

Electronic Alert

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Coronavirus in the Community: How Employers Should Respond to the Outbreak

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The wait is over – the novel coronavirus (COVID-19) has arrived in the Pacific Northwest. Employers need to consider the legal implications of their actions when carrying out coronavirus prevention and containment measures. The situation is evolving daily and could likely get worse before it resolves.

Employers have a responsibility under the Occupational Safety and Health Act (OSHA) to maintain a safe workplace. While there are confirmed cases in both Oregon and Washington state, the risk of exposure for the average worker is still relatively low. However, many employees may feel uneasy about coming to work or interacting with the public at large due to increasing media attention.

Consider the following best practices in response to the outbreak:

- Stay current with local and national health agency recommendations: Employees want to be confident that their employers have a handle on the situation. Notify employees that management is apprised of, and carefully monitoring the outbreak. Any shared education or information on the virus should be brief, and reiterate information from official sources. The Center for Disease Control's (CDC) website includes up-to-date information regarding the spread of the disease, risk assessment, and guidance for travelers. Oregon employers should monitor the Oregon Health Authority website for updates, while Washington employers should consult the Washington State Department of Health website.
- Follow normal flu season protocol: Provide hand sanitizer, handwashing stations, and facial tissues; encourage employees to wash hands with soap and water for at least 20 seconds; and clean and disinfect frequently touched objects and surfaces.
- Limit travel to affected areas: Implement travel guidelines and procedures that require approval for travel to affected areas, and consider cancelling all work-related travel to affected areas where employees may be exposed.
- Actively encourage sick employees to stay home: According to the CDC, coronavirus is most contagious while an individual is exhibiting symptoms. It is crucial that employees be sent home or refrain from coming into work if they have any symptoms of the virus.
- Offer telework to potentially exposed employees during the incubation period: If an employee recently returned from a known affected area or was potentially exposed to the virus, you may want to offer remote work as a precaution during the virus incubation period. Further, some employees may have preexisting medical conditions which make them more susceptible to the coronavirus, making telecommuting during an outbreak a reasonable accommodation under

the ADA. Employers should be mindful to include telecommuting employees in all normal work functions (meetings, decisions, projects, etc.) where possible so as not to isolate them during the incubation period.

- Mitigate litigation risk: If telecommuting is unavailable but an employer would still like an employee who is not exhibiting symptoms but may have been exposed to the virus to stay home for the incubation period, the employer should consider paying the employee while they are required to stay home.

Be aware that telecommuting requests may increase from non-exposed employees in response to exposure concerns. OSHA's whistleblower protections permit employees to refuse work assignments when they have a reasonable fear for safety or health at work. At this stage, whether a fear is "reasonable" is highly fact-sensitive and requires careful analysis.

The appropriate response to the coronavirus outbreak requires thorough consideration. This is a dynamic situation that implicates numerous state and federal laws. Employers should be cognizant of their company's needs and consult legal counsel as needed.

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