Daily headlines about the growing coronavirus threat have many employers concerned that they are not doing all they should to protect employees without undue disruption to operations. Here are some answers that may inform your own response plan.

**MAY WE REQUIRE EMPLOYEES TO TRAVEL TO/FROM CHINA IF NEEDED FOR BUSINESS PURPOSES, OR SHOULD WE CANCEL ALL BUSINESS TRAVEL TO/FROM CHINA FOR THE DURATION OF THE THREAT?**

Although employers generally have broad discretion in determining and enforcing their job requirements, employers must tread carefully when deciding to require an employee to travel to a country with heightened travel warnings. Given the Centers for Disease Control and Prevention’s (CDC’s) Level 3 (Avoid Nonessential Travel) and the U.S. Department of State’s Level 4 (Do Not Travel) warnings, employers should limit business travel to China to absolute necessity and avoid travel to any of the affected areas.

If an employee notifies an employer that he or she does not feel comfortable
traveling to China amid heightened travel warnings, then it is the employer’s responsibility to weigh carefully the employee’s concerns, the risk of actual exposure and the business needs to determine whether an accommodation is possible, such as video conferencing or rescheduling the trip.

In instances where travel to China is necessary, employers should provide their employees with as much support as possible. For example, consider reimbursing reasonable expenses for personal protective equipment, medicine and even upgrading the employee’s flight class to limit exposure to other passengers.

**WHAT SHOULD WE DO IF WE BECOME AWARE THAT ONE OF OUR EMPLOYEES WAS EXPOSED TO THE VIRUS? MAY WE REQUIRE EMPLOYEES WHO HAVE RECENTLY TRAVELED TO CHINA TO WORK FROM HOME?**

If an employer has a reasonable objective belief (not based on unfounded fears) that an employee may have been exposed to the coronavirus and is a danger to the workplace, the employer can require the employee to work from home. However, absent a reasonable objective belief, the employer does not have a legitimate basis to require an employee to work from home.

When determining whether you should require an employer to work from home, employers should consider the facts and circumstances of the employee’s recent travel, including but not limited to the duration of the employee’s trip, the areas the employee visited, the amount of time the employee has been back and the employee’s symptoms, if any.

If an employee’s position does not allow him or her to work from home, then the employer should consider providing the employee with paid leave for the duration of the incubation period (originally believed to be 14 days, although newer information indicates a longer period of up to 24 days).

Employers should consult with legal counsel before requiring an employee who recently traveled to China to work from home to ensure that the employer is not violating the Americans with Disabilities Act and/or any local, federal or state antidiscrimination laws.

**SHOULD WE SURVEY EMPLOYEES ON RECENT TRAVEL TO/FROM CHINA FOR ANY REASON? WHAT SHOULD WE COMMUNICATE TO EMPLOYEES ABOUT MEASURES WE ARE TAKING?**

Questioning employees about their personal travel raises issues of privacy and the potential for actual or perceived discriminatory treatment. Generally speaking, the better approach is to let all employees know that the company is monitoring the situation and taking appropriate precautions, and to provide a point person for questions related to coronavirus risk avoidance. Direct employees to immediately notify that point person if they have been exposed to the virus so that the company can provide them with appropriate support, such as a temporary work-from-home accommodation to avoid coworker exposure. Assure employees of the confidentiality of information they provide, with sharing of that information on a need-to-know basis only or as required by law in the case of government agency notification. If exposure
already has occurred, the company should provide notice and similar support to those affected (without identifying the source, absent consent).

HOW SHOULD WE RESPOND TO EMPLOYEES WHO EXPRESS FEAR OF WORKING AROUND OTHERS WHO MAY HAVE TRAVELED TO/FROM CHINA RECENTLY?

It is natural for employees to express fear over the coronavirus outbreak, including the fear that they could be exposed to the virus in the workplace. There is much we don’t yet know about the virus, and often the unknown is what drives our fear. Employers can do a lot to address general fear of the virus by educating their workforce, including posting updates from the CDC in common areas with other workplace postings and communicating to employees that they are monitoring any guidance issued by OSHA and other regulatory agencies related to the coronavirus outbreak.

If one or more employees approach Human Resources or a manager about fears related to the coronavirus, it is important to listen to those concerns exactly as if the employee(s) had come to HR to complain about a potential safety hazard. Pinpointing the nature of the alleged “hazard” is essential so that additional details can be gathered to evaluate whether the concern is credible. If the employee identifies a coworker who recently returned from China, ask the employee why they believe this person may have the coronavirus or could be a carrier. Document the information that the employee provides (whether it is based on general fears or actual first-hand knowledge). Remember that symptoms of the virus include fever, cough and trouble breathing, but those same symptoms closely align with a host of other medical conditions, including the flu.

After listening to the employee’s concerns and gathering whatever information is conveyed, HR should inform the employee that the information provided will be evaluated and any steps that may be warranted will be taken. However, do not discuss any other employee’s personal information with the employee who lodged the concern, or make any promises to do so. If the employee discloses that he or she has a medical condition that causes greater susceptibility to the virus (or increased anxiety about possibly contracting the virus), ask what the employee is asking the organization to do to address that condition, and document that request as part of the interactive process to help ensure compliance with the Americans with Disabilities Act.

If an employee raises a concern about the coronavirus to HR or a manager, it is important to remember that even if the fear is not reasonable, the employee has a right to raise it without fear of retaliation. Federal law and laws in many states protect individuals from retaliation for raising safety concerns in the workplace.

UNDER WHAT CIRCUMSTANCES, IF ANY, SHOULD WE REQUIRE AN EMPLOYEE TO UNDERGO MEDICAL SCREENING?

Medical screening should be considered only after carefully evaluating all available and credible information about the employee’s potential exposure to the virus. Then, as with any other medical condition, medical screening may only be done if it is “job-related and consistent with business necessity,” which requires “a reasonable belief
based on objective evidence” that the employee poses a direct threat to himself or herself or others due to the suspected medical condition. The employer must show that the employee’s medical condition poses a “significant risk of substantial harm” to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.

Certainly, the coronavirus poses a significant risk of substantial harm if in fact the employee has the condition or is a carrier, but you also must consider the likelihood that the potential harm will occur. That determination requires an examination of all relevant information, without consideration of information from unreliable sources and without relying on stereotypes or making general assumptions. Whether or not impairment due to exposure to the coronavirus qualifies as a disability under federal or state law, an employer could face a discrimination claim under the Americans with Disabilities Act or state law if the employer regarded the employee as disabled.

**IS THERE ANYTHING MY ORGANIZATION NEEDS TO DO TO MEET MY OSHA OBLIGATIONS?**

OSHA’s General Duty clause requires employers to mitigate or eliminate workplace hazards that could cause serious harm to employees. The nature of the workplace affects the type and level of response that may be required. For example, health care facilities and organizations entrusted with care for vulnerable populations may need to implement heightened protection standards.

Remind employees to take common-sense precautions such as staying home if they are sick, greeting others in ways other than hand-shaking, and minimizing the risk of infection by conscientious hand-washing and sneezing and coughing into a sleeve or tissue. Provide plentiful supplies such as hand sanitizer and antiseptic wipes and avoid holding meetings in close quarters. Employers should assign someone, often a member of HR or Employee Health and Safety, to regularly monitor information posted by the CDC and OSHA for guidance on appropriate measures.

**WHAT SHOULD WE CONSIDER IF WE HAVE A UNIONIZED WORKFORCE OR EMPLOYEE GROUP WITH CONCERNS ABOUT THE CORONAVIRUS?**

In unionized facilities, employers operating with collective bargaining agreements (CBAs) should consider whether their responses to coronavirus concerns constitute unilateral changes in existing work conditions or procedures. Despite employer desires to act for the safety and benefit of their employees, implementing changes to working conditions in response to coronavirus concerns without bargaining with a union could result in unfair labor practices under the National Labor Relations Act (NLRA). Employers must carefully assess the language in their CBAs so that bargaining obligations are fulfilled and to determine what management rights support their ability to appropriately respond to coronavirus concerns.

Even in non-unionized facilities, employers should consider NLRA implications if employees collectively raise concerns about working conditions or changes to work procedures/operations because of the coronavirus. Under Section 7 of the NLRA, employees have the right “to engage in [concerted] activities for the purpose of ... mutual aid or protection....” This includes employees raising group concerns about
safety and health, such as by requesting additional personal protective equipment (PPE) because of potential exposure to the coronavirus. Under these magnified circumstances, employers must avoid retaliatory, threatening or discriminatory responses to employee group concerns about the coronavirus.

WHAT SHOULD WE KEEP IN MIND FOR OUR INTERNATIONAL EMPLOYEES OUTSIDE OF CHINA?

Companies with employees working outside the U.S. should check any government or health authority guidance issued by the country in question. Employers also may wish to seek specific advice from employment law experts in that country, especially if the country has a high number of coronavirus cases or if any employee is believed to be at high risk of infection.

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