

The COVID-19 Pandemic: Recommendations for Employers

The COVID-19 pandemic has already caused severe disruption to many businesses across the country. Employers will be required to continue to monitor developments and adjust to changing circumstances in the coming weeks and possibly months. We provide the following recommendations for employers in dealing with the many employment-related issues that will inevitably arise.

1. Communicate with Employees

Transparency is key during the COVID-19 pandemic, and informing employees of what senior leadership in your company is doing and thinking is an important step in easing minds and allaying employee concerns. Your communications should be updated regularly so that employees have the most recent information available. Employers should consider creating an internal web page dedicated to COVID-19 so that all communications can be accessed easily. Here are some suggestions about what to include in your communications:

- Remind employees of good hygiene practices;
- Encourage employees to stay home if they feel sick;
- Inform employees of what steps are being taken to clean the work environment;
- Identify your applicable policies regarding sick time, paid time off, and employer-sponsored travel;
- Identify a core group or committee of senior leadership responsible for keeping up with public health alerts and to whom questions can be directed; and
- Explain plans in place or under consideration in the event of a business closure or for alternative work arrangements.

2. Review Policies and Collective Bargaining Agreements

Employers should make sure to review their policies and any applicable collective bargaining agreements to comply with any obligations they may have to provide paid time off or continuation of payment during a possible business closure.

The U.S. Department of Labor's [Wage and Hour Division has issued some guidance](#) for employers regarding how COVID-19 might impact their obligations under the Fair Labor Standards Act. Under the FLSA and New York law, non-exempt employees generally do not have to be paid during a closure if no work is performed, but exempt employees generally must be paid their full weekly salary for any week in which they perform some work. An employer can require an employee to use vacation time or paid time off in order to cover wages during a closure, as long as such a requirement is not contrary to the employer's paid time off policies or the provisions of a collective bargaining agreement. So, it is important to review policies and collective bargaining agreements.

3. Ensure Compliance with FMLA and PFL Obligations

The [USDOL has issued guidance for employers regarding their FMLA obligations](#) during the COVID-19 pandemic. In general, COVID-19 will be considered a serious health condition that will qualify employees for FMLA leave if they have the disease or if they are needed to care for a family member that has the disease. In addition, employees in New York may be eligible for paid family leave in order to care for a family member who has COVID-19.

4. Follow OSHA Guidance

Employers have a general duty under the Occupational Safety and Health Act to provide their employees with a workplace that is free from recognized hazards likely to cause death or serious physical harm. [OSHA has issued a Guidance on Preparing Workplaces for COVID-19](#) to assist employers in complying with this general duty. Employers should familiarize themselves with the OSHA guidance and follow OSHA's recommendations.

5. Consider Travel Restrictions or Warnings

Many businesses are prohibiting non-essential business travel, both international and domestic. Employers should consider what travel is actually necessary, and restrict any business travel that is not considered necessary.

Employers should also consider warning employees about the possible effects of personal travel and requiring that employees who travel outside a specific geographical region inform senior leadership or human resources of where they intend to travel.

The [CDC has a web page to provide information regarding the potential risks of travel](#) to various countries and regions. Employers should check this web page regularly, especially if they have many employees who are required to travel frequently on business.

6. Be Aware of the EEOC's Guidance on Pandemics

In general, the Americans with Disabilities Act prohibits employers from making disability-related inquiries and requiring medical examinations of employees, except under certain limited circumstances. In 2009, during the H1N1 pandemic, the [EEOC issued guidance regarding compliance with these legal requirements](#) that can be a useful tool for employers to consult during the COVID-19 pandemic. According to the EEOC's guidance, employers may send an employee home if the employee displays symptoms at work. Employers may also ask employees who report feeling ill at work or who call in sick whether they are experiencing symptoms that are consistent with COVID-19. If so, they should be directed to remain out of work until they provide a medical clearance to return.

7. Plan for Alternative Work Arrangements

One of the key recommendations from the CDC is "social distancing" during a pandemic. If it is practical for an employer to have some or all of its workforce work from home, those possibilities should be explored. Employers should make sure to provide a way for non-exempt employees who are expected to work from home to report their work hours so that their straight time and overtime pay can be properly computed. Similarly, non-exempt employees in New York should be directed to take their 30-minute meal period each day if they work a shift of more than six hours.

If you have any questions about this Information Memo, please contact [Monica C. Barrett](#), [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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