



## Advice for Employers Regarding the Coronavirus Outbreak

March 3, 2020: With the recent news that the “Coronavirus” (a-k-a: COVID-19, 2019-nCoV, or SARS-CoV-2) has found its way into Rhode Island, Massachusetts and other states, many employers are asking questions concerning their rights and obligations when it comes to addressing this issue with their employees. The following is meant to address several questions employers have been asking and issues employers will likely be faced with as the number of positive and suspected cases of Coronavirus continue to grow within the U.S. and abroad.

**Question 1: If an employee is displaying flu-like symptoms while at work, is an employer permitted to address the issue with the employee by, for example, sending the employee home?**

**Response:** Yes. Generally speaking, an employer may send an employee home if the employee is displaying flu-like symptoms while at work or on work-related business.

Although the Americans with Disabilities Act (“ADA”) places limitations on an employer’s ability to ask disability-related questions and require employees to take medical examinations, the most-recent guidance published by the Equal Employment Opportunities Commission (“EEOC”) in response to the “H1N1” influenza outbreak in 2009 clarifies that sending an employee home in this situation does not violate the ADA. On the one hand, if the employee’s symptoms are related to a common cold or influenza, sending the employee home is not a disability-related action, and the ADA will not be implicated. On the other hand, if the employee’s symptoms relate to a more serious health condition such as Coronavirus, sending the employee home would be permitted under the ADA if the illness were serious enough to pose a “direct threat” to the health and safety of the employee or the employee’s co-workers.

The EEOC’s current guidance on this topic is found at: [www.eeoc.gov/facts/pandemic\\_flu.html](http://www.eeoc.gov/facts/pandemic_flu.html).

The EEOC is expected to issue updated guidance tailored to the Coronavirus in the coming weeks.

**Question 2: May we ask our employees whether they are suffering from an underlying health condition that makes them more vulnerable to the effects of Coronavirus?**

**Response:** No (not at this time), but you can invite employees to voluntarily disclose such information to the company if they are concerned about it. Again, the ADA places limitations on an employer’s ability to ask disability-related questions and require employees to take medical examinations.

According to the EEOC, employers may only make disability-related inquiries of employees if (1) the employer can show that the inquiry is job-related and consistent with business necessity or (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the employee or others that cannot otherwise be reduced by reasonable accommodation.

Asking employees about their underlying health condition(s) due to the potential threat of a Coronavirus outbreak would likely not meet either of these tests (at this time) based on current EEOC guidance. If employers do invite employees to disclose their underlying health conditions, they should allow them to do it in confidence (ideally to individuals other than their direct supervisors), and employee responses must be entirely voluntary.

**Question 3: If an employer chooses to send an employee home, must we pay the employee?**

**Response:** Maybe. The answer to this question depends on the particular facts of each case.

For example, in unionized workplaces, there may exist collective bargaining obligations and/or obligations to pay employees as set forth in existing collective bargaining agreements. There may also be an obligation to pay an employee under state and federal wage and hour laws, regardless of whether the employee is classified as exempt or non-exempt. Moreover, if an employer sends an employee home as a reasonable accommodation under the ADA, the employer may be obligated to pay the employee as part of this accommodation. Finally, if the employer is a public body, the employer may have an obligation to continue paying employees pursuant to the United States and Rhode Island Constitutions.

**Question 4: If an employee has traveled recently, can we require the employee to stay home?**

**Response:** For the time being, no; unless the employee reports being exposed to Coronavirus.

If and when this outbreak has been classified as a pandemic or a public health emergency, employers might have more latitude to impose restrictions upon employees who have traveled recently, but at present, the most they can do is ask employees who are returning from travel (particularly to areas where there are known outbreaks) if they have been exposed to the virus. If so, employers probably can require them to stay home, but they should consult with counsel regarding how this might affect the employees’ pay and conditions of employment.

**As these questions demonstrate, the labor and employment issues surrounding the potential Coronavirus outbreak can be tricky and fact-intensive, and the issues will likely be evolving as the outbreak either worsens or subsides. We will be monitoring these issues closely and will circulate additional updates over the coming days and weeks.**

**If you have any questions that require immediate attention and are unsure of your rights and obligations, please do not hesitate to contact us. Our employment attorneys have been monitoring the latest developments in this area, and they will make themselves available to take calls and answer e-mails on short notice.**