

Coronavirus 2020: Current Guidance for US Employers



Janet Hendrick is an experienced employment litigator who tackles each of her client's problems with a tailored, results-oriented approach.

By Phillips Murrah Attorneys [Janet Hendrick](#) and [Phoebe Mitchell](#)

Around the globe, the number of confirmed Coronavirus cases has risen to over 81,000. Although 95% of these confirmed cases are located in China, the number in the United States has grown to 53.[\[1\]](#) With many unanswered questions about the virus, including concrete information on how it is contracted and spread, employers must grapple with responding to the possible repercussions of Coronavirus in the workplace.

What is Coronavirus?

According to the World Health Organization (WHO), Coronavirus is a virus that can cause respiratory issues, with symptoms

ranging from those similar to the common cold, to more serious issues, such as difficulty breathing resulting in hospitalization. The elderly and those with preexisting medical problems are more likely to develop serious symptoms from Coronavirus. The incubation period, or the period of time between catching the virus and showing symptoms of the disease, ranges from 1-14 days. COVID-19, the particular strain of Coronavirus that is the subject of the current global outbreak, was previously unknown before its initial diagnosis in Wuhan, China, in December 2019. There is currently no vaccine or specific antiviral medicine to prevent or treat Coronavirus.



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Prevention

- The WHO recommends the following preventative measures:
- Regularly and thoroughly clean your hands

- Maintain at least 3 feet distance between yourself and anyone who is coughing and sneezing
- Avoid touching eyes, nose and mouth
- Cover your mouth and nose with your bent elbow or a tissue when you cough or sneeze
- Stay home if you feel unwell
- Seek medical attention if you have a fever, cough and difficulty breathing

Considerations for Employers

Under the General Duty Clause of the Occupational Safety and Health Act (OSHA), employers must furnish “employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to...employees.” Although OSHA has published a general guidance for employers regarding Coronavirus, it has not published any standards specific to Coronavirus in the workplace. However, activities such as nonessential business travel to China or other areas affected by the virus could violate the General Duty Clause. Employers should consider preventative measures to stop the spread of Coronavirus, such as providing hand sanitizer to employees and encouraging sick employees to stay home.

When an employer suspects that an employee has been exposed to Coronavirus, either by traveling to an affected area or through contact with an affected person, the employer should require the employee, including those under required or self-quarantine, to work from home, where possible, during the 14-day incubation period. For employees who cannot work remotely, employers should allow the employee to take leave consistent with the employer’s normal leave of absence policies, including permitting employees to utilize any available paid leave. There is no requirement, however, to provide impacted employees with any additional paid leave.

Impacted employees may be eligible for job-protected unpaid

leave under the Family and Medical Leave Act. Employees who test positive for Coronavirus most likely meet the FMLA's definition of "serious health condition" and are thus entitled to FMLA leave. These employees may also meet the definition of a "qualified individual with a disability" under the Americans with Disabilities Act (ADA), and its state equivalents, in which case the employer, assuming covered by the ADA, must engage in the interactive process to determine if leave or another reasonable accommodation is required.

Leave eligibility for potentially affected employees who do not show symptoms of Coronavirus is less clear. Certainly there is no requirement under the ADA or state equivalents to accommodate employees who are not ill. And while employees are not generally entitled to FMLA leave to avoid contracting an illness, if the employee is under the continuing treatment of a health care provider, the employee may meet the test for a "serious health condition" under the FMLA. Remember that "serious health condition" includes certain forms of "continuing treatment." "Continuing treatment" takes many forms, including a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves (i) treatment two or more times within 30 days of the first day of incapacity by a health care provider or (ii) treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider. "Continuing treatment" also includes any period of absence to receive multiple treatments by a health care provider for a condition that would likely result in a period of incapacity of more than three consecutive days in the absence of medical intervention or treatment. For employees who take leave, employers should require medical clearance before allowing the employee to return to work.

Employers should also be aware that all 50 states have laws

that address quarantine and isolation.[\[2\]](#)

These laws grant authority to certain state government entities to control the spread of communicable illnesses, thus allowing the state government to mandate quarantines or isolation. Some of the state quarantine laws also impose a penalty on persons who escape or attempt to escape a mandated quarantine.

As with all employment law considerations, consistency is critical: employers should treat impacted employees consistently to avoid any claim of discriminatory treatment. Any policy or employer action addressing communicable illnesses such as Coronavirus should address all such illnesses and should be applied equally to all individuals to ensure that no protected class of employees is disproportionately affected.

Employers should consult with their employment counsel for additional guidance on addressing concerns about the Coronavirus in the workplace. Phillips Murrah's labor and employment attorneys continue to monitor developments to provide up-to-date advice to our clients.

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[\[1\]](#) Coronavirus disease 2019 (COVID-19) Situation Report – 37, World Health Organization (February 26, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200226-sitrep-37-covid-19.pdf?sfvrsn=2146841e_2.

[\[2\]](#) State Quarantine and Isolation Statutes, National Conference of State Legislatures, (February 27, 2020), <https://www.ncsl.org/research/health/state-quarantine-and-isol>

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