



Surviving COVID-19

Healthy Workplaces, Reduced Staffs, Informed Customers **BY PHILLIP M. PERRY**

Businesses face daunting operational challenges as the rapid spread of COVID-19 causes employees to call in sick and customer counts to dwindle. Managers can reduce workplace disruptions with measures such as revisiting sick leave policies and allowing some employees to work from home. Whatever the details of an organization's response program, though, it must begin with the maintenance of a virus-free environment.

// An employer's general duty is to maintain the health and safety of the workplace," says Joseph Deng, an employment law partner at Baker & McKenzie in Los Angeles. "A business must be free of hazards that are likely to cause death or serious physical harm. In light of the virus, employers should pay close attention to what the national, state, and local authorities are advising."

At the national level, the Centers for Disease Control and Prevention (CDC) continually updates a website with advice about reducing the chances of infection. To access the information, go to www.cdc.gov and search for "Interim Guidance for Businesses and Employers".

State and local authorities may also provide information on their own websites. "Advice at the local level is especially important," says Deng. "It will be directly related to what's happening with the virus in the area where a

business is located—just as a recommended response to a hurricane will depend on the proximity of the storm to a business."

At the national level, the Centers for Disease Control and Prevention (CDC) continually updates a website with advice about reducing the chances of infection.

Much of the guidance from all levels deals with the proper sanitation of the work environment. "The most significant thing businesses can do is make sure employees engage in proper hygiene

practices," says Susan Gross Sholinsky, vice chair of the employment, labor, and workforce management practice of Epstein, Becker Green in New York. "They should keep their premises clean, disinfecting doorknobs, elevator buttons, and community equipment such as printers, and commonly used kitchen items such as refrigerator handles."

Employers are also taking steps such as the following:

- **Limiting travel.** "Most of the companies I am talking to are limiting or prohibiting all future international travel," says Sholinsky. "They are also asking employees if they have traveled internationally, whether for business or pleasure, and are requiring them to stay home if they have visited countries with elevated risk. When feasible, audio and video conferencing is taking the place of in-person visits."

- **Restricting outsider visits.** "Some companies are limiting third parties who can come into the offices, separate and apart from their own employees," says Sholinsky. "Visiting clients and vendors are being asked where they have traveled in the last few weeks and whether they are exhibiting any flu-like symptoms."
- **Coordinating with vendors.** The CDC website suggests businesses "talk with companies that provide contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies."

Sick Workers

Despite management's best efforts, some employees may fall sick. Anyone who comes down with symptoms of the virus (fever, coughing, and shortness of breath) should be separated from the workplace and required to remain at home. That will

protect their coworkers from infection, helping to contain the spread of the disease.

Afflicted individuals should contact their healthcare provider, or the state or local health department, for advice on what to do next. "Infected individuals should not go straight to the doctor's office or to the hospital emergency room, because they are not equipped for infectious disease control," says Deng. "Instead, they should call ahead to determine whether symptoms are consistent with a COVID-19 infection. If they are, the individuals will be directed to the appropriate testing facility."

Employees with the relevant symptoms should stay away from the workplace even if they have not been definitely diagnosed with the coronavirus. "Traditionally in our country's culture people come to work sick,"

says Brian Baker, vice president of Hagerty Consulting, an emergency management consulting firm based in Evanston, Ill. "But the novel coronavirus is extremely contagious, and we do not have the diagnostics to tell us who has the virus and who doesn't."

A business may need to change its traditional sick leave policies in light of the coronavirus. "Sometimes a liberal sick leave policy is tough for employers," says Baker. "But it is much better to lose a portion of your workforce than to lose all of them."

The employer must decide whether to pay people who are out sick. While no national law requires they do so, some states and cities have passed legislation touching on the matter. Jurisdictions with some type of sick leave laws include California, Washington, Michigan, Vermont, San Francisco, and New York City.

Even companies which are located outside of such protected areas should

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consider reimbursements for quarantine time. "Employers should avoid being penny wise and pound foolish," says Deng. "They should establish non-punitive leave policies, and that includes loosening requirements that employees provide doctors' notes to prove sickness. Bear in mind that local health workers will likely be overwhelmed with live cases and

infected while on business travel to an affected country may be eligible for workers' compensation."

Some states also have paid family leave laws that mandate partial pay for employees who are out of work because they are caring for sick family members. "Some states' and cities' sick time laws

a loved one. Or, a child must stay home because of the closing of a school or day care center. What's more, an employee may express fear about using public transportation to commute to work. In all such cases, employers must decide whether to grant paid sick leave.

Protect Customers

Employees are not the only people subject to health risks from workplace infection. Businesses need to protect anyone who comes into contact with staff members as well.

"To the extent the business is a place of public accommodation, employers need to be mindful of the risks to customers, vendors, and other visitors," says Sholinsky. "If asked what the company is doing to protect against the spread of the virus, an employer can inform individuals that the premises are being cleaned and maintained consistent with CDC recommendations."

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may not be able to provide such notes."

Sick leave reimbursement decisions may be based on the circumstances surrounding the event. "In some cases, an individual who is out sick for an extended period of time because of COVID-19 may be entitled to short-term disability," says Sholinsky. "An employee who was

provide for paid sick time when an individual's workplace—or a child's school or day care center—is shut down due to a declared public health emergency," says Sholinsky.

On occasion, it is not the employee who becomes sick but a child, parent, or

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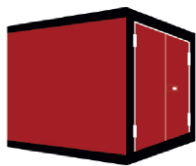
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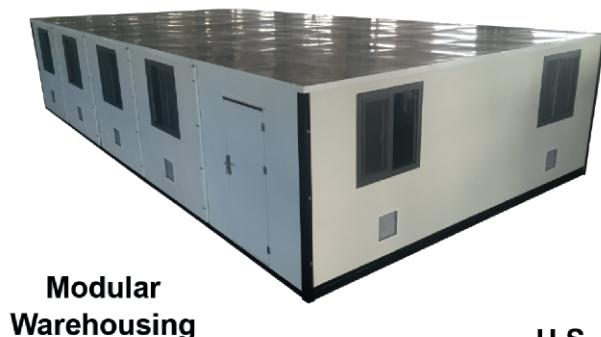
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Strictly from a public relations perspective, employers may wish to advise customers if a staff member has been diagnosed with the disease. "Customers will likely not take kindly to finding out they were at a business where an employee had been impacted and they were never informed," says Deng. At the same time, employers should be mindful of not identifying which employee was affected. "You need to maintain the delicate balance between getting the information out in a manner that will protect everyone, while also complying with privacy laws about disclosing medical information."

There is only a limited number of health-related questions employers are permitted to ask employees.

Indeed, concerns of employee privacy should be paramount for any business dealing with the coronavirus outbreak. "Generally speaking, if you are asking questions about an employee's life outside of the workplace, there should be a legitimate, business-related reason for doing so," says Sholinsky. "You need to balance the important information needed about someone's health in light of COVID-19 concerns against the individual's right to privacy regarding their personal medical situation."

There is only a limited number of health-related questions employers are permitted to ask employees. "If someone was quarantined after traveling to a country with elevated risk, for example, and shortly after returning to the office they are out sick, it would be appropriate to ask whether they are experiencing flu-like symptoms, and if they are whether they have visited a doctor or been tested for COVID-19," says Sholinsky.

Once obtained, personal medical information should be kept safe from dissemination. "If you are requiring

employees to make declarations about their travels or their health conditions, you need to be careful how the information is collected and disclosed," says Deng. "Handle the information with respect to COVID-19 in the way you would handle any other personal information." That means restricting information to those with a need to know. "If you send someone home with symptoms, the only people who should know about it are those individuals who have come into direct contact with the person."

Plan For Disruption

Every business needs a road map for surviving with slimmer staffs when employees stay home because of the coronavirus. "The most important thing is to have a plan and communicate it to employees and customers," says Brian Baker, vice president of Hagerty Consulting, an emergency management consulting firm based in Evanston, Ill. "The plan should answer two questions: What functions does the organization need to perform to stay in business? And how can those essential functions continue, given a possible uptick in employee absenteeism and a decrease in the customer base?"

Employers may consider these steps:

- Allow teleworking for those employees able to perform their duties from home.
- Establish flexible work hours for employees who must stay at home at certain times to care for family members.
- Share best practices with other businesses in the region and with the local chamber of commerce.

Additional ideas are available in the document "Interim Guidance for Businesses and Employers" at www.cdc.gov.

No plan will work if it remains unheeded. "We recommend that employers clearly communicate their rules and policies regarding the coronavirus," says Susan Gross Sholinsky, vice chair of the employment, labor, and workforce management practice of Epstein, Becker Green in New York. "Companies with intranet sites should link them to all virus-related communications and tell employees to check the site frequently for updates and guidance."

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All actions must conform to state and city employee privacy laws, which vary widely. Some Federal laws may also apply. "Bear in mind that under the Americans with Disabilities Act (ADA), employers are generally not allowed to make disability related inquiries about preexisting health conditions or other private medical information," says Deng. The law also prohibits giving a medical exam. "It's allowable to ask employees if they have a cough or fever, or shortness of breath. But you may have issues under the ADA, or under state laws, if you take their temperature or do any other screening that might be construed as a medical exam."

One exception to this rule is if there is a "direct threat" to the workplace, such as development of a pandemic in your area. "You are allowed to make medical inquiries and ask about disability-related matters if there is no other way to get information that will protect the

workforce," says Deng. "Assessment as to what constitutes a direct threat should be based on objective factors. Be informed about what CDC guidelines and what local and state authorities tell you. That will inform your duty and level of care with respect to workforce."


reference to race, ethnicity, or national origin," says Deng.

The need to avoid discrimination speaks to a practical issue: The novel coronavirus causing COVID-19 can strike any individual regardless of background.

In carrying out the policies and procedures described in this article, businesses must avoid any actions that are discriminatory, consciously or otherwise.

Avoid Discrimination

In carrying out the policies and procedures described in this article, businesses must avoid any actions that are discriminatory, consciously or otherwise. "Although it is okay to ask employees if they have traveled recently to high risk locations, and to tell them to self-quarantine for a two-week period, you have to apply the policy without

"Just because people are of a certain race or national origin does not mean they have a higher chance of infection with the virus," says Sholinsky. "Companies should be careful not make such assumptions." 

Phillip M. Perry is a New York-based freelancer and a regular contributor to Mini-Storage Messenger.

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