



COVID-19 and spring break travel: Maintaining a healthy workplace

March 9, 2020

This year, spring break coincides with the continued spread of COVID-19 (coronavirus), sparking many questions for employers. To date, there are more than 110,000 confirmed cases with at least 540 in the U.S.¹ and 3,800 deaths globally. As a result, the Centers for Disease Control and Prevention (CDC) is [advising](#) against non-essential travel to China, South Korea, Iran and Italy and is discouraging travel to Japan for the elderly and individuals with chronic health issues. The CDC is also quarantining all individuals returning to the U.S. from highly-affected countries for up to 14 days (the incubation period) to determine whether they show symptoms of the virus, which include fever, cough and shortness of breath.

In line with CDC guidance, a number of companies have curbed or eliminated all international business travel and canceled major conferences and meetings. However, with the peak of spring break approaching, employers are confronting more difficult questions related to personal travel. In a [previous publication](#), we identified key issues for employers to consider when approaching this topic with employees, including what illness-related questions are permissible. Below is some additional information for employers regarding COVID-19 and personal travel.

Can I restrict employees from personal travel to locations with high-risk of COVID-19?

In most cases, an employer can create a policy restricting personal travel as a term or condition of employment, provided that the policy is not created or administered in a discriminatory matter. However, several states have off-duty discrimination laws that prohibit discrimination against employees who participate in legal activities outside the workplace, such as personal travel. Moreover, a policy restricting personal travel is likely to create significant enforcement and employee relations issues. Rather than attempting to implement a policy against personal travel, employers should focus on educating their workforce regarding

the virus and strongly encourage employees to avoid traveling to high-risk areas identified by the CDC.

Can I require employees that have traveled to locations with high-risk of COVID-19 to stay home?

The CDC recommends that any employee that appears to have symptoms of the virus should be sent home immediately or not be permitted to return to work until they are free of symptoms for at least 24 hours. If it is determined that an employee has been infected with COVID-19, all employees who have worked closely with that employee should be informed that they may have been exposed. In that situation, employers should be sure to maintain the infected employee's confidentiality under the Americans with Disabilities Act (ADA). Potentially exposed employees should also be permitted to work from home for the 14-day period to ensure that the illness does not spread. Employers that send sick employees home or require employees to work from home should do so with caution and have an established policy that is followed consistently.

For asymptomatic employees who have traveled to high-risk areas, employers can also require them to work from home for up to 14 days after travel, provided that those decisions are applied in a non-discriminatory manner. For example, there should not be quarantine requirements imposed on people simply because of their national origin. The CDC also provides [guidance](#) on how to conduct a risk assessment in light of COVID-19 exposure.

Can I require employees who travel to certain areas to get medical clearance before returning to work?

The ADA prohibits requiring employees to undergo medical examinations, except under specific circumstances. Specifically, the employee must pose a direct threat to the health or safety of the individual or others that cannot be eliminated or reduced by a reasonable accommodation. Whether a pandemic illness rises to the level of a direct threat depends on the severity of the illness. (Notably, the 2009 spring/summer H1N1 influenza did not rise to the level of being a direct threat to justify requiring employees to undergo medical examinations.) To date, the CDC has not classified COVID-19 as a pandemic.

Rather than requiring medical clearance for any employee who has traveled to a high-risk location, the better practice is to consider allowing employees to work from home for at least 14 days or to use paid leave for that period. If an employee is diagnosed with COVID-19, the argument that the employee poses a direct threat is much greater, but medical examinations even in those circumstances should be evaluated carefully with counsel.

Other key reminders:

- Do not panic but continue to provide timely and accurate information from the CDC and other government agencies to employees.
- Review your organization's Emergency Action Plan. If a plan is not in place or if the plan does not address communicable diseases, develop one.
- When developing an incubation period leave policy, ensure that policy is based on objective information and is consistent with guidance from the CDC, World Health Organization or other governmental sources.
- Follow your policies consistently and uniformly to avoid exposure to discrimination claims.
- Practice flexibility in terms of compensation and leave policies and encourage employees to be open to working from home when possible. It is in the public interest for employers and employees to cooperate and work collaboratively during this time.
- Encourage employees to practice respiratory etiquette and hand hygiene and take special precautions to clean and disinfect common areas.

¹ Cases have been confirmed in all states except Alaska, Idaho, Montana, Wyoming, North Dakota, South Dakota, New Mexico, Arkansas, Louisiana, Mississippi, Alabama, Michigan, Ohio, West Virginia and Maine.

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