



MEMORANDUM

From: Loveless Law Firm, LLP

Date: April 10, 2020

Re: Preventing and Responding to Coronavirus Outbreaks in the Workplace

The Occupational Safety and Health Administration (OSHA) has issued non-mandatory coronavirus guidance encouraging employers to, among other things:

- (i) Develop an infectious disease preparedness and response plan (e.g., identifying potential sources of infection in and outside of the workplace, identifying and implementing controls to reduce exposure, such as use of personal protective equipment, preparing for increased absenteeism and supply chain disruptions, and considering downsizing or closing operations)
- (ii) Prepare and implement basic infection prevention measures (promoting hand washing, covering coughs and sneezes, and “social distancing,” and encouraging employees to stay home if they are ill)
- (iii) Develop procedures for prompt identification and isolation of ill employees/visitors
- (iv) Consider and implement flexible work arrangements, such as working from home, reduced hours, alternating schedules –and–
- (v) Follow existing OSHA standards, particularly taking additional measures to maintain a clean and sanitary workplace

What if Employees Are Hesitant to Come to Work?

Employers should anticipate that, under certain circumstances, employees may refuse to work based on concerns over COVID-19. If the employee’s concern for his or her safety or well-being is reasonable and raised in good faith, the Occupational Health and Safety Act protects the employee from retaliatory actions. Determining whether the employee’s concern is reasonable will require careful consideration of the circumstances of his or her job requirements. For example, if the employee will need to travel by airplane or other mass transit for work or if the work would require working in large groups, then his or her fear of contracting the virus might be reasonable based on the latest CDC guidance. Employers should consider alternatives and any administrative or engineering controls that may reduce or eliminate the risk altogether.

Can Employers Prevent Employees from Coming to Work?

Absent an agreement with an employee or a collective bargaining agreement that restricts the employer’s authority to dictate hours of work, levels of production, or similar issues, an employer is typically free to send employees home from work. To the extent that employees can work remotely, OSHA encourages employers to allow telecommuting, working from home, alternating schedules, reducing work hours, or similar measures to reduce the risk of spreading COVID-19.

If an employee is diagnosed with COVID-19, an employer should prohibit that employee from coming into the workplace, consistent with the latest guidelines from public health authorities like the CDC. If the employee can work remotely, the employer should allow the employee to do so.

Moreover, for employees who may display symptoms of COVID-19, employers should consider taking similar actions, provided that they account for other employment laws, including the American with Disabilities Act. To the extent an employee who is confirmed or presumptively diagnosed with COVID-19 has been in close contact with coworkers, the employer may inform those coworkers of their potential exposure, but the employer must not disclose the employee's identity without his or her written consent.

Disclaimer: This policy template is meant to provide general guidelines and should be used as a reference.

Locations:
30021 Tomas, Suite 260, RSM, CA 92688
1438 N. Gower Street, LA, CA 90028 1301
Ballinger St, Ft. Worth, TX 76102

PHONE 949.679.4690
FAX 949.666.7424
EMAIL andrea@lovelesslawfirm.com
WEB SITE www.lovelesslawfirm.com

Mailing address:
30021 Tomas, Suite 260
Rancho Santa Margarita, CA 92688