

# CLIENT ALERT: Coronavirus: Employer Considerations

The United States Center for Disease Control and Prevention (“CDC”) has been closely monitoring the recent outbreak of coronavirus – a respiratory illness first detected in Wuhan, China, of which several cases have been reported in the U.S. As more countries announce measures for travelers returning from Wuhan, employers may be asking how they can balance the obligation to ensure a healthy and safe working environment with privacy and antidiscrimination obligations they have under state and federal law.

In January, the CDC confirmed that the virus may be spread via person to person contact. In light of this information, and the understanding that the incubation period is between two and 14 days, employers may wonder whether they can ask their employees to work from home if they recently returned from an infected area, but have not yet shown any symptoms of coronavirus. To the extent practicable, employers should consider allowing those employees to work from home. If remote work is not possible for an employee who is concerned he or she may have come in contact with the virus, employers could alternatively consider providing paid leave during that incubation period.

At the time of this publication, the CDC has issued a level 3 health travel notice – recommending that individuals avoid all unnecessary travel to China. For those employers with employees traveling to China for business purposes, consider whether postponing or moving the location of the trip are suitable alternatives. Other options may include telephone and/or video conferencing. Similarly, if an employee expresses concern about business travel to other affected areas, employers should consider reasonable alternatives, mindful of OSHA’s requirement that employers provide “a place of employment which are free from recognized hazards that are causing or likely to cause the death or serious physical harm to . . . employees.”

With regard to those employees showing what could be early-stage coronavirus symptoms – which are similar to that of a cold – there is a risk of overreaction and business disruption if employers take a one-size fits all approach, requiring all employees with those types of symptoms to stay home. Instead, employers should assess risk on a case-by-case basis, and encourage employees to seek and follow professional medical advice in a manner consistent with the employer’s usual sick leave policies. Similarly, employers should carefully broach the topic of employees’ symptoms as state and federal antidiscrimination laws limit medical inquiries by employers if doing so may reveal an employee’s disability. In light of these limitations, we recommend employers do what they can to ensure a healthy and safe working environment by: encouraging any employees showing symptoms of the coronavirus to follow public health guidance and reminding employees about applicable human resources policies and procedures.

Importantly, employers should ensure supervisors are trained to avoid overreaction and are informed about the applicable laws that restrict inquiries into the health status of employees and the importance of adhering to company antidiscrimination policies (including avoiding stereotyping based on race, ethnicity, and national origin).

Please note that the above information is based upon what is presently known about the coronavirus; this is an ongoing issue and employers should remain apprised of further updates from the CDC and other local public health officials. Employers assessing potential risks associated with coronavirus, other employee illness, or disability and/or medical leave laws should consult with their MBJ attorney.

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