



April 2019

## What Can Employers Do About the Measles Outbreak?

By Carolyn D. Richmond, Glenn S. Grindlinger and Matthew C. Berger

As measles outbreaks affect New York City and major California counties, employers should understand the best practices for ensuring the health and safety of their employees, customers and guests. Outlined below are steps you can (and cannot) take to ensure you're maximizing workplace safety while complying with federal, state and local laws.

### Background on Measles Outbreaks

News reports are noting a dramatic spike in measles cases this year. According to the Centers for Disease Control and Prevention (CDC), since January 1, there have been 704 confirmed cases of measles in the United States and at least nine measles outbreaks (defined as three or more cases) across the country, including in New York's Kings, Queens and Rockland counties and in California's Butte, Los Angeles and Sacramento counties. The outbreak in New York City has been so severe that Mayor Bill de Blasio declared a public health emergency, requiring unvaccinated individuals living in parts of Brooklyn to receive the measles vaccine or face violations and possibly fines of \$1,000 for noncompliance.

Employers are now faced with the challenge of protecting their workforce and customer bases during this public health emergency. The steps below provide guidance and resources for approaches that maximize workplace safety and avoid potential legal pitfalls.

### Step 1: Notice to Employees

If you learn that an employee has been diagnosed with measles, you may be tempted to alert the rest of your staff immediately. Don't! Not only can this cause an unnecessary panic, but you must also be careful about employee privacy concerns and the information you share.

The first thing you should do is contact your local health department. In New York City, employers can contact the New York City Department of Health and Mental Hygiene (NYC Department of Health), while employers in California can contact the California Department of Public Health. Your state or local health department can provide you with the necessary information to help prevent further exposure of your employees.

Once you have a plan in place after speaking with the applicable health department, you can inform the rest of your employees that the company has become aware that "someone" diagnosed with measles was present in the workplace and the company has taken steps to address the issue. You can also provide employees with the [CDC's FAQs on measles](#). Employers in New York City can also reference the [NYC Department of Health's FAQs on measles](#) while employers in California can turn to the [Los Angeles County Department of Public Health's FAQ on measles](#). It is important that you provide your employees with only official information so they are not exposed to the misinformation that is prevalent on the internet.

Take extreme care to protect the identity of the employee diagnosed with measles to avoid

discrimination liabilities. Measles may be considered a disability under the Americans with Disabilities Act and is likely considered a disability under various state and local laws, including the New York State Human Rights Law, the New York City Human Rights Law, and the California Fair Employment and Housing Act.

## **Step 2: Leave from Work – PTO, Sick Leave, FMLA and Reasonable Accommodations**

There are several options for providing leave time for an employee with measles, who will likely need to take leave for treatments and recovery. In New York City, employers must offer a minimum of 40 hours of paid sick leave under the New York City Earned Safe and Sick Time Act. Employers with locations outside of New York City should also be aware of applicable state and local sick leave laws that may apply. The employee must notify the company of the need to take sick leave and, if the employee is out for more than three (3) days, you may be able to request a doctor's note attesting to the employee's need for the leave (although you cannot require that the employee disclose the reason for the sick leave). If your business offers paid time off (PTO), the employee should be permitted to use available PTO as needed.

If an employee needs more time away from work than their accrued sick leave and/or PTO will cover, the employee may be able to take leave under the Family and Medical Leave Act (FMLA) if they are eligible. If the employee does not have any remaining FMLA leave or does not qualify for FMLA leave, you should engage in a cooperative dialogue with the employee to determine if there is a reasonable accommodation that is available, such as working from home or taking unpaid leave. In the unlikely event that the affected employee does not want to take leave from work, you may require an employee to stay home if you believe that a direct threat is posed to the workplace safety. Regardless of which type of leave the employee uses, you may not take any adverse actions against the employee because of the measles diagnosis and/or the need for leave,

as federal, state and local laws protect employees from discrimination on the basis of health concerns, certain leave requests and disabilities.

You may also wish to allow unaffected employees to use PTO or work from home if they express concerns about being exposed to measles. Although you are not legally required to do so, permitting employees to use available PTO or work from home may make good business sense to keep your staff happy.

## **What You Cannot Do**

What you may not do is require employees to get vaccinated for measles. Numerous disability, religious and privacy concerns are implicated if an employer attempts to impose a vaccination requirement. However, you can educate employees about the science and medical facts regarding the efficacy and safety of the measles vaccine.

If your business is located in New York City, you can also inform your employees that, pursuant to the NYC Department of Health's Order of the Health Commissioner, individuals who live, work, or reside in ZIP codes 11205, 11206, 11211 and 11249 must be vaccinated or face the potential of receiving a violation and fine. New York City employees living, working or residing in one of these ZIP codes can get vaccinated at one of these [locations](#). You may also wish to offer employees the option of taking unpaid leave if they decide to get vaccinated.

For more information about this Alert, please contact Carolyn D. Richmond at 212.878.7983 or [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com), Glenn S. Grindlinger at 212.905.2305 or [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com) or any other member of Fox Rothschild LLP's Labor & Employment Department.