By this point, we’re being bombarded from all angles (from gyms and schools to retailers and, for us, courthouses) with news about the coronavirus and the precautions we should be taking to prevent its spread. Between the sheer volume and the mixed messages, it can be overwhelming. So we’re going to cut to the chase and offer tips on how to start preparing for what appears to be the inevitable. Here are key best practices that employers should be considering (if not already implemented in the workplace) when faced with a pandemic like the coronavirus.

- Remind employees of best practices for preventing the spread of the coronavirus and other illnesses in the workplace. Ensure employees have access to soap, hand sanitizer, and plenty of paper towels and tissues. For example, if you have hand dryers in your restroom, consider temporarily adding paper towels or napkins so employees can avoid touching sink knobs and door handles. Perform additional cleaning of frequently used items and surfaces, and provide disposable wipes so employees can clean keyboards, desks, and other surfaces.

- Ensure you’re actively encouraging employees to self-monitor for symptoms, and to report and stay home if they are exhibiting symptoms. Make sure employees know who to report to if exhibiting symptoms or absent from work. Keep in mind that many hourly nonexempt employees may be fearful about
reporting because if they don't work, they don't get paid. Find a way to incentivize employees to self-identify and self-quarantine.

- Consider remote work policies and practices. Look at your workforce to determine who can temporarily telecommute if an outbreak occurs or if a worker needs to self-isolate. Make sure you think about which employees or positions are necessary for your business to function. And, look at whether you need to cross-train any workers in case of a reduced workforce. You may have employees who can work remotely, but who need additional training or equipment to do so. Start identifying those employees now and determining what needs to happen to make remote work possible should it become a necessity. If you do offer work-from-home as an accommodation, work with your employment lawyer to ensure you’re clear this is temporary and that you’re not creating a precedent for remote work for any position or employee.

- Of course, not everyone holds a position that lends itself to remote work — even with additional equipment or training. Since these are likely to be mostly hourly nonexempt workers, this brings up the issue of pay. If — or, more likely, when — an employee needs to self-isolate for the incubation period, what, if anything, will the employee be paid? If your company offers sick leave, will the employee be required to first use up available sick leave? If so, what happens when the employee runs out of sick leave — will there be any supplemental pay, or will the remainder of the leave be unpaid? We’re not saying there’s a right or wrong answer here, but this is a time to review and consider modifying your employee leave policies as they pertain to time off and pay. And if any of your workers are covered by a collective bargaining agreement, make sure to check the terms.

- Salaried exempt employees who can’t report to work raise a separate set of issues. Typically, if a salaried employee performs any work in a workweek, the employee’s full salary is due, but there are certain permissible deductions from an employee’s salary that may be relevant here. If you consider deducting from an employee’s salary, it would be prudent to consult with your employment lawyer first, or you risk losing the exemption from overtime and minimum wage.

- Consider whether to restrict or eliminate in-person meetings and large group gatherings (like conferences) as well as travel. Encourage the use of videoconference and telephone calls to prevent close contact. While you should be wary of restricting personal travel, you can restrict work-related travel to certain locations and/or to critical travel. If an employee has recently traveled abroad, consider asking the employee to stay home for the incubation period (commonly cited as 14 days). Be careful about what you ask the employee, though. Federal law places restrictions on the kinds of inquiries an employer can make into an employee’s medical status. You can ask, however, whether the employee has traveled to an affected area or about possible exposure to a contagious illness, and you can inquire about symptoms like fever and a cough or sore throat. Remember you can’t ask questions about an employee’s family members’ health, as this violates federal law.

- This doesn’t mean you should start taking the temperatures of employees when they get to work. Typically, this is considered an unlawful medical examination
unless such action is advised by health authorities or where this is job-related and consistent with business necessity. However, this may not be the case given the unique circumstances of the coronavirus and its rapid spread, particularly once this reaches pandemic status and has widespread presence. If an employee appears to have respiratory illness symptoms, like a cough or shortness of breath, you may separate the employee from other workers and send the employee home.

- Before acting when an employee is exhibiting symptoms, we suggest consulting with your employment counsel to ensure that risk determinations and decisions are not based on protected characteristics like race or national origin. You may want to consider antidiscrimination training regarding treatment of those who are sick or suspected of being or becoming sick.

- The coronavirus likely meets the definition of a serious health condition under the Family and Medical Leave Act (FMLA). If the company is covered and the employee is eligible, the employee will be entitled to up to 12 weeks of unpaid leave if the employee is unable to work or if leave is needed to care for an immediate family member who has the coronavirus. The answer is less clear for employees who are in quarantine but may not have the coronavirus, so be sure to carefully consider the facts on a case-by-case basis. Employees who are ineligible for FMLA may also contract the coronavirus, which will raise different leave issues, or you may operate in a state that affords greater leave protection to employees.

- If an employee is infected, you can tell co-workers that there may have been exposure. But, you need to maintain confidentiality of the employee’s name. And, if employees become worried about going to work, make sure there are no disability issues at play (such as an employee who suffers from severe anxiety or an autoimmune disorder), and, if not, analyze whether this concern is valid when considering whether the employees will be entitled to any leave or pay.

- Finally, if you have an employee who is infected or who wants to return to work following infection, think about whether you want to require a doctor’s note if it’s your practice to do so. To the extent possible, but while keeping your workforce safe, consider whether it makes sense to temporarily relieve employees of the obligation to provide a doctor’s note while out with a respiratory illness to validate illness or return to work. This also alleviates some strain on the healthcare industry. Of course, you’ll want to make sure it’s clear this is a temporary change to your policy and have measures in place to ensure the employee only returns after being symptom free for a period of time, like 24 hours.

Remember that your workplace, employees, industry, or the state law at issue may present unique facts and circumstances that warrant further analysis or a different approach, so be sure to contact your employment counsel as warranted.

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