

ALERT

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Jonathan Trafimow

A Company's Best Responses To Coronavirus (COVID-19)

By: Jonathan Trafimow, Keith Frank & Helena Nagel

Companies distracted by the challenges of running their businesses during the Coronavirus pandemic may fall into dangerous and costly pitfalls while trying to maintain a safe and healthy environment for their employees. Don't be one of them. This article outlines the issues that employers should consider in developing their response plan.

Every company should have a response plan:

Coronavirus can significantly disrupt business operations with little or no warning. To minimize the health, legal and financial impact this pandemic has on your company, we recommend establishing a thorough, up-to-date response plan. This article identifies some issues that may arise. Due to the complexity of the numerous federal, state and local laws that may be implicated, companies should work with employment counsel as they prepare their response plan.

What to do if an employee shows symptoms of Coronavirus:

Employers are permitted to ask an employee who is exhibiting Coronavirus symptoms to leave the workplace and seek medical attention. Symptoms of Coronavirus include fever, cough and shortness of breath, according to the Centers for Disease Control ("CDC").

However, under the federal Americans with Disabilities Act ("ADA"), employers may not seek information regarding the employee's medical status. Employers must comply with ADA restrictions while still maintaining a safe workplace for everyone.

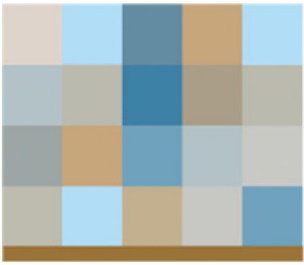
To do this, employers should seek to foster a more transparent environment, in which employees voluntarily disclose whether they are suffering from Coronavirus symptoms. One way employers can incentivize employees to voluntarily disclose is to show flexibility with sick leave and attendance policies so employees who may have exhausted their sick leave will not be reluctant to disclose symptoms or miss work.



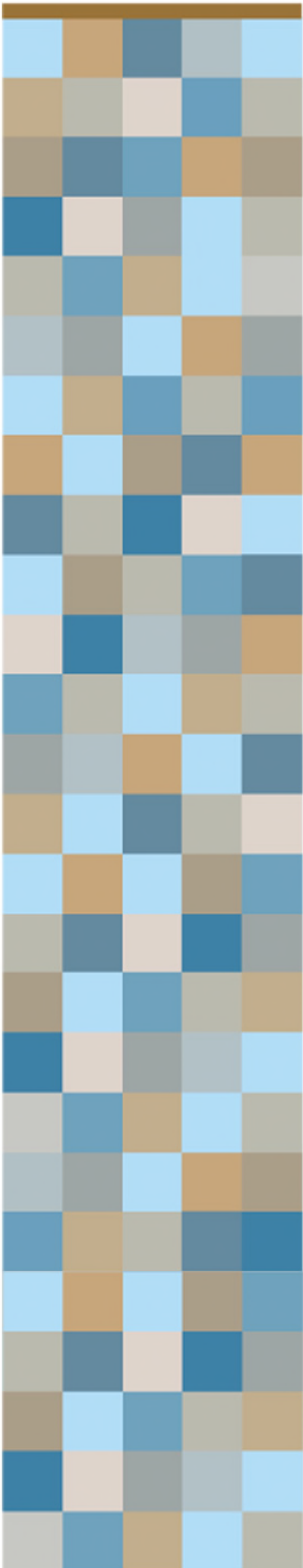
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What to do if an employee is diagnosed with Coronavirus:

If an employee tests positive for Coronavirus, the employer should respond quickly to limit exposure in the workplace. As an initial matter, the company should send home all individuals who worked closely with the diagnosed employee for 14 days. It is important that the employer takes all necessary measures to ensure that it does not disclose any medical information concerning the diagnosed employee, or any other employee, while trying to contain any exposure. Employers may also want to take additional steps to deeply clean and disinfect the area in which the diagnosed employee worked.

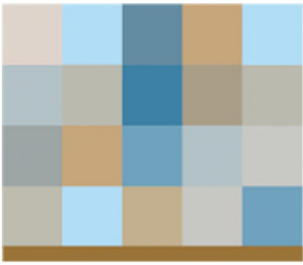
Employers should also check their state and local laws to determine whether they are obligated to continue paying an employee who is out of work due to suspected and/or confirmed Coronavirus. For example, New York is reviewing proposed legislation that would require employers to provide sick leave for all employees quarantined due to potential exposure to Coronavirus. Even if not required by law, it may be advantageous for employers to be flexible regarding paid sick leave and encourage employees to stay home.

What to do if an employee recently traveled to an area affected by Coronavirus:

An employer may ask an employee about exposure to the pandemic virus during recent travel, regardless of whether the employee exhibits symptoms of Coronavirus. A company may also ask employees whether they have otherwise been exposed to the Coronavirus to determine potential risk. However, as explained above, the employer must not ask the employee any medically-related questions.

What to do if you must temporarily close your business due to the Coronavirus outbreak:

Companies should develop a plan in the event they are forced to temporarily close their businesses due to Coronavirus. In developing this plan, companies should consider whether a "work-from-home" policy is practical for their respective business and determine whether their employees can feasibly work remotely. If a company decides to proceed with a "work-from-home" policy, it should establish the necessary safeguards to ensure compliance with all applicable laws. For example, "work-from-home" policies must establish procedures that provide non-exempt employees with meal and rest breaks, which may be required under applicable state and local law. The policies must also be able to accurately capture all hours worked by non-exempt employees, to ensure



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compliance with the federal Fair Labor Standards Act ("FLSA") and other state and local laws.

Companies should also consider whether they are obligated to issue notifications to employees pursuant to the federal Worker Adjustment and Retraining Notification ("WARN") Act and similar state mini-WARN Acts. Under the federal WARN Act, applicable to companies with at least 100 employees, employers must provide 60 days' notice to their employees, in addition to unions and government officials, prior to a "plant closing" or "mass layoff" at a single site. If a company determines that it is obligated to issue WARN notices to its employees, it should review the federal WARN Act and/or applicable mini-WARN Acts to determine whether an exception applies. For example, New York's mini-WARN Act, applicable to New York companies with at least 50 employees, provides the "unforeseeable business circumstances" exception, which may apply in connection with a closing caused by this pandemic virus. However, the applicability of an exception under one law does not excuse a company of its obligations under other applicable laws

In the new post-HSTPA New York, landlords should consult with an attorney for assistance in navigating the new eviction requirements and hurdles when dealing with either commercial or residential tenants who are in default of lease payments.

[Moritt Hock & Hamroff LLP](#) has a team of experienced lawyers who are closely monitoring Coronavirus developments and can help companies appropriately respond to this pandemic virus.

Any issues raised in this Alert may be addressed either to Jon Trafimow or Keith Frank they can be reached at (516) 873-2000 or by email at jtrafimow@moritthock.com or kfrank@moritthock.com. Leslie Berkoff, a partner of the firm and co-chair of its ADR practice group, contributed to this Alert.



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