

March 17, 2020

VIA EMAIL

Dear Clients:

Bailey Law Partners has received numerous questions from our clients concerning workplace issues relating to the current coronavirus pandemic. We offer the following as general guidance only and invite you to contact us for specific legal advice as it applies to your situation.

While addressing workplace issues, employers must be mindful of various sources of law and information which may implicate privacy considerations, rights under the Federal and Medical Leave Act and related local medical leave laws, rights protecting persons with disabilities, and advice circulated by national and local health authorities, to name a few.

We provide general guidance under three potential scenarios that employers may need to respond to in the upcoming weeks and months: 1) an employee reporting to be sick; 2) an employee that does not report to be sick but is having apparent symptoms; and 3) an employee who reports to have been diagnosed with COVID-19.

1. My employee reported that they are sick but thinks it is only a common cold. What should I do?
 - Generally speaking, the advice for addressing sick employees is the same: **ALLOW YOUR EMPLOYEES TO STAY HOME**. This is so for those infected with coronavirus and those who are not.
 - Consider allowing employees who wish to stay at home when they are not sick to do so as well, including by allowing work from home accommodations.
 - Be flexible with sick leave, both for employees and family members alike.
 - Do not insist on doctor's notes.
 - Make safe work practices a top priority. Consider providing personal protective equipment where needed, alcohol based hand sanitizers, no-touch trash cans, and requiring employees to regularly wash hands.

2. My employee seems to be sick but has not stated that she is sick. What should I do?
 - Under past guidance from the Equal Employment Opportunity Commission, advising workers who appear sick to go home was not a disability related decision triggering Americans with Disabilities Act protection. Employers may therefore consider recommending that employees who are manifesting symptoms of illness to go home. Employers may consider continuing to pay employees under these circumstances.

3. My employee has been diagnosed with COVID-19. What should I do?

- Require the employee to remain at home for at least 14 days.
- Identify any co-workers or other employees that may have been exposed to the sick employee and inform them that they may be at risk. Encourage those employees to quarantine at home for 14 days.
- Perform a risk assessment: <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>
- Beware of potential privacy risks. Do not identify the employee who tested positive. Avoid disclosing their identity while conducting safety assessments or providing information regarding potential exposure to co-workers.

The information herein is not a substitute for legal advice specific to your circumstances and each employer's circumstance will provide its own challenges and considerations. Please contact us with specific questions that you may have. Thank you and be safe.

Kind regards,

BAILEY LAW PARTNERS



Paul Pfeilschiefter

Additional guidance:

Center for Disease Control:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

United States Department of Labor Occupational Safety and Health Division (OSHA):

https://www.osha.gov/Publications/influenza_pandemic.html.

OSHA Guidance on Preparing Workplaces:

<https://www.osha.gov/Publications/OSHA3990.pdf>