

## We're here for you.

As the situation regarding COVID-19 rapidly evolves and more questions arise, we thought it best to put information in one place. Here we're answering most frequently asked questions. Check back on our website regularly as our response team is constantly updating information.

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Governor Mills' announced on March 12, 2020 Maine's first presumptive positive case and since then, seven more cases (as of the time of this drafting) have been identified. Businesses, schools, non-profits, and organizations around the state are struggling to determine the appropriate response to the novel coronavirus and resulting disease COVID-19 means for them. Right now, employers should be seriously reflecting on the message that they are sending employees about the virus and robustly planning for different contingencies in the coming weeks and months.

As leaders of your organization, you want to provide a calming voice to employees, and try to give some clarity so that they can plan their own lives, recognizing that there are many answers we cannot give and that you will need to continue following national, regional, and local guidance from the Centers for Disease Control and public health authorities.

### **Frequently Asked Questions**

Below are some common questions employers have regarding the coronavirus. Please don't hesitate to reach out if you have additional questions or concerns.

#### **+ Should we restrict work-related travel? If so, where to?**

Generally, keep in mind, all employers—whether under OSHA or the state-law equivalent—have a general duty to keep the workplace free from known threats or hazards. COVID-19—now a pandemic—is undoubtedly a known hazard.

Yes, you can and should restrict work-related travel, especially nonessential travel. As of the time this email is published, the CDC has identified China, South Korea, Europe, and Iran as a Warning Level 3 on its Travel Health Notices, meaning individuals should avoid all nonessential travel to these locations. Employers should still consider restricting travel generally, particularly to areas of the United States or internationally where there

are known outbreaks (including Washington State and New York City), as a precautionary measure to help prevent the spread of the coronavirus. Due to the unprecedented nature of this outbreak, requiring a 14-day quarantine for all business and personal travel in an effort to prevent the further spread would be within your rights as a business.

### **+ Can we restrict personal travel? If so, how do we enforce it?**

While you cannot restrict employees' travel, you can advise employees that personal travel may present health risks and inform them that they will be subject to a 14-day quarantine upon return. In some cases, employers may want to review previous decisions to approve requested vacations or paid time off, if due to the virus, this travel would require a precautionary additional quarantine leave.

### **+ What if an employee is refusing to go on work related travel? Can we require it?**

Largely this will depend on how necessary the work-related travel is to the employee's job and the level of risk—which is largely unknown—with the travel. We strongly encourage you to exercise caution before requiring any form of travel for work. Employees opting out of work-related travel should not be retaliated against or otherwise treated differently.

### **+ Should we cancel conference attendance? What if we are sponsoring or hosting a conference?**

This is highly advisable. Currently, the CDC advises that employers should consider cancelling work-related meetings or events. Governor Mills is advising that all gatherings of 250 or more be cancelled. State or local governments should consider restricting or prohibiting large gatherings.

### **+ Can we require employees to work from home?**

Yes. You can require employees who have the capability to work from home to do so. You must apply any remote work or telecommuting policy, whether temporary or permanent, fairly and equally among all employees and not require or refuse remote work based on any protected characteristic.

If you have non-exempt employees (typically hourly, who are entitled to overtime) working from home, make sure that they are carefully keeping track of all hours worked. Exempt, salaried employees working from home must continue to be paid the same set salary while working from home.

**+ Can we require employees to self-report exposures to known or presumptive positive cases, or self-report a positive test?**

Yes, employers may ask questions to gauge whether certain employees pose a health and safety risk including whether they are experiencing flu-like symptoms, such as fever, sore throat, coughing, or trouble breathing, whether they have traveled to certain regions or been in contact with anyone who is infected. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA. If an employee reports with these symptoms for now you should separate that employee immediately from contact with others and send them home.

Should you have an employee test positive, you should attempt to get any information from that employee which would help you assess any other employees, clients or customers with whom they may have come into contact. To the extent practicable, keep the identity of the infected employee confidential and simply refer to them as an employee of the company.

If an employee does self-report, you should require them to stay in quarantine for 14 days or until they are symptom free for 24 hours without the use of fever-reducing medications, whichever is later. Employers should be careful not to make assumptions based on certain characteristics protected by state and federal law. For instance, do not make virus-related inquiries solely based on someone's race or national origin.

**+ Can we require employees to quarantine after return from travel? If so, what types of travel? For how long?**

Yes. The CDC or state or local public health officials recommend that people who have been to identified Warning Level 3 locations remain quarantined for 14 days or until they are symptom free without the use of medication (such as Advil or Tylenol). However, given the rapid spread of this disease and the ever-changing landscape, it is advisable that all employees returning from international travel or travel within the United States from areas where there are known outbreaks, or from cruises, be required to remain in quarantine for 14 days before reporting for work.

**+ If an employee is quarantined, do we have to pay them? Can we require PTO? Is this FMLA?**

Employees can be required to use PTO, sick, vacation, or personal time while they are

in a self-induced or an employer-required quarantine. If employees do not have any accrued time, the time out of work can be without pay. You may also consider creating a coronavirus leave bank for employees without paid leave who are impacted by the virus.

Additionally, both the state and federal government are considering paid leave for employees impacted by the coronavirus, so please refer back frequently to our website for further information.

Whether the quarantine period qualifies as FMLA depends. Congress is currently contemplating extending FMLA coverage to those eligible employees impacted by the coronavirus. Until that time, you want to consider whether you are a covered employer under either Federal or State FMLA and that the employee is otherwise eligible to take FMLA. If the quarantine is precautionary, it would not likely be covered by FMLA. However, if the employee is positive for the coronavirus or is caring for a family member infected with the coronavirus, it may qualify as a “serious health condition” depending on the severity of the infection. Likewise, employees who simply refuse to come to work out of fear of contracting the virus would likely not qualify for FMLA. However, even if an employee has exhausted their FMLA leave time or preventive leave does not qualify, you should provide it as a protective measures for your other employees, clients and customers, and others.

### **+ What if our business suffers and we temporarily cannot afford to employ all our employees?**

Employers should prepare for all contingencies—even those that seem remote right now—including a temporary shutdown. During a temporary shutdown, employers do not have to pay employees who are not working. Employees who have earned time such as PTO, sick or vacation time, may be permitted to use that during the period of the shutdown. Additionally, employees may be entitled to receive unemployment benefits for temporary layoffs.

### **+ What if an employee self-reports that he or she may have been exposed to the virus, and has had contact with other employees or clients/customers?**

An employee who reports that he or she may have been exposed to the virus must immediately be separated from other employees and sent home for quarantine period (currently 14 days). You should discuss with that person whom he or she came into contact with so that you can alert those individuals and, for individuals with whom the employee

had more than mere incidental contact, take the same precautions.

Employers have a general duty to protect employees from known hazards under OSHA law and if you become aware of exposure to the virus—even if unconfirmed—you have a duty to take measures to protect others, including clients, until the risk is mitigated after an incubation period or the individual receives a negative test result. However, you should be careful not to identify the employee who self-reports by name and, to the extent practicable, should avoid giving information that may lead others to discern the employee's identity. This is a difficult balancing of employee privacy, but the primary concern is to ensure the safety of other employees.

### **+ How should we evaluate employees who seem ill?**

You are not expected to be experts of coronavirus symptoms or to try to diagnose employees for the virus. If you have any employees who appear to have respiratory symptoms (cough, shortness of breath), current CDC guidance instructs you to separate those individuals from other employees and send them home immediately.

### **+ Can we take the temperature of employees at work? Should we?**

Under the ADA, an employer cannot require a medical examination of a current employee unless it is both job-related and consistent with business necessity. However, if an employer reasonably and objectively believes an employee poses a “direct threat”, meaning a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation” then the employer may send the employee home to self-quarantine and/or require a medical examination without running afoul of the ADA. Employers who are not trained and designated healthcare professionals should not be conducting their own medical screening, including testing an employee's temperature. Even testing for fevers is an imperfect solution as some people the Coronavirus do not exhibit a fever or that is possible for an individual to have the Coronavirus but not yet develop related symptoms.

### **+ What steps can we take to minimize risk of transmission?**

Right now, all employers should be requiring employees to report their past and future travel or contact with people suspected or known to be exposed to the virus. Make reasoned decisions about who to place on leave for a protective period of quarantine. Employers should also be contacting employees and informing them of and instructing

them to follow the CDC guidance on preparing for COVID-19. This includes having medication and other supplies on hand, avoiding close contact with people who are sick, washing your hands often with soap and water for at least 20 seconds and/or using hand sanitizer, avoid touching high-risk surfaces in public places (elevator buttons, handles, handrails, and if you must, use a tissue to cover your hand), avoid touching your face, avoid crowds, and avoid all non-essential travel including plane and cruise ships.

Employers should also inform employees and practice regular cleaning and sanitation in workspaces and areas in which employees may come and go throughout the day. This includes sanitizing doorknobs, countertops, workstations, and providing disposable wipes to employees to do so for their own areas.

We strongly recommend employers to think about the culture and the tone that they are setting from the top regarding transmission and risks to the community. If your employees can work remotely without interrupting your business, now is the time to encourage it. If you can limit or cancel work-related travel, you should be doing so to prevent the spread of the virus and to protect our vulnerable neighbors and members of our community.

### + **What should we be doing right now to prepare for Coronavirus and COVID-19?**

If you have not already, you should begin planning for various contingencies that are relevant to your business, if further social distancing measures are going to be required to help our community combat this virus. If applicable, you should be looking at the following:

**1) Review your current leave policies.** Do you offer employees separately enumerated sick leave, personal leave, and vacation, or a general bank of paid time off (PTO)? Consider whether any amendments to your policies are needed so that employees are required to take leave if they are symptomatic or what barriers to leave may exist (including notice periods and approval).

**2) If you have it, review your short-term disability plan documents.** Review your plan documents to determine when benefits may begin for employees who become ill, what evidence of eligibility is required, and what exclusions may exist based on the circumstances or reductions for other income received by the employee.

**3) Consider remote work capabilities.** If possible, you should be equipping all employees who can work remotely to do so. If you do not already have one, you may need to create a remote work policy that addresses how confidential information of your organization will

be safeguarded, how non-exempt employees are expected to keep accurate logs of time worked, and address company-provided versus employee-provided equipment.

**4) If needed, consider temporarily adopting additional leave.** Some employers are adopting additional paid leave in the event that further social distancing measures are needed in Maine and it becomes difficult or impossible for employees to come to work. Employers are doing this in a variety of ways:

- Temporarily creating a new policy for a separate leave bank of “Coronavirus, COVID-19 leave,” to provide additional paid leave for employees who are not able to come to work due to illness or mandates on social distancing. This leave policy can reflect either employees’ full rates of pay, or a partial amount.
- In some cases, adopting a policy to allow employees to take leave that has not yet been accrued or earned, allowing them to “go in the negative” for paid leave, to be repaid at a later time when it is earned. Any policy in which this leave is being adopted should be done in consultation with an attorney to avoid potential wage and hour issues.