Coronavirus, whose formal name is COVID-19, has been the subject of much media attention since the first outbreak in Wuhan, China, late last year. Just like recent outbreaks of the swine flu, the avian flu, SARS and the West Nile virus, each new “bug” creates fear surrounding a previously unknown threat. While there are tens of thousands of cases in China, as of February 19, 2020, according to the U.S. Centers for Disease Control and Prevention (CDC), there were 15 confirmed cases of coronavirus in the U.S. The confirmed cases were limited to seven states located on the perimeter of the country.

According to the CDC, coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats and bats. Rarely, animal coronaviruses can infect and then spread between people.

To put the current coronavirus outbreak in context, the CDC estimates there have been between 26 MILLION and 36 MILLION cases of flu in the U.S. this season and an estimated 15,000 to 36,000 deaths. In fact, this year’s flu season is the worst in almost 20 years. While the majority of these deaths and hospitalizations have occurred in people over age 65, this year’s flu has impacted children and younger adults in greater numbers than usual.
While no one knows for sure the extent to which the coronavirus will take hold in the U.S., employers should take steps now to plan ahead so that they will be able to maintain normal business operations. The challenges for any business facing coronavirus or any other disease outbreak involve a multitude of conflicting legal obligations. Under the Occupational Safety and Health Act (OSHA) and similar state laws, employers have a general duty and obligation to provide a safe and healthy work environment, even when the work occurs outside the employer’s physical premises. Furthermore, under these health and safety laws, employers must not place their employees in situations that are likely to cause serious physical harm or death.

Conversely, overreacting by implementing broad-based bans and making business decisions about employees that are not based on statistical realities could get an employer sued under laws that prohibit discrimination based upon disability (perceived or real) and national origin discrimination, among others.

Properly planning for and implementing plans to deal with the coronavirus is legally and operationally complex. Listing all of the considerations for such plans are too numerous for this brief blog article. By way of example, employers who have operations in Hubei Province in China, the epicenter of the coronavirus outbreak, will face far more difficult and complex challenges than an employer with a single facility in the middle of the U.S. However, at a minimum here are some things every business should be doing:

- If you have not already done so, institute a ban on all business travel to China. This may be a moot point given the cancellation of most flights into and out of mainland China. Under the circumstances, it is also totally appropriate to require that any of your employees who choose to travel to China for personal reasons notify a designated company official and let the official know of their plans.

- If employees must use a company-designated travel agent to arrange business travel, get the agent to provide reports on all international business travel. But don’t overreact and implement a broad-based travel ban to countries that do not pose a risk of harm. However, if an employee expresses fear of any international travel, have a rational discussion and review the relevant outbreak statistics to see if those fears are real or inflated. Even if fears are irrational, consider the negative impact on employee morale by forcing someone to travel.

- Designate a management official to check the CDC website daily to see the latest tracking of the virus’ spread. This person should be the in-house resource and should be involved in ban or no-ban decisions.

- If an employee has been to a real coronavirus “hotspot,” consider making him or her stay home for the full 14-day incubation period. Whether employees work remotely or do not work, the decision whether they should be paid to stay home during this time is an individualized determination. However, employers need to be flexible and should consider bending the rules if they want to appear humane and seriously concerned about health issues. If employers force
someone to stay home for two weeks without pay or make them use precious PTO, they may push people to hide where they have been, which will defeat planning to ensure that management is taking all reasonable steps to prevent the spread through the workplace.

- Do not panic or overreact but rather engage in sound business contingency planning. Begin by developing contingency plans based upon the industry you are in, the size of your business and how you will operate in the event absenteeism rates greatly exceed those of a normal flu season.

- Use this opportunity to communicate with your employees about seasonal flu prevention strategies, such as minimizing contact and engaging in sound hygiene and sanitation. As the statistics above demonstrate, seasonal flu poses a far greater and more immediate threat to your employees’ health than does the coronavirus.

- Develop a plan for communicating with your employees if a major pandemic breaks out, regardless of where they are located, including the workplace, at home or on the road. Regardless of how bad things may get, it is important that management not panic or overreact. Plan for worst case scenarios now so you can effectively respond to what will likely be a rapidly changing situation. To do this, your management should anticipate and prepare for how you will answer the plethora of questions that will almost certainly be raised.

Proper planning for and dealing with individualized employee situations implicates a whole range of employment laws, such as ADA, GINA, OSHA, Title VII, ERISA, as does the nature of your business. To deal with these legal issues, you should consult with your attorney.

Finally, there are a variety of web-based resources available to assist you in planning, preparation, and monitoring the spread of the coronavirus on a global basis, including the CDC at www.cdc.gov, OSHA at https://www.osha.gov/SLTC/covid-19/, and the World Health Organization https://www.who.int/emergencies/diseases/novel-coronavirus-2019.

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