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CORONAVIRUS: HOW WILL IT AFFECT YOUR WORKPLACE?

As of this writing, over 96,000 individuals worldwide have been infected by the 2019 Novel Coronavirus ("COVID-19"). As it continues to spread across the globe, COVID-19 presents a unique set of challenges for employers. Critically, employers must ensure that they have policies and practices that protect employees from potential infections in the workplace. This extends to issues involving workplace safety, privacy, wage and hour, reasonable accommodations, and medical leave.

We recommend that all employers develop and implement a contingency plan that is flexible enough to address worst-case scenarios and to enable the company procedures to address and respond to both current and potential events. Ultimately, employers are obligated, both legally and ethically, to protect employees from reasonably foreseeable and avoidable risks of harm. Put simply, employers have a vested interest in protecting the health and welfare of their employees. In the face of the COVID-19 challenges, or future pandemics, we recommend that employers do the following:

- Assemble a COVID-19 Response Team, which includes management representatives from Operations, Facilities Management, Human Resources, Information Technology, and Legal.
- Require that the Response Team stay apprised of the most current information on the virus, including the signs and symptoms of the disease, the potential exposure window, and the latest treatment protocols. The CDC has up-to-date guidance on managing COVID-19 risks in the workplace, as well as [employer risk-assessment guidelines](#).
- Keep employees informed and educated on how to protect themselves and others from exposure to the virus, how to reduce the chances that the virus is spread to others through personal hygiene, and other preventive measures that they need to be aware of. Ensure that employees have the means to do so, including ready access to soap and warm water, alcohol based hand-sanitizers, etc.
- Engage Facilities Management to review and revise cleaning and disinfection protocols, as appropriate.
- Encourage employees to immediately seek medical care if they experience a fever, cough, or difficulty breathing.
- Require employees to stay home when they are sick, without fear of being penalized.
- Make vaccinations available to employees at the workplace.

- Ensure that employee workstations, and office common areas, are regularly cleaned and disinfected. Provide employees with sanitizer and disinfectant wipes to maintain a clean workplace.
- Keep unnecessary visitors, family members, and other members of the general public from visiting the workplace, to the greatest extent practicable.
- Avoid face-to-face meetings in favor of video or teleconferencing.
- Restrict non-essential business travel. Require that employees report any personal travel to at-risk areas.
- Encourage employees to lead a healthy lifestyle, including good nutrition, exercise, and smoking cessation, to maintain a strong immune system.

In consultation with qualified employment counsel, review, revise, and update policies and procedures to address potential outbreaks and/or quarantines affecting your workforce. See also the EEOC's [2009 Guide to Pandemic Preparedness in the Workplace](#), and the EEOC's more recent posting [What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus](#). The following workplace policies should be evaluated and considered in your analysis:

- *Workplace Accommodations*: Under the Americans with Disabilities Act, if an employee requests workplace accommodations related to a disability, you must engage the employee in the interactive process. If the employee is infected, or is subject to a quarantine, consider whether telecommuting is an option. Also be prepared to address employee requests for exceptions from business travel on a case-by-case basis. Should questions arise, consult with your legal counsel.
- *Workplace Safety*: Review and consider the [workplace safety guidelines](#) for employees in at-risk occupations, published by OSHA. Take note of whether federal, state, or local agencies require employers to report incidences of infection. Ensure that you are compliant with OSHA recordkeeping requirements by setting out the procedures by which employees may report workplace illnesses.
- *Sick Leave and Paid Time Off*: Strongly encourage sick employees to stay home. Remember employers may require employees to go home if it is reasonable to believe that the employee may pose a direct threat to the health or safety of others in the workplace.
- *FMLA Leave*: Employees infected by, or under quarantine as a result of, COVID-19 may, under certain circumstances, be eligible for leave under the Family and Medical Leave Act. Mere exposure to the virus is unlikely to render an employee eligible for leave. However, if COVID-19 renders an employee incapacitated for three or more successive days, and the employee is

under continuing treatment by a health care provider, FMLA leave may be appropriate. For more information regarding FMLA leave and COVID-19, we recommend you give us a call.

- *Employee Privacy:* If you discover that an employee is confirmed to have COVID-19, you should inform fellow employees of the possibility that they have been exposed in the workplace. At the same time, employers have certain duties to protect and maintain confidentiality and not to unnecessarily disclose the identity of infected employee as required by both the ADA and most state and federal privacy laws. Employers *should*, nevertheless, inform employees that a co-worker has been infected without identifying the individual, and that they should continue to monitor themselves for potential symptoms, and to seek medical treatment immediately if they encounter any symptoms.

Johnston Allison Hord's Employment Practices and Benefits Group continues to closely monitor COVID-19 developments, as well as policy guidance from OSHA, the World Health Organization, and the CDC. We stand ready to advise you during this challenging time. Don't hesitate to call us for help.

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