



CORONAVIRUS [COVID-19]

CORONAVIRUS AND YOUR WORKPLACE

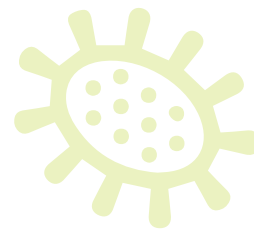
Addressing Sick Leave, FMLA, Pay, Privacy, and Actions You Need to Take



CORONAVIRUS AND YOUR WORKPLACE

Addressing Sick Leave, FMLA, Pay, Privacy, and Actions You Need to Take

The outbreak of coronavirus disease 2019 (COVID-19) presents new challenges in the workplace as employers strive to keep businesses running, comply with regulations, and support the health and well-being of their workforce. A business's response to this crisis needs to minimize the spread of the disease in the workplace while reducing the risk of noncompliance with Occupational Safety and Health Act (OSHA) regulations and employment laws such as the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA).



To address these issues, you need to be ready to respond. This requires a multi-faceted plan that takes into account everything from FMLA and confidentiality rights to OSHA recordkeeping requirements. At the same time, you need to stay on top of issues such as social distancing and absenteeism, as well as production concerns. Your response must be flexible enough to adapt to an ever-changing situation in a way that supports your entire organization.

RESPONDING TO THE OUTBREAK

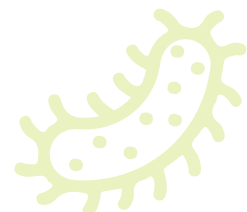
Your business's response to the coronavirus outbreak should be overseen by a trusted team of leaders. This can involve individuals from senior management, your legal team, safety and risk management, operations, communications, and human resources.



The team should put your infectious disease outbreak or pandemic plan into action, taking the steps necessary based on the severity of the outbreak in a given area.

The Centers for Disease Control and Prevention recommends that employers:

ENCOURAGE SICK EMPLOYEES TO STAY HOME. You may need to be flexible with your sick leave policy to ensure that employees do not come to work when they have coronavirus symptoms; make sure your policy is in line with guidance from local public health officials.



WASH GERMS AWAY



- ✓ MICROWAVE HANDLES
- ✓ DESKS AND WORKSTATIONS
- ✓ COUNTERTOPS
- ✓ DOORKNOBS
- ✓ COMPUTER KEYBOARDS
- ✓ COMPUTER MICE
- ✓ FAUCET HANDLES
- ✓ PHONES
- ✓ REMOTE CONTROLS

If you have more than one location, you may need to give local managers the authority to adjust your policy based on the severity of the outbreak in that area. Employers are encouraged by the CDC to not require a doctor's note from employees who are sick with acute respiratory illness, as health providers may be too busy to provide this documentation.

HOW LONG SHOULD ILL EMPLOYEES STAY HOME?

The CDC recommends that employees stay home when they have symptoms of acute respiratory illness. They should not come to work until they:

- Are free of fever of 100.4 degrees F or greater,
- Are free of signs of fever, and
- Are free of any other symptoms for at least 24 hours

They should be free of fever and symptoms without the use of fever-reducing medication or other medicine (such as a cough suppressant) that alters symptoms.

ALLOW EMPLOYEES TO STAY HOME TO CARE FOR A FAMILY MEMBER.

Employees may need care for a sick child or other relative. They also may need to deal with school and day care closings. A sick leave policy may need to be altered to cover these situations.

CLEAN THE WORK ENVIRONMENT.

All frequently touched surfaces should be routinely cleaned. In addition, you can provide disposable wipes to encourage employees to clean commonly touched surfaces.

Clean surfaces that are touched frequently. Areas most likely to be contaminated include:

- Microwave handles
- Desks and workstations
- Countertops
- Doorknobs
- Computer keyboards
- Computer mice
- Faucet handles
- Phones
- Remote controls

Electronics can usually be cleaned with a disinfectant wipe (check the manufacturer's website if you're not sure whether liquid can be used). For other surfaces that should be routinely cleaned, follow the directions on the label of the cleaning agent.

EMPHASIZE PREVENTIVE ACTIONS.

Encourage employees to:

- Wash hands often with soap and water for at least 20 seconds, or clean their hands with a hand sanitizer containing at least 60 percent alcohol if soap and water are unavailable,
- Always wash hands that are visibly soiled,
- Avoid touching the eyes, nose, or mouth with unwashed hands,
- Avoid close contact with people who are sick,
- Cover coughs and sneezes with a tissue or sleeve, and
- Clean frequently touched surfaces.

SEPARATE SICK EMPLOYEES.

If an employee at work shows symptoms of severe respiratory illness, such as a cough or shortness of breath, separate the employee from others and send the employee home.

IDENTIFYING AND ISOLATING SUSPECTED CASES

In all workplaces where exposure to COVID-19 may occur, prompt identification and isolation of potentially infectious individuals is a critical first step in protecting workers, visitors, and others at the worksite.

- Immediately isolate people suspected of having COVID-19. For example, move potentially infectious people to isolation rooms and close the doors.
- Take steps to limit spread of the person's infectious respiratory secretions, including by providing them with a facemask and asking them to wear it, if they can tolerate doing so. *Note: A surgical mask on a patient or other sick person should not be confused with PPE for a worker; the mask acts to contain potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth).*
- If possible, isolate people suspected of having COVID-19 separately from those with confirmed cases of the virus to prevent further transmission, including in screening, triage, or healthcare facilities.
- Protect workers in close contact with the sick person by using additional engineering and administrative control, safe work practices and PPE.

Note: The CDC currently defines "close contact" as being about 6 feet (about 2 meters) from an infected person or within the room or care area of an infected patient for a prolonged period while not wearing recommended PPE.

HANDWASHING HOW-TO



Wet hands with clean water and apply soap.



Scrub hands for at least 20 seconds.



Make sure to clean the backs of your hands and between fingers.



Don't forget to clean under fingernails.



Rinse hands with clean, running water.



Dry your hands with a clean towel or air dryer (germs are transferred more easily to and from wet hands).

Close contact also includes instances where there is direct contact with infectious secretions while not wearing recommended PPE. Close contact generally does not include brief interactions, such as walking past a person.

COMMUNICATING WITH YOUR WORKFORCE

To ease employee anxiety and avoid misinformation or the spreading of rumors, communicate with employees about the actions you are taking to address issues associated with the coronavirus. Designate a company official to be the point person when it comes to all things COVID-19. This person would be responsible for checking the CDC and World Health Organization websites regularly to stay on top of the disease's spread and impact. Let employees know that you are monitoring information and will share it.

Make sure employees are aware of:

- Your planned response to the outbreak
- Any updates on the impact the outbreak is making on your community and workplace

To get in front of your employees worries, use clear, succinct communication. Let them know, for example, that they don't have to shake hands with others, including customers, if they don't want to. You might want to get input from your employee population regarding their questions and how they prefer to receive information. Employees are likely to be especially concerned with how the outbreak will impact them and their jobs. Anticipate their concerns and prepare a list of frequently asked questions. Your communication can include an explanation of:

- Leave policies,
- Options for remote work, and
- Travel policies,
- Pay and benefit considerations.
- Separation of sick employees,

All contract and temporary employees should also receive the latest information regarding your policies. Everyone in your workplace should be aware of steps that can help control the spread of the virus and the steps your company is taking to respond to the situation.

COMMUNICATION METHODS

Use a variety of communication strategies to keep workers informed about your policies and what they should do to help contain the spread of the disease. This can include:

- Emails that keep employees informed of the steps your company is taking to address the effect of the outbreak.
- A webpage to house information and keep employees up-to-date on any cancellations, travel restrictions, or work-from-home policies.
- Posters that remind workers of the need to wash hands, cover coughs, and clean common surfaces.

RECOMMENDED COMMUNICATION METHODS



EMAILS



WEBPAGES



POSTERS

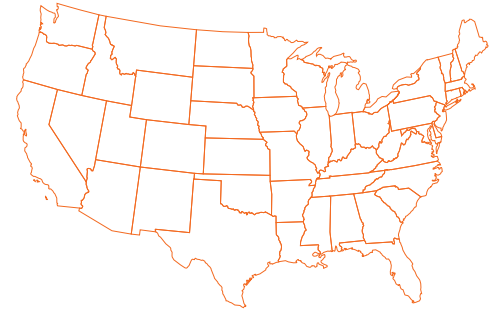
CONSIDERATION OF EMPLOYEE RIGHTS

The coronavirus outbreak also brings up a number of issues relating to employee rights.

PAY

If you have employees who have the coronavirus, they should not come to work. Your sick leave policy will apply, but you may consider making it broader or more generous during the coronavirus outbreak.

The fear of not being paid could incentivize employees to come to work when sick. This exposes their coworkers, and possibly the public, to the virus. Allowing employees to take paid sick leave could be less expensive or disruptive in the long run.



FMLA

For some employees or family members, COVID-19 could be seen as a serious health condition for purposes of the Family and Medical Leave Act (FMLA). The employee would need to meet the eligibility criteria in order to take FMLA leave. If so, the employee's job would be protected, and upon return to work, the employee would need to be returned to his or her position or an equivalent one.

But what if an employee is being isolated because of COVID-19? If employees are isolated because they have the disease, they are likely receiving inpatient care (overnight stay in a healthcare facility) or continuing treatment from a medical professional. As such, the absence could qualify for FMLA protections.

Does that also work for employees who are quarantined? Employees could be quarantined even if they are not affected by the disease but are being restricted to help reduce the spread of it. Therefore, much would depend upon the facts involved. If, for example, an employee is hospitalized overnight, the condition would be considered a serious one, and the employee would be entitled to the FMLA protections.

If the employee is unable to perform his or her job, is receiving treatment at least twice, or is receiving treatment at least once followed by a regimen of continuing treatment (e.g., prescription medication), then the condition would also be considered a serious one for FMLA purposes. All that monitoring, testing, and observation could be seen as treatment.

CONSIDER STATE LAWS

The federal FMLA may be only one area of concern. Many states have laws that provide for leave, and some provide for paid leave. You will need to take stock of what states your employees are in and how the state leave laws apply.

CONSIDER STATE LAWS

IN ADDITION TO
FEDERAL FMLA,
MANY STATES
HAVE THEIR OWN
LEAVE LAWS THAT
YOU NEED TO BE
AWARE OF.

ADA

Another law you may need to keep in mind is the federal Americans with Disabilities Act (ADA). The ADA prohibits employers from discriminating against employees based on a disability. A disability is an impairment that substantially limits one or more major life activities, and breathing is a major life activity.

YOU CAN STILL FOLLOW CDC RECOMMENDATIONS

The ADA rules continue to apply to the COVID-19 outbreak and do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC about steps employers should take regarding COVID-19.

For purposes of the ADA, don't get a false sense of security because the condition is not permanent. A temporary impairment may be a disability. Of course, the more severe the condition is, the more likely it will be a disability.

You are expected to provide a reasonable accommodation to an employee with a disability. Providing time off can be a reasonable accommodation. Unfortunately, there is no one-size-fits-all accommodation for every situation. You are generally expected to provide an accommodation as long as doing so does not pose an undue hardship. Meeting an undue hardship threshold isn't easy, however. No bright line test exists to determine whether a particular accommodation poses an undue hardship.

The ADA also restricts when you may make medical inquiries or require medical exams. For employees, the ADA prohibits disability-related inquiries or medical examinations unless you have a reasonable belief, based on objective evidence, that a particular employee is unable to perform essential job functions because of a medical condition; or an employee will pose a direct threat due to a medical condition.

CAN YOU ASK AN EMPLOYEE IF HE OR SHE HAS CORONAVIRUS?

You may ask employees if they are experiencing COVID-19-like symptoms, such as fever or chills and a cough or sore throat. If COVID-19 is like seasonal flu, these inquiries are not disability-related. If COVID-19 becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of the disease poses a direct threat.

You may ask employees if they are experiencing COVID-19-like symptoms such as fever, chills, cough, or sore throat.

Whether COVID-19 rises to the level of a direct threat depends on the severity of the illness. If the CDC or state or local public health authorities determine that the illness is like seasonal influenza, it would not pose a direct threat or justify disability-related



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inquiries and medical examinations. By contrast, if the CDC or state or local health authorities determine that COVID-19 is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination.

STAY ON TOP OF PUBLIC HEALTH INFORMATION

During a pandemic, employers should rely on the latest CDC and state or local public health assessments. While the Equal Employment Opportunity Commission recognizes that public health recommendations may change during a crisis and differ between states, employers are expected to make their best efforts to obtain public health advice that is current and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

CONFIDENTIALITY

All information about employees (and applicants) obtained through disability-related inquiries or medical examinations must be kept confidential. Avoid sharing an employee's medical information with coworkers. If an employee is affected and you are taking steps in response, doing so could cause other employees to become curious. If they ask about whether a particular employee is infected, you could simply indicate that you are taking appropriate precautions, and that you are not at liberty to disclose personal information.



Information regarding the medical condition or history of an employee must be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record.

DOCTOR'S NOTES

You may require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work. Such inquiries are permitted under the ADA either because they would not be disability-related or, if COVID-19 were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

The CDC recommends that employers not request them, however, as health care providers may be too busy to provide them. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.



OTHER DISCRIMINATION RISKS

You should also refrain from making determinations based on other protected classes, such as race and national origin. Don't, for example, treat employees who are from a particular country differently simply because they come from that country.

OSHA COMPLIANCE RESPONSIBILITIES

When it comes to hazards such as COVID-19, the level of responsibility an employer has to protect workers depends largely on the anticipated exposures. If there is widespread transmission, then all employers will have some responsibility under OSHA requirements. If there is not widespread transmission, then only those employers who have employees likely to interact with potentially infected persons will be expected to implement significant controls. This latter group includes:

- Healthcare
- Deathcare
- Laboratories
- Airline operations
- Border protection
- Solid waste and wastewater management
- Employees who travel to areas where the virus is spreading

Employers and workers in operations where there is no specific exposure should remain aware of the evolving outbreak situation. Changes in outbreak conditions may warrant additional precautions in some workplaces.

KEY OSHA STANDARDS FOR COVID-19

There is no specific OSHA standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposures. Among the most relevant are:

- Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection when necessary to protect against a hazard.
 - When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). The program must include fit testing, medical evaluation, training, and user seal checks. However, if the only use is **voluntary** use of a dust mask (e.g., N95), employers only have to provide a copy of Appendix D to the respiratory protection standard. But, if an employee uses any other type of respirator on a voluntary basis, then more stringent controls must be in place, including medical evaluation.
- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm."

OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit COVID-19. However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard.

RECORDING CASES OF COVID-19

While OSHA injury and illness recordkeeping requirements exempt recording of the common cold and flu, COVID-19 is a work-related illness when a worker is infected on the job. This applies in all industries covered by the recordkeeping rule — not just healthcare. OSHA tells J. J. Keller and Associates, Inc., that the “discernable cause” of a work-related COVID-19 exposure in a non-healthcare setting could be simply “working near someone who carried the virus.” This means if you have a worker who likely contracted COVID-19 because of coming into contact with an infected person, the case would be work-related, and would be recordable if there is medical treatment beyond first aid, lost time, or restricted work.

STATE STANDARDS

Employers should check state and local standards where they have operations. For example, healthcare workers in California are protected by the Cal/OSHA Aerosol Transmissible Diseases (ATD) standard, which is aimed at preventing worker illness from infectious diseases that can be transmitted by inhaling air that contains viruses (including COVID-19), bacteria or other disease-causing organisms.

SUPPORT FOR BUSINESS OPERATIONS

The coronavirus outbreak will mean a change to business as usual. Have contingency plans in place to address how work will get done, how you will minimize the adverse impact on your customers, and how your workplace will adapt in order to minimize the spread of the disease. Detailed planning will limit the impact of an outbreak on your business operations.

Decide how you will address these issues:

SOCIAL DISTANCING. Public health authorities may recommend increasing the physical distance between employees. To support this, consider offering:

- The option for employees to work from home, even if a family member is sick
- Staggered shifts

In addition, you may need to:

- Modify, postpone, or cancel large work events; and
- Cancel non-essential travel.

ABSENTEEISM: Consider how business operations can be maintained if there is increasing absenteeism. Identify essential jobs, roles, and business functions. Look for additional resources, such as cross-trained employees who can fill critical positions. Consider shifting work to locations that are experiencing less of an impact from the virus or lower absenteeism rates.



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SUPPLY CHAIN AND PRODUCTION DISRUPTIONS: Have alternative plans in place for raw materials, suppliers, and logistics and be prepared to be flexible as the situation changes. Develop a communication plan to keep suppliers, your employees, and customers informed of changes. If international and domestic production levels drop due to a pandemic, manufacturers and retail establishments may feel the effects by way of unavailable raw materials and finished goods.

SPECIAL CONSIDERATIONS FOR TRANSPORTATION EMPLOYERS

A motor carrier's pandemic preparedness plan is created to protect employees, customers, and the general public from viral threats. A business continuity plan is a piece of this plan, and it has the primary objective of maintaining and restoring operations during a crisis. Its role is to keep trucks or busses moving.



Your plan should consider the following topics:

AVAILABILITY OF GOODS AND SERVICES

- Are your customers (shippers and receivers) and their vendors able to continue operation during the outbreak?
- What would the demand for your customers' products or services (pharmaceutical vs. appliances vs. toys, etc.) be during an epidemic?
- Can essential materials and supplies be safely, legally, and practically stored at regional distribution centers or dispersed at sites along likely traveled routes?
- What is the availability of fuel and lubricants? How long can you operate if a shortage occurs?
- Could there be a shortage of repair parts or supplies for vehicles and equipment?
- Are open warehouses or storage containers available locally on short notice if you need to stockpile supplies temporarily?
- Do you have pre-established contracts with multiple vendors for essential supplies? If your supply chain is disrupted, how long can you operate?
- Are there specialty support operations available during a pandemic, such as tank wash stations and cleaning supplies for bulk hazardous materials?

EMPLOYEE AVAILABILITY

- Are you able to re-assign cross-trained employees to fill in the gaps?
 - Is a mechanic licensed with a CDL able to take loads?
 - Can a dispatcher or supervisor fill in as a driver if qualified?
 - Can someone assist in dispatching?
- Are there enough available certified maintenance technicians in-house if your third-party fleet maintenance service is unable to service your equipment?

- How will you address drivers who are unwilling to transport goods or passengers in areas designated as “hot spots” for the virus?
- Are there procedures in place for vehicles, including trucks, trailers, and buses, to be adequately cleaned and disinfected between shifts and load changes?
- Are you cleaning (daily) frequently touched surfaces on busses?
- What procedures are in place in the event a driver becomes ill while on the road?
- Do you offer a work-from-home option for administrative personnel to decrease exposure to the virus?
- Have you modified your policy on absenteeism (making it less stringent) during times of pandemic?

ROLES AND RESPONSIBILITIES

- Have you designated someone to oversee your coronavirus-related prevention initiative?
- Do dispatchers have a checklist of symptoms of the coronavirus in order to refer drivers to treatment?
- Are dispatchers trained that regulations prohibit a driver from operating a CMV when ill?
- Have drivers been trained on your pandemic policy? They should have:
 - Educational materials (information about signs and symptoms, company procedures); and
 - The drivers’ point of contact for questions.

ASSESSING RISK: WHEN TO IMPLEMENT YOUR POLICIES

Have a team in place to oversee the implementation of your plan. Decide what will trigger the execution of steps such as policy modifications or social distancing. Work with community health leaders to determine when significant measures, such as closing operations, are necessary in a specific location.

In assessing potential hazards associated with the coronavirus outbreak, employers should consider whether or not their workers may encounter someone infected with COVID-19 in the course of their duties.

Employers should also determine if workers could be exposed to environments (e.g., worksites) or materials (e.g., laboratory samples, waste) contaminated with the virus.

Depending on the work setting, employers may also rely on identification of sick individuals who have signs, symptoms, and/or a history of travel to COVID-19-affected areas that indicate potential infection with the virus.

Taking these steps will help you identify exposure risks for workers and implement appropriate control measures.

A FLEXIBLE AND TIMELY RESPONSE

The steps you take to address the coronavirus crisis will depend on the severity of the outbreak in your community and its impact on your workplace. Communicate regularly with supervisors and employees so they are up to date on your policies and are aware of steps they can take to reduce their risk of becoming infected by the virus and slow its spread.

Be ready for increased absenteeism, disruption to normal business operations, and a rapidly changing situation. Coordinate your response with state and local health officials to support the health of your employees and community during a challenging time.



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EMPLOYEE RELATIONS MANAGEMENT TODAY NEWSLETTER

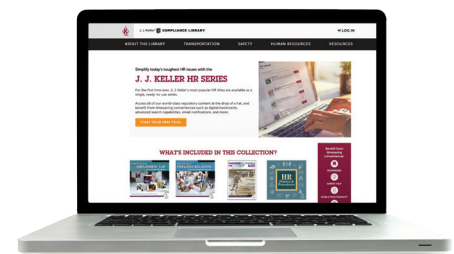
Manage your team more effectively with this comprehensive newsletter written by our trusted team of in-house experts. This quick-read resource reminds those who manage employees how workplace issues can quickly escalate, and how their actions can result in liability for themselves and the company. Available with Online Edition.



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She stays on top of employment law poster updates and makes sure J. J. Keller's labor law poster content is complaint. She also watches for changes to drug testing and marijuana laws and is co-editor of the Everyday Drug & Alcohol Program Management manual. In addition, Terri provides healthy living tips and wellness best practices in the Employee Health and Wellness Training Advisor/LivingRight.



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