COVID-19 | Don’t panic, be prepared (Part I)

GODFREY KAHN, S.C.

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Following Godfrey & Kahn’s recent client alert on coronavirus, there have been several new developments. On March 11, 2020, President Trump addressed the nation and, on the same day, the World Health Organization (WHO) declared a 2019 novel coronavirus (COVID-19) global pandemic. Today, March 12, 2020, Wisconsin Governor Tony Evers declared a public health emergency.

What employers need to know now

From a legal perspective, President Trump’s address and the WHO’s declaration don’t have a meaningful impact for employers as federal and international agency guidance has remained largely unchanged. However, Governor Evers’ declaration of a public health emergency has potential to be a game changer. It is likely the focus on COVID-19 will now become local as Wisconsin municipal, county and state agencies respond to the Governor’s call to action.

Considering this shift, it is important that employer’s understand the following:

1. The meaning of a pandemic

Declaring a pandemic has nothing to do with changes to the characteristics of a disease, but is instead associated with concerns over its geographic spread.
According to the WHO, a pandemic is declared when a new disease for which people do not have immunity spreads around the world beyond expectations. There is no threshold test used to make this determination. Ultimately, the WHO gets the final say. According to the WHO, once a pandemic is declared, it becomes more likely that community spread will eventually happen, and governments and health systems need to ensure they are prepared.

2. Federal and international agency guidance

The main suggested federal and international resources for employers to monitor are:

- World Health Organization (WHO)
- U.S. Centers for Disease Control and Prevention (CDC)
- U.S. Department of Health and Human Services (HHS)
- United States Department of State (State Department)

Most have a resource page dedicated to COVID-19.

3. State, city and county resources are important

Many employers mistakenly believe that response directives will come to them from federal agencies. However, this is generally not the case. The CDC states in its guidance that state and local authorities have primary jurisdiction for isolation and other public health orders within their respective jurisdictions. Federal public health authority primarily extends to international arrivals at ports of entry and to preventing interstate communicable disease threats. In fact, the CDC makes clear that its guidance is meant to be flexible, recognizing that decisions and criteria to use such public health measures may differ by jurisdiction.

The main suggested state resources to monitor are:

- State of Wisconsin
- Wisconsin Department of Health Services

4. Public health emergency

Don’t panic, Governor Evers’ declaration of a public health emergency does not mean a state shut-down. Instead, Wisconsin law (WI Stat. Sec. 323.10) provides the Governor with the ability to declare a state of emergency which empowers the government to perform actions or impose policies that it would normally not be permitted to undertake for particular articulated reasons, including a public health emergency (WI Stat. Sec. 323.02(16)).

Key takeaways

As an employer, it is critical to understand that state and local jurisdictions may
choose to make decisions about isolation, other public health orders and monitoring that exceed those recommended in federal guidance. For this reason, it is critical that employers continually monitor updates from city, county and state health departments as well as federal and international agencies. Consider designating a person to check for updates on a frequent and regular basis. This will allow your organization, to the extent possible, to prepare for school, daycare, business and community shut downs that may impact your employees.

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