Coronavirus Outbreak Prompts Employers to Review Sick Leave Policies

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Do employees have the right to take time off if they are concerned about contracting coronavirus? Can employers send sick workers home? Should employees be paid for missed work time?

HR and other business leaders are likely considering these questions and more as the new strain of coronavirus—and the respiratory illness it causes, known as COVID-19—has made its way to at least a dozen U.S. states so far.

“We believe employers would be wise to review their paid-time-off practices immediately,” said Francis Alvarez, an attorney with Jackson Lewis in White Plains, N.Y. “Employers are likely to face unique circumstances that were not anticipated when they prepared their attendance and leave policies.”

At a minimum, he said, they should identify whether state or local paid-sick-leave laws cover situations where employees are directed to stay home due to their own illness, concerns they may become ill, a relative’s illness, or school or business closings.

“If you don’t have a communicable disease policy (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx), this is a great time to put one in place,” said Catharine Morisset, an attorney with Fisher Phillips in Seattle. Employers should think about what they will do if employees show symptoms.
She suggests that employers check the Centers for Disease Control and Prevention (CDC) website regularly for updates, encourage employees to stay informed and apply the same prevention strategies (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/keep-your-workplace-clean-during-coronavirus-scare.aspx) as they would during flu season.

"Be ready with FAQs," she added. "Let employees know what to do if they get sick."

**States Reporting Cases of COVID-19 to the CDC**

Source: Centers for Disease Control and Prevention, updated Mar. 9, 2020.

Note: Data include both confirmed and presumptive positive cases of COVID-19 reported to the CDC or tested at the CDC since Jan. 21, 2020. This table does not include information on testing results of persons repatriated to the United States from Wuhan, China, and Japan. States are now testing and publicly reporting their cases. In the event of a discrepancy, state case counts are the most up to date.

**When Is Time Off Required?**

Employers must first evaluate whether absences are covered under federal, state and local leave laws, including unpaid leave laws, Alvarez said. The Americans with Disabilities Act may also provide a right to job-protected leave.

Regular flu symptoms aren't usually considered a serious health condition under the Family and Medical Leave Act (FMLA), but a longer-term respiratory illness could trigger an employee's right to take job-protected, unpaid FMLA leave.


States and municipalities that mandate paid sick leave all provide paid time off for an employee who is ill with COVID-19, but vary in how they implement it. For details on how your own jurisdiction handles paid time off if an employee's eligible relative—such as a spouse, child or parent—is sick or requires treatment associated with an illness.
Some paid-sick-leave laws specifically cover quarantine by public health authorities. Many paid-sick-leave laws apply when an employee's place of business or an employee's child's school or childcare facility is closed by public health authorities due to a public health emergency. COVID-19 has already caused some school closures and more can likely be expected, Johnson said.

Employers can generally require employees to provide written verification from a medical provider if paid sick leave is needed for more than three days, Johnson said. He noted, however, that the CDC is recommending that employers don't require such documentation in this situation, since medical providers are likely to be overwhelmed with requests if COVID-19 spreads.

**Sending Workers Home**

According to the CDC, employers should actively encourage sick employees to stay home (https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html) by:

- Telling employees to stay home if they have symptoms of acute respiratory illness, a fever of 100.4 degrees or higher, or signs of a fever. Employees should be fever-free for 24-hours without the use of medication before returning to work.
- Encouraging employees to notify their supervisor and stay home if they are sick for any reason.
- Ensuring that the company's sick leave policies are flexible and consistent with public health guidance and that employees are aware of the policies.
- Making sure contractors and staffing agencies inform their employees about the importance of staying home when ill and encouraging business partners not to reprimand workers who need to take sick leave.
- Not requiring employees with acute respiratory illness to provide a doctor's note to verify their illness or to return to work, since health care providers may be overwhelmed with requests.
- Maintaining flexible policies that allow employees to stay home to care for a sick relative.

"Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual," the CDC said.

**Managing Reduced Staff Levels**

"If absences are not legally protected, employers should consider implementing remote work and other social-distancing practices that might reduce absenteeism," Alvarez said.

Morisset suggested that employers be proactive. "If telework is possible, set that up," she said. "Let employees know they can work from home." Employers that want to make the policy temporary should be clear that it's in place to address the current public health situation.

If telework isn't an option, employers may have to decide whether to provide affected workers with additional paid or unpaid time off. "The dangers of not giving people paid time off may outweigh the analysis of whether they are entitled to it," Morisset said. "It comes down to employers' business analysis about what they can afford to do."
There are many industries such as retail, health care, hospitality and transportation that cannot function without workers present. "Every business must consider whether and how it can operate with reduced staff," Alvarez said. They may need to limit service or close during peak periods of absenteeism. Other industries might be able to reduce employee interactions in offices or stagger operations to reduce face-to-face contact. "There may be situations where employees are frightened to commute or just do not want to risk exposure due to community spread of the infection," he observed. These situations will pose difficult questions that employers will have to address based on their own business and operational needs.

Advice from the CDC

The most effective thing employers can do to prevent the spread of coronavirus is to make sure workers stay home when they are sick, said Jay Butler, deputy director for infectious diseases at the CDC, on a briefing call with businesses on Wednesday afternoon.

Butler said he expects the disease known as COVID-19 to spread unevenly, much as the flu does every year, and that various parts of the country will feel its brunt at different times. The goal is to slow the virus while health officials work on effective treatments and a vaccine.

"You want to be able to separate those who are sick and those who are not sick to minimize transmission," he said. Sick employees should contact medical practitioners from their home by phone—not in person. "We don't want them going into a waiting room and coughing for a few hours before seeing the doctor," he said.

Butler reiterated the advice that CDC and other health officials have been broadcasting for weeks: practice careful handwashing (www.shrm.org/ResourcesAndTools/tools-and-samples/Pages/stop-the-spread-of-germs-at-work.aspx), keep work areas clean using products with bleach or alcohol, avoid sick people when possible, and try to stop touching your face. He also said employers need to be mindful of privacy issues if they learn that an employee has contracted the disease.

When asked if companies should consider canceling events and closing offices, Butler said that question is better posed to local and state health agencies which will be more up-to-date on local conditions. "These decisions have to be made on a case by case basis. It really comes down to the specifics," he said. "The role of the CDC is to be able to provide guidance and help with some of the preparedness activities."


*SHRM staff writer Nancy Cleeland contributed to this article.*

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