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The coronavirus outbreak has caused concern for companies worldwide as they navigate and plan for its impact on their business operations. While different industries will be affected in different ways, there are some steps that all employers can take to mitigate the impacts of COVID-19, the disease caused by the new coronavirus. Here are the top ten issues employers should keep in mind when formulating a coronavirus response.

1. Ensure good and open communication

Good communication with employees regarding the outbreak and the company's response is essential. Employees should be reminded of relevant policies and practices, such as sick leave, paid time off and telecommuting policies. Employees should be informed as soon as reasonably practical about the company's plans and expectations, and should be updated regularly.

2. Ensure a safe workplace

Employers can and should take steps to ensure a safe work place, including instructing sick employees to stay home and educating employees about proper hygiene (disinfecting hands and surfaces), social distancing, and how to recognize COVID-19 and its symptoms. The Occupational Safety and Health Administration (OSHA) has issued guidance on preparing the workplace for a flu pandemic, which can be found [here](#).

Additionally, an employee who contracts the coronavirus in connection with their employment may be eligible for workers' compensation. Certain categories of workers (e.g., healthcare workers such as nurses) may be granted a presumption that they contracted the disease in the course of employment.

3. Consider telecommuting

To prevent community spread, some employers may choose to expand telecommuting options for employees. Employers should review or consider implementing telecommuting policies to permit remote work and make the terms and conditions of such work clear. In addition, employers should ensure that technology and administrative support are in place in the event mass telecommuting becomes necessary. Companies that do not already have



video conferencing capabilities chat apps and other technology that makes telecommuting more effective should consider acquiring these now.

4. Develop a plan for employees who cannot telecommute

Not all employees can telecommute. For example, service workers cannot perform their work remotely. For those employees, a variety of issues need to be considered, including any obligations to pay employees who either cannot or are required not to come to work, and whether they can be required to use sick leave or vacation benefits if they cannot come to work. In California, employees may use paid sick leave and must be compensated consistent with state and local paid sick leave laws. California's Labor Commissioner has taken the position, however, that employers cannot require employees who are quarantined to exhaust paid sick leave.

Employees in California who report for their regularly scheduled shift but are required to work fewer hours or are sent home, must be compensated for at least two hours or no more than four hours of reporting time pay. For example, a worker who reports to work for an eight-hour shift and only works for one hour must receive four hours of pay, one for the hour worked and three as reporting time pay so that the worker receives pay for at least half of the expected eight-hour shift. An exception to reporting time pay is where operations cannot commence or continued when recommended by civil authorities. Similarly, exempt workers who perform only some work during a workweek due to a shutdown of operations are entitled to a full week's salary, with deductions permitted for full weeks where no work is performed.

Employers should also consider the broader public relations and morale issues implicated by payment decisions in the context of this worldwide epidemic.

5. Evaluate options for limiting business travel and managing international employees

The Centers for Disease Control and Prevention (CDC) is routinely updating its recommendations regarding travel, often on a daily basis. Review the CDC resources frequently and consider canceling, postponing or limiting nonessential business travel to high-risk locations. In some circumstances, there may be a need to bring home employees who are working internationally. In that case, there may also be a need to evaluate whether those employees immediately return to the workforce or need to work from home for some time.



6. Don't discriminate, and evaluate your obligations to provide leaves of absence

Employers should be mindful that COVID-19 implicates various state and federal laws pertaining to discrimination, leaves of absence and reasonable accommodations. For instance, employers must make reasonable accommodations for disabling conditions unless it would impose an undue hardship or pose a direct threat to the health and safety of other employees. Although a transitory illness like those caused by COVID-19 is not necessarily a disability under federal or state law, each case must be evaluated individually. Similarly, the Family and Medical Leave Act (FMLA) and state law equivalents require covered employers to provide qualified employees time off for serious medical conditions, both for themselves and to care for certain family members.

7. Be mindful of privacy rights and medical examination guidelines

Under the Americans with Disabilities Act (ADA) and equivalent state laws, employers must be mindful of what constitutes a permissible medical inquiry. For example, the Equal Employment Opportunity Commission (EEOC) issued guidance pertaining to pandemic preparedness in 2009, which advised that taking an employee's temperature to determine whether the employee has a fever is a medical examination under the ADA; however, if the pandemic has become widespread in the particular community—as determined by the CDC or state and local authorities—employers may measure employees' body temperature. The full guidance from the EEOC regarding permissible inquiries and reasonable accommodations under the ADA during a pandemic is found [here](#).

Similarly, state law (California's Fair Employment and Housing Act) and federal law (Title VII of the Civil Rights Act) prohibit discrimination on the basis of, among other things, race or national origin. Employers are prohibited from treating employees differently based on national origin (e.g., avoiding or isolating employees because their national origin is associated or connected to a region affected by coronavirus). Employers should be mindful of messaging with respect to COVID-19, including reminding employees of company policies with respect to harassment or discrimination. In the event of alleged harassment or discrimination, employers should be prepared to take swift action to investigate and remediate any issues.

Additionally, while an employer can request that employees inform them if they are planning to travel or have traveled to countries the CDC considers high-risk areas, employers may not generally inquire into areas of medical privacy, unless such an inquiry were part of a voluntary wellness program and/or the inquiry is job-related, consistent with business necessity and there is objective evidence that due to a medical condition, the



employee is unable to perform essential job functions or will pose a direct threat to other employees. Likewise, employers may not disclose medical information about an employee—even an infected employee—to other employees. In the event an employee is infected, steps may be taken to protect the workforce without specifically identifying the affected employee.

8. Have a plan for layoffs and be prepared to provide WARN notices

In the event of a widespread outbreak that disrupts business or prevents business altogether in the case of work that cannot be performed remotely, employers may be required to layoff portions of its workforce. In such cases, generally, employers covered by the state and federal WARN Act must provide 60 days' notice to affected employees. In unforeseeable circumstances, the company must provide "as much notice as is practicable"—which is a defense to an action brought under the WARN Act.

For employers with group health plans, the plan documents will spell out how long employees may not be working before they are no longer eligible for coverage. In such cases, a COBRA notice must be provided to employees. Similarly, those individuals who are temporarily unemployed due to an outbreak and who are not themselves ill may be eligible to claim unemployment benefits.

9. Stay up to date on the latest developments

Employers should also keep abreast of various resources and information issued by local, state and federal agencies in response to the outbreak. Some of these resources are:

- The Occupational Safety and Health Administration (OSHA), which provides information and recommendations regarding maintaining a safe and healthy workplace in light of COVID-19, see [here](#).
- The Centers for Disease Control and Prevention (CDC) which issued guidance to employers available [here](#).
- [The World Health Organization](#)
- [Los Angeles County Public Health Department](#)
- [Coronavirus Disease \(COVID-19\)—FAQs on laws enforced by the California Labor Commissioner's Office](#)

10. Know your resources



Coronavirus: Top 10 issues for employers

For additional assistance with respect to compliance and concerns regarding your company's response to COVID-19, please reach out to a member of the [Employment and Labor team](#) at Manatt.

Here's a [March 11 update](#) from the same firm.