

# What Employers Should (and Should Not) Say to Employees to Manage the Challenges of the Coronavirus

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# How should employers keep employees informed?

- Be a helpful and credible source of information
  - ❑ Proactively share protocols, policy changes and tips
  - ❑ Create an expectation for ongoing updates and where to receive latest details
- Be clear and consistent with company policies
  - ❑ Set clear expectations about what employees should do
  - ❑ Share plans, while avoiding speculation or worst case scenarios
- Be human
  - ❑ Express empathy for employees and the toll of the situation
  - ❑ Anticipate anxiety, rumors, and misinformation

## May an employer require disclosure of an illness?

- Americans with Disabilities Act (ADA) restricts disability-related inquiries and medical examinations during employment
  - ❑ Asking if an employee is “feeling OK” *versus* asking if an employee has a respiratory condition or viral infection
- Different rules for employees with visible symptoms
  - ❑ Disability-related inquiries and medical examinations are permitted if an employer reasonably believes the employee poses a direct threat to safety
- Objective evidence of a threat is required *before* a disability-related inquiry or medical examination

# May an employer require an employee to stay home?

- An employer must enforce its policy consistently
  - ❑ Sending home individual employees should be based upon observation of visible symptoms and/or answers to permitted inquiries
  - ❑ Sending home the entire workforce is permitted
- Physicians' notes
  - ❑ An employer may require an employee who had visible symptoms to provide a physician's note certifying fitness to return to work
  - ❑ Physician's note should only certify fitness; not additional medical information

# What happens when there's a case (possible or confirmed)?

- Communicate commitment to transparency and timely communications
  - ❑ Highlight preventive measures in place
  - ❑ Share your cooperation with health officials and compliance with federal guidelines
- If possible, provide context on source, scope and impact of situation
  - ❑ Note locations of employees confirmed with virus
  - ❑ State whether situation has been contained or ongoing
  - ❑ Provide actionable information for employees on precautions
- Ensure that communications demonstrate an appropriate level of empathy and accountability towards employees, the public and potentially impacted people

# SAMPLE EMPLOYEE COMMUNICATION

COMPANY leadership wanted to provide an important update to you about the COVID-19 issue. Today, we learned a COMPANY associate who works in our West Coast office may have been potentially exposed to the virus through a family member. As a precautionary measure and following the guidelines we developed based on CDC and WHO recommendations, the associate will be tested and self-quarantined for the next 14 days. We will continue to track this situation closely and will provide updates once more information becomes available as well as continue to follow all guidance provided by government and public health officials.

At COMPANY, the safety and well-being of our employees is our first priority and; therefore, we recommended the following precautionary actions:

- If you sick or do not feel well, please work from home. If your illness progresses, please seek medical attention and inform Human Resources of any developments or if assistance is needed.
- If you are pregnant or have underlying medical conditions, please speak to your manager or Human Resources contact about working remotely, as needed.
- Continue to follow all hygiene protocols as recommended by the WHO, which are in place in our office.

Our goal is to ensure a safe work environment for all our employees and we appreciate your support and flexibility during this time. In the meantime, if you have any questions, please reach out to your Human Resource contact.

# What should employers tell employees about travel activities?

- Mandatory disclosure of travel activities is permitted
  - ❑ Require teleworking period for employees who visited CDC level 3 travel health notice countries
  - ❑ Consider modified leave policies for employees who cannot telework and visited CDC level 3 travel health notice countries
- Workers' compensation and OSHA rules may apply to work-related travel
  - ❑ Consider ban on travel to countries listed within CDC travel health notices

# What else can employers do to minimize risk?

- Discourage sick employees from “toughing it out”
  - ❑ Resend information about symptoms
  - ❑ Remind employees about various leave policies
  - ❑ Consider temporary enhancements to leave policies
  - ❑ Sending home the entire workforce is permitted
  - ❑ Promise no retaliation or penalties

# Working remotely?

- Ensure that IT infrastructure can support large groups
- Develop contingency plans for major business disruptions
- Consider segmenting the workforce into essential and non-essential employees
- Working remote tips:
  - Use video conferencing, whenever possible
  - Encourage informal communications and actions to maintain company culture



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# Questions

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# Meet the Presenters



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Nick Reiter, co-chair of Venable's Labor and Employment group, represents employers in labor and employment matters. Nick's breadth of experience includes first-chairing jury trials, negotiating new collective bargaining agreements, and advising clients on the best employment practices for minimizing the risk of a new lawsuit.

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[Learn more about Andrew](#)



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