

Agencies Publish Guidance for Employers on Responding to the 2019 Novel Coronavirus

By Katharine C. Weber, Tara K. Burke &

February 14, 2020

Meet the Authors



Katharine C. Weber

Principal
(513) 898-0050
katharine.weber@jacksonlewis.com



Tara K. Burke

(She/Her)
KM Attorney
(513) 322-5027
tara.burke@jacksonlewis.com

Related Services

COVID-19
Disability, Leave and Health
Management
Healthcare
Immigration
Life Sciences
Transportation and Logistics
Workplace Safety and Health

The 2019 novel coronavirus continues to evolve and has been officially named COVID-19 by the World Health Organization, replacing the previous 2019-nCoV designation.

There are now more than [46,000 confirmed cases across the globe](#), with the vast majority in mainland China, and [15 confirmed cases in the U.S.](#) Many details about the virus are unknown, including its severity and how it spreads, leaving employers with many questions about how to appropriately respond.

New guidance is available for employers from the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and California's Division of Occupational Safety and Health (Cal/OSHA).

CDC Guidance for Non-Healthcare Employers

On February 7, 2020, the CDC published [Interim Guidance for Businesses and Employers to Plan and Respond to 2019 Novel Coronavirus \(2019-nCoV\)](#), providing important information for non-healthcare employers to help prevent workplace exposures to COVID-19.

The CDC provides detailed steps for employers to take *now*. The CDC's recommendations fall under six main areas:

- 1. Actively encourage sick employees to stay home.** Employees with symptoms of acute respiratory illness should stay home and not come to work until they are fever-free and free from symptoms for at least 24 hours. The CDC encourages employers not to require employees who have an acute respiratory illness to present a doctor's note to validate their illness or to return to work because the medical facilities may be overwhelmed. Although not legally required, employers should carefully consider whether this approach is appropriate in their workplaces.
- 2. Separate sick employees.** Employees who appear to have acute respiratory illness symptoms (*i.e.*, cough or shortness of breath) should be separated from other employees and sent home immediately.
- 3. Emphasize staying home when sick, respiratory etiquette, and hand hygiene by all employees.** The CDC provides links to posters that encourage employees to stay home when sick, cough and sneeze etiquette, and hand hygiene and recommends that employers put posters at the entrance to the workplace and in other work areas. The CDC also encourages employers to provide tissues, no-touch receptacles, hand sanitizer, and instructions on handwashing and use of hand sanitizer.
- 4. Perform routine environmental cleaning.** The CDC recommends routine cleaning of all frequently touched surfaces and that employers provide disposable wipes so that commonly used surfaces, such as doorknobs, can be wiped down by employees before

each use. The CDC does not recommend any particular cleaning product or additional disinfection beyond routine cleaning at this time.

5. Advise employees to take certain steps before traveling Everyone should check the CDC's Traveler's Health Notices for each country before traveling and not travel if they have symptoms of acute respiratory illness. Employers also should make sure that employees know what to do and who to contact if they become sick while traveling.

6. Additional Measures. The CDC recommends that employees who have a sick family member at home with COVID-19 "should notify their supervisor and refer to CDC guidance for [how to conduct a risk assessment of their potential exposure](#)"

CDC's Risk Assessment for Exposure in Travel or Community Settings

The CDC has published an extensive guidance for conducting a risk assessment and provides associated recommendations in its [Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential 2019 Novel Coronavirus \(2019-nCoV\) Exposure in Travel-associated or Community Settings](#).

Employers who are concerned that an employee may have been exposed to the virus should consult the CDC's risk assessment. This guidance addresses various potential exposure scenarios and identifies four exposure risk categories: (1) High Risk; (2) Medium Risk; (3) Low Risk; and (4) No Identifiable Risk. Based on these exposure risk categories, the CDC provides recommendations for exposure risk management, including appropriate restrictions on public activities (including workplaces), medical evaluation, and travel restrictions depending on whether the individual has symptoms of COVID-19. The CDC has provided separate [guidance for healthcare settings](#).

Employees who live in the same household as someone with confirmed COVID-19, for example, may fall under "High Risk" or "Medium Risk," depending on the circumstances. Individuals who are "High Risk" but have no symptoms should be quarantined (voluntary or under public health orders) for 14 days. For employees who fall under the "Medium Risk" category, as long as they have no symptoms, the CDC generally recommends that they avoid areas where people congregate, which includes workplaces, for 14 days. However, the CDC says that employers may consider, case-by-case and in consultation with public health officials, whether these individuals may come to work without entering crowded locations. These complex decisions must be considered carefully in the context of the workplace and multiple layers of legal and other considerations.

If an employee is confirmed to have the COVID-19 infection, the CDC recommends that employers inform coworkers of potential exposure. Knowledge about potential exposure is certainly important, but employers should consider legal issues including confidentiality requirements under the Americans with Disabilities Act and state law.

Until now, most employers have been appropriately focused on limiting potential exposure from individuals who had recently traveled to Hubei or other areas in mainland China. If this outbreak continues to grow across the U.S. or in certain geographic areas, employers will be forced to manage the risk of employees potentially bringing the virus to work as a result of exposures at home or otherwise in their own communities. Employers should develop strategies now that are appropriate for their workplaces, including communications to employees.

Planning for Possible Outbreak in the U.S.

In its [Guidance for Businesses and Employers](#), the CDC also recommends that all employers plan for a potential outbreak of COVID-19 in the U.S. and be prepared to implement strategies to protect their workforce while ensuring continuity of operations. Planning for a potential outbreak includes identifying and communicating objectives, such as “(a) reducing transmission among staff, (b) protecting people who are at higher risk for adverse health complications, (c) maintaining business operations, and (d) minimizing adverse effects on other entities in their supply chains.” Among other things, the CDC recommends that employers now consider whether, when faced with an outbreak of the illness, they could have employees telecommute or stagger shifts to create physical distance among employees and whether they have the infrastructure to support those efforts. The CDC also recommends that employers consider plans to minimize exposure between employees and the public (if public officials call for social distancing) and prepare for increased absenteeism.

All employers should review the CDC’s complete [Guidance for Businesses and Employers](#). The CDC’s guidance is not a legal mandate for employers. OSHA and many state laws, however, impose a general duty on all employers to provide workers with work environments free from recognized hazards. Federal and state mandatory requirements may apply, particularly in higher risk industries, to prevent occupational exposure to COVID-19.

OSHA Provides Guidance for All Employers and Specific Guidance for Certain Industries

[OSHA](#) has published detailed information on hazard recognition, medical information, potentially applicable OSHA standards, control and prevention, as well as additional resources and information about workers’ rights. As OSHA explains, without sustained human-to-human transmission, most U.S. workers remain at low risk of exposure and infection. However, OSHA identifies important but common sense practices for all workers and employers to help prevent worker exposure to COVID-19: proper handwashing including the use of alcohol-based rub (hand sanitizer), avoid touching eyes, nose, or mouth with unwashed hands, and avoid close contact with sick people.

Certain groups of workers, especially those in healthcare, are at a higher risk for potential exposure and employers and workers must take additional precautions. OSHA provides additional guidance for groups of workers with increased risk of exposure, including:

- [Healthcare](#)
- [Deathcare](#) (including coroners, medical examiners, and funeral directors)
- [Laboratories](#)
- [Airline operations](#)
- [Waste management](#)
- [Business Travelers](#)

The CDC also has published guidance for [healthcare professionals](#) and [laboratories](#).

Employers with Workers in California Should Review New Cal/OSHA Guidelines

Cal/OSHA also issued [guidance on requirements to protect healthcare workers](#) from COVID-19. The guidance covers the safety requirements when providing care for

suspected or confirmed patients of the respiratory disease or when handling pathogens in laboratory settings. COVID-19 is an airborne infectious disease covered by Cal/OSHA's Aerosol Transmissible Diseases (ATD) standard, which requires employers to protect workers from diseases and pathogens transmitted by aerosols and droplets. The ATD standard applies in healthcare facilities, laboratories, public health services, police services, and other locations where employees are reasonably anticipated to be exposed to confirmed or suspected cases of aerosol transmissible diseases. The ATD standard requires employers to have an ATD Exposure Control Plan that includes procedures to identify COVID-19 cases, provision of appropriate personal protective equipment, among other things. Employers also must provide training for their employees covering many items related to COVID-19, such as the signs and symptoms, modes of transmission, methods to prevent exposure, and personal protective equipment.

Next

Employers should continue to monitor information coming from state and local health departments and promptly report any suspected cases of COVID-19 to the local health department. Healthcare employers should consult guidance from OSHA, the CDC, and other relevant agencies. This is a rapidly evolving situation and all information in this update is subject to change. For the latest information, please review the relevant agency communications.

To better support clients as they respond to this challenging public health issue, Jackson Lewis has established a dedicated "Coronavirus" team that is continually assessing risks, preparing employee communications, and providing practical advice on the workplace compliance issues flowing from [coronavirus workplace concerns](#) and the [travel restrictions and new facts](#) we are continuing to learn about COVID-19. Contact a Jackson Lewis attorney for more information.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.