for a workweek in which *any* work is performed. Taking deductions from exempt employees' salaries during a workweek in which any work is performed is only permissible in very limited situations, and you should check with counsel before doing so.
  - For non-exempt employees, you may have payment obligations for canceling shifts. For example, in California, when a non-exempt employee reports to work and is not furnished with a full day's work, the employee must be paid one-half his or her regular day, up to 4 hours ("reporting time" pay), unless certain limited exceptions apply.
  - You may have additional obligations under collective bargaining agreements or company policies (such as an office closure policy).
- If employees are furloughed, or if you shut down temporarily, be aware of the effects:
  - Employees may be eligible to collect unemployment benefits.
  - Understand the effects on your paid time off and employee benefits plans. You should be informed about the extent to which employees who are not actively working are still eligible for these benefits.
  - If you are contemplating layoffs, state programs such as the California EDD's Workshare Program may be useful.
  - Finally, shutdowns and layoffs—even if temporary—can, in some circumstances, trigger notice requirements under federal or state WARN laws.

## **How Do You Handle Employees Who Are Sick?**

- Consistent with CDC guidance, employees should be advised to stay home if they have symptoms of a respiratory illness until they are fever and symptom free for at least 24 hours without the use of fever-reducing or symptom altering medications. Employees exhibiting fever or respiratory illness who come to the workplace or workplace gatherings should be told to go home. If the employee has no paid sick leave available, consider granting paid sick leave as an accommodation under these unique circumstances.
- Think twice before asking for documentation of illness for employees who report that they have COVID-19 like symptoms. Current CDC guidelines state: “Do not require a healthcare provider’s note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.” Additionally, some state and local sick leave laws restrict an employer’s ability to request documentation.
- Be cognizant of the inquiries you can make for an employee who calls in sick. While employers generally are prohibited from inquiring into an employee’s medical condition, current CDC guidance indicates it is appropriate to ask questions designed to determine if the employee has or may have been exposed to COVID-19, specifically:
  - (1) Did the employee recently travel to any high-risk area, *e.g.*, China, Italy, Iran, South Korea;
  - (2) Does the employee have a fever and/or respiratory symptoms?
- If an employee informs you that they have been diagnosed with COVID-19:
  - Ensure the employee understands not to come to work until they are cleared to do so.
  - The area where the employee had contact should be thoroughly cleaned.
  - Generally advise your workforce of the confirmed case without naming the employee(s).
  - Determine whether other employees may continue to work onsite.
    - Follow [CDC risk assessment guidelines](#) and local public health guidelines and consult with local public health officials as needed.
    - Consider sending individuals who worked in close proximity with the infected individual home for at least 14 days with instructions to monitor their symptoms.
    - Work at home should be considered as an option.

- Notify clients or customers who may have been exposed, taking care not to identify the employee who is infected. If you work in a multi-tenant building with shared elevators, you should also notify building management.
- If an employee advises that s/he has come into contact with someone with a confirmed or presumptive positive COVID-19 case:
  - If the employee is displaying symptoms send them home and evaluate whether other employees should be sent home as well using the CDC's risk assessment procedure and local public agency guidelines. (See above).
  - If the employee is not displaying symptoms, evaluate whether they can continue to work onsite using CDC's risk assessment procedure and local public agency guidelines. Consult with local public health officials as needed.
  - Notify employees that while you do not have any confirmed case of COVID-19, you have received a report that a current employee has had contact with someone with COVID-19 and that you have evaluated the situation in accordance with CDC and state and local agency guidelines; describe any other precautions you are taking.

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Dealing with COVID-19 in the workplace in the coming weeks will likely require day-to-day attention. While there is no need to panic, employers should stay up to date on developments, and be logical and flexible while making decisions that will impact their workforce.

If you have questions or concerns, please reach out to the Rogers Joseph O'Donnell attorney with whom you regularly work, or the authors of this legal update: [Gayle M. Athanacio](#), [Sharon Ongerth Rossi](#), or [Virginia K. Young](#).

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