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Coronavirus – Workplace Considerations for Hospitality Employers

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The recent outbreak of respiratory disease (COVID-19) caused by the novel coronavirus presents many issues for hospitality establishments. Employers should be vigilant and plan for a potential outbreak, as the United States Centers for Disease Control and Prevention (CDC) recently announced that it expects the disease to spread in this country. In their preparations, hospitality employers should be mindful of various employment laws when determining how they will manage workplace concerns about the coronavirus and plan for continuing operations in the event that employees have been exposed to the coronavirus.

We provide answers to some common questions that the hospitality industry may have based on available information at this time. This alert is intended to provide only general information and does not address every potential concern. Given the complex legal landscape and the multitude of issues involved, hospitality employers should consult with legal counsel about the facts and circumstances of specific situations prior to taking any action in response to the coronavirus.

How can we prepare for a local outbreak of the coronavirus?

Create an outbreak response plan now to ensure the continuity of your operations and involve your employees in that process. You should anticipate increased

employee absences, as employees and their family members may become ill and their children's schools and childcare providers may close. It would be advisable to determine which positions or functions are critical to your operations and plan for operating with reduced staff, which may involve cross-training employees to perform other duties or allowing employees to work from home (if possible).

Review your human resources policies and practices to ensure that they are flexible and comply with applicable laws and public health recommendations, as well as develop a communications plan for sharing critical information with employees. In advance of any outbreak, remind employees of your sick leave policies, including their rights under applicable laws, and share details of your response plan.

While many federal, state and local laws affect an employer's response to an outbreak of the coronavirus, the U.S. Equal Employment Opportunity Commission (EEOC) previously released guidance on pandemic preparedness in the workplace and the Americans with Disabilities Act (ADA). The guidance is available [here](#) and may be instructive when creating your outbreak response plan.

Can we ask employees to stay home if we suspect they may have the coronavirus or have been exposed to the coronavirus?

Generally, employers are obligated to protect their employees from known hazards, which may include the coronavirus. However, employers should tread very carefully if employees do not voluntarily divulge that they have the coronavirus and employers are acting on mere suspicion.

To contain the spread of the coronavirus, you should actively encourage sick employees to stay home and remind sick employees of any rights that they may have to paid time off when they are sick or caring for an ill family member. If employees have symptoms of an acute respiratory illness (*e.g.*, fever, cough, shortness of breath), you can ask them not to return to work until they no longer have a fever for at least 24 hours.

If employees recently returned from travel to a country with a coronavirus outbreak, such as China, Iran, Italy, Japan or South Korea, you may ask those employees to complete a self-monitoring quarantine period at home for up to 14 days (the suspected incubation and transmission period) after returning from the country at issue.

Do we need to pay employees who are being quarantined, self-monitoring at home or are otherwise ill with the coronavirus or caring for a family member with the coronavirus?

It depends. Initially, you would be required to pay employees who are absent from work for these reasons if they have accrued paid time off pursuant to any paid safe/sick leave law. Additionally, employees may be entitled

to New York Paid Family Leave benefits if they are caring for a family member with the coronavirus. However, after employees exhaust any paid safe/sick leave, the obligation to pay them depends on whether they are classified as exempt or non-exempt employees and whether you are requiring them to be absent from work.

Generally, you are only required to pay non-exempt employees for the actual hours that they work. Therefore, legally, you do not have to pay these employees if they are unable to return to work after they exhaust any applicable paid leave entitlement. However, you likely would be required to grant them an unpaid leave of absence.

As for exempt employees, you are required to pay them their full weekly salary if they perform any work during a given week. Moreover, if you are requiring them to be absent from work—such as to self-monitor for the coronavirus at home—you must pay them their full weekly salary. On the other hand, if they are diagnosed with the coronavirus and unable to work due to their medical condition, then you likely would not have to compensate them after they exhaust any applicable paid leave entitlement. However, granting such employees an unpaid leave of absence is advisable.

Can we tell other employees about an employee who has or may have the coronavirus?

Employees have a reasonable expectation of privacy regarding their medical information. Therefore, you must maintain the confidentiality of any employee with a suspected or confirmed

case of the coronavirus and should put procedural safeguards in place to protect his or her identity (including the reason why an employee may be working at home during a quarantine or self-monitoring period).

However, you should inform other employees of their possible exposure to the coronavirus because employees have a right to know if there is a health risk in their workplace. Those employees then can and should conduct a risk assessment of their potential exposure based on guidance from the CDC.

Upon learning of an employee who has been diagnosed with the coronavirus, immediately contact your local health department, such as the New York City Department of Health and Mental Hygiene, and establish a plan before communicating this development to your employees.

Do employees need clearance to return to work? Can we request documentation?

Currently, there is no formal clearance process for employees to return to work from the coronavirus. However, employers may request documentation under certain circumstances. For example, in New York City, if an employee has been absent for more than three consecutive workdays, you may request a doctor's note from a licensed healthcare provider. Additionally, if an employee has traveled to one of the CDC-designated countries, you may request documentation of the employee's travel to confirm the dates of the employee's self-monitoring at home (the NYC Department of Health and Mental Hygiene has provided a [template for employees](#) to use). If the employee

did not have any fever, cough or shortness of breath during these 14 days, there is no medical reason to exclude that employee from the workplace and you should allow him or her to return to work. As a reminder, all medical documentation should be maintained confidentially and separately from the employee's personnel file.

What do we do if an employee arrives at work presenting symptoms of the coronavirus?

If an employee arrives at work displaying symptoms of respiratory illness, you should immediately separate the employee from the other employees and send him or her home. You cannot subject the employee at issue to medical examinations to determine if he or she is sick (taking an employee's temperature is considered by the EEOC to be a "medical examination"). Even if the employee does not perform any work on the date in question, as a hospitality employer, you should be mindful of any legal requirements to provide the employee sent home with call-in pay.

How can we prevent the coronavirus from spreading to our workplace?

You should encourage employees to stay home and seek medical care when they are sick. You also should encourage employees to partake in good hygiene by washing their hands often with soap and water (for at least 20 seconds) and covering their mouths and noses with a tissue (or their sleeve) when coughing or sneezing. Additionally, you should make alcohol-based hand sanitizer and disposable cleaning wipes available, provide tissues and no-touch trashcans and disinfect frequently touched surfaces

such as doorknobs, countertops and workstations.

Can we fire someone who has the coronavirus?

No, you should not terminate or otherwise take any adverse action against an employee who has the coronavirus or is regarded as having the coronavirus. If an employee requires time off from work, you should engage in a cooperative dialogue and interactive process with that employee regarding his or her individual situation and consider granting that employee an unpaid leave of absence (after exhausting any paid leave to which the employee may be entitled) until the employee is able to return to work. An unpaid leave of absence should be considered regardless of whether the employee is eligible for leave pursuant to the Family and Medical Leave Act (FMLA).

Can we refuse to hire someone because we believe that person may have been exposed to the coronavirus?

Employers should not ask job applicants about their medical conditions or recent travel or refuse to hire them merely because they have (or had) the coronavirus or are from (or recently visited) a CDC-designated country such as China, Iran, Italy, Japan or South Korea. The fact that there is great concern surrounding the coronavirus, or that other employees may not want to work with a particular person out of fear of contracting the coronavirus, is of no consequence.

Should we be concerned about employees being harassed or discriminated against as a result of the coronavirus outbreak?

The coronavirus outbreak has stirred up many offensive and racist beliefs, and people of certain ethnicities have been stigmatized. Employers should be extra vigilant in ensuring that employees are not being harassed or otherwise discriminated against based on their race or national origin because of coronavirus fears.

Can we prohibit employees from wearing medical masks or respirators?

This is a complicated issue. Under most circumstances, you can prohibit employees, particularly customer-facing positions like servers, from wearing medical masks or respirators. Further, the current consensus is that masks are not necessary to protect the health of most employees and are needed only if a person is treating someone infected with the coronavirus. Therefore, unless an employee has a disability requiring the use of a mask or works directly with individuals affected by the coronavirus, an employer likely can prohibit employees from wearing masks at work. However, please speak with legal counsel before taking such action.

Can we impose travel restrictions on our employees?

Employers may require employees to limit all non-essential *business* travel to CDC-designated countries and strongly encourage employees to limit all non-essential personal travel to CDC-designated countries. In constructing such a policy, employers are advised not to impose a ban on all travel or a ban on

travel to only one of the several CDC-designated countries (*e.g.*, banning travel to China, but not banning travel to Iran, Italy, Japan and South Korea).

Additionally, employers should be mindful that New York law prohibits discrimination against employees based on their lawful off-duty conduct (including legal recreational activities), and, if it is lawful to travel to CDC-designated countries, then there may be legal concerns with prohibiting employees from personal travel to those areas.

If a vaccine for the coronavirus becomes available, can we require our employees to get it?

No, you cannot require employees to be vaccinated for the coronavirus if a vaccine becomes available. However, if a vaccine becomes available, you can educate employees about the vaccine, consider making it available at no cost to employees, and consider offering employees leave to obtain the vaccination.

What should we do if we believe that a guest or visitor to our establishment has the coronavirus?

You should be very careful in taking any action, particularly if your beliefs are mere suspicion, because it is against the law to deny a person entry to your establishment and refuse service based on a person's actual or perceived race, ethnicity, national origin or disability. Thus, you cannot treat persons differently if, for example, they are Chinese or Italian because those countries have areas with widespread or sustained community transmission of the coronavirus.

What should we do if a guest inquires about whether any employees have the coronavirus or recently traveled to a CDC-designated area?

As explained above, you must maintain the confidentiality of any employee's medical information. However, in response to a guest inquiry, you may choose to inform that guest as to whether any employees recently traveled to a CDC-designated area and/or have been diagnosed the coronavirus. You also may choose to inform the guest of the precautions that you have taken to minimize the risk of transmission to any person who enters the establishment.

Where can we obtain further information about the coronavirus?

We suggest that you visit the following federal, state and city resources regularly, as the coronavirus is a rapidly evolving situation and updated information is continually being posted on these websites:

- [CDC coronavirus guidance](#)
- [OSHA coronavirus guidance](#)
- [NY Department of Health coronavirus information](#)
- [NYC Department of Health coronavirus information](#)

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