

Managing the Commercial Impact of the Coronavirus: OSHA Provides Guidance Regarding Coronavirus Preparation and Response

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As the coronavirus outbreak continues to wreak havoc on markets and industries in the U.S. and around the world, businesses are now confronting significant and unique challenges. Successful navigation of these challenges will require thoughtful and comprehensive planning. Foley has created a multi-disciplinary and multi-jurisdictional team, which has prepared a wealth of topical client resources (see Foley's [Coronavirus Resource Center](#)) and is prepared to help our clients meet the legal and business challenges that the coronavirus outbreak is creating for stakeholders across a range of industries, including manufacturing, technology, solar, hospitality and travel, healthcare, food, fashion and apparel, and sports & entertainment. Chief among those challenges is the prospect of new legal requirements for employers during this challenging time.

As more employers are allowing employees to work remotely and are taking other precautions to protect against the outbreak of COVID-19 (also known as the coronavirus), the Occupational Safety and Health Administration (OSHA) has weighed in. On March 9, 2020, the agency issued guidance for employers on preparing workplaces for the coronavirus. OSHA also [has a webpage](#) that explains applicable health and safety standards that involve potential employee exposure to the virus.

Applicable Standards

Under the [General Duty Clause](#), all employers have a duty under the law to maintain a safe workplace for employees. This means that OSHA may hold employers responsible for not doing enough to protect their employees against the virus. And the Clause gives the agency some flexibility in doing so.

While there are no new OSHA regulations specific to the coronavirus, OSHA points out that employers should be specifically aware of OSHA's existing standards on [PPE](#), [bloodborne pathogens](#), and [sanitation](#), among others. OSHA also suggests that employers consult California's [standards](#) on preventing infectious diseases that can be transmitted by inhaling air, which are mandatory for certain healthcare employers in the state. Each of these standards and requirements have potential applicability in dealing with the coronavirus and/or may provide a "framework that may help control some sources of the virus." Employers should therefore consult these standards in implementing an appropriate preparation and response plan to reduce the likelihood of drawing an OSHA citation due to a COVID-19 situation.

“Preparedness and Response Plan”

More specifically, OSHA recommends that employers do the following:

- Develop an Infectious Disease Preparedness and Response Plan (including contingency plans for dealing with a reduced workforce);
- Prepare to Implement Basic Infection Prevention Measures (such as promoting frequent hand washing, ensuring regular cleaning and housekeeping, encouraging employees to stay home if they are feeling sick, and discouraging the shared use of phones, desks, and other equipment);
- Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate;
- Develop, Implement, and Communicate about Workplace Flexibilities and Protections; and
- Implement Workplace Controls (including physical barriers and proper ventilation, discontinuing non-essential travel, training to employees on proper precautions, and personal protective equipment (PPE) such as gloves, goggles, face masks, respiratory protection, and other gear where appropriate).

Employers should be aware of other regulations and statutes that may come into play when implementing their preparation and response plans. In that regard, in Foley's [Coronavirus FAQs](#) for Employers, we have discussed various coronavirus-related issues, including whether employers can force sick employees to go home, when employees are required or may be permitted to use respirators or face masks, whether employees may refuse to perform certain work, and other best practices for keeping a safe workplace. Employers should think through all options and issues not only at the OSHA level, but also at those that may arise under the ADA, FMLA, or local or state sick leave ordinances.

OSHA Logs

So what OSHA obligations arise when an employee has a confirmed case of coronavirus?

First, employers may have to record the confirmed case of COVID-19 on their OSHA 300 log under certain circumstances. While OSHA regulations state that the common cold or flu is generally not recordable, OSHA [indicates](#) that COVID-19 can be a recordable illness “when a worker is infected as a result of performing their work-related duties.” That is, *IF* the employee has a “confirmed case” of COVID-19, *IF* the case is “work-related” as defined in the [regulations](#) (e.g., exposure in work environment caused or contributed to the illness), *AND IF* the case meets one of the general recording criteria under the [regulations](#) (e.g., days away, medical treatment beyond first aid, etc.), it must be recorded. Of course, the difficult task for employers (and OSHA, for that matter) is determining when and how an employee contracted the virus. This is a fact-intensive inquiry that will require some consideration of whether, among other things, the employee’s coworkers have previously exhibited COVID-19 symptoms, whether the employee has engaged in work travel to any areas with high virus activity, and/or whether the employee has come into contact with customers or vendors who have previously exhibited COVID-19 symptoms.

Second, employers may have to report the confirmed case of COVID-19 to OSHA. Two [requirements](#) must be met to trigger the reporting requirement: (1) the confirmed case of COVID-19 is “work-related,” and (2) the employee is hospitalized as an in-patient or dies as a result of the confirmed case of COVID-19. Deaths must be reported to OSHA within 8 hours, and in-patient hospitalization must be reported within 24 hours. That said, OSHA does not require reporting if the in-patient hospitalization occurs more than 24 hours after the work-related incident leading to the infection, or if the death occurs more than 30 days after the work-related incident leading to the infection. And again, the “work-related” inquiry is the difficult task in determining whether to report the occurrence to OSHA.

For more information about these recommended steps, please contact your Foley relationship partner. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

We will continue to keep you apprised of relevant developments. [Click here](#) for Foley’s Coronavirus Resource Center for insights and resources to support your business during this challenging time.