

# CORONAVIRUS: SOME ISSUES FOR BUSINESSES AND HR PROFESSIONALS

COURTESY OF:

**DUNGAN & LEFEVRE**

A LEGAL PROFESSIONAL ASSOCIATION

*The current COVID-19 pandemic by now has affected all Ohioans in very real ways. The crisis also presents unique questions for the employer-employee relationship. The following bullet points consist of general HR considerations relating to the virus. If your business has a specific concern regarding a policy or employee, as always, you should direct that question to your legal counsel.*

## FOLLOW ALL RELEVANT GOVERNMENT SAFETY ORDERS

*By now, Ohioans are used to daily briefings from the Governor, Lieutenant Governor, and the Director of Health, usually to announce new precautionary measures. For example, the Director has signed Orders restricting the operation of certain businesses, and most recently, an Order restricting the operation of all “non-essential” businesses in Ohio for a period of 14 days. First and foremost, your business should ensure that it is in compliance with all specific orders from the state, federal, or local government.*

The “Stay at Home Order” exempts all essential businesses and provides examples of industries that are considered essential by the State of Ohio. If you believe your business falls into one of those categories, state officials have made clear that you should have a clear rationale for believing so. The best course of action would be to seek a written legal opinion from your company’s attorney regarding the business’ status.

*Even if your business remains in operation throughout the state of emergency, you are required to follow safety measures outlined by the Health Department.*

- For example, employers must ensure that all staff follow appropriate social distancing measures, meaning maintaining at least six feet between individuals, whenever possible.
- Employers are also directed to encourage hand-washing and/or the use of hand sanitizer as often as possible. “High-contact” surfaces such as doorknobs, keyboards, work benches, etc., should also be cleaned with sanitizing products as often as possible.
- HR professionals should consider posting conspicuous written notices regarding social distancing and hygiene throughout the facility. Additionally, sanitizing products should be easily accessible for use by employees.

## WHAT IF AN EMPLOYEE HAS COVID-19?

- If an employee calls in sick, you are permitted to ask whether the employee is experiencing symptoms of COVID-19. The federal Americans with Disabilities Act (“ADA”) requires any information obtained from the employee be treated as confidential medical information.
- The ADA also does not prohibit you from requiring any employee showing symptoms of the virus to stay home. Notably, this is consistent with specific health directives from the state and federal government.
- If an employee cannot work due to being infected with the virus, new federal legislation likely requires that the employee be given up to two weeks of paid sick leave. A separate summary of that legislation, the Families First Coronavirus Response Act, has also been provided by the Troy Chamber.

## MAY A COMPANY HAVE A MANDATORY FEVER-CHECK POLICY?

- The ADA does not prohibit a company from requiring all employees to have their temperatures taken upon reporting to work. In fact, this practice has been encouraged, if not required, by the Governor and Director of Health in Ohio.
- The ADA also does not prohibit a company from screening all job applicants for symptoms of the virus, so long as the company follows this policy consistently in all cases. The company also may require that a prospective employee who has been given a conditional employment offer have his or her temperature checked prior to the start date.

## WHAT IF AN EMPLOYEE IS IN A VULNERABLE GROUP?

- If an employee is concerned about coming into work because the employee is particularly susceptible to serious complications due to the virus, i.e., the employee is elderly or has a condition affecting the immune system, the ADA likely requires the company to explore reasonable accommodations for the employee.
- For example, the company should consider the possibility of the employee working remotely. Notably, state officials have asked businesses to institute this policy for all employees whenever possible.

## ARE THERE ADDITIONAL RESOURCES RELATING TO COVID-19?

*The federal Equal Employment Opportunity Commission (“EEOC”) has provided multiple resources for businesses specific to the current pandemic. For example:*

- Employer FAQs: [https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)
- Written Guidance Regarding the Pandemic: [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)