



Coronavirus: Hope for the Best but Plan for the Worst

While employers (and individuals) should always hope for the best, it is always a good idea to plan for the worst. In this alert, your Alera Group, Inc. (“Alera”) team is providing general guidance to its clients and friends, including advice focused on their employees and a review of important insurance considerations.

The coronavirus (“COVID-19”) is here. On January 31, 2020, the U.S. Department of Health and Human Services (“HHS”) declared a public health emergency relating to COVID-19. As of March 2, 2020, six people in the U.S. have reportedly died from the virus and there have been at least 65 other confirmed cases reported.

As of March 2, 2020, the U.S. Centers for Disease Control (“CDC”) consider the “the immediate health risk from COVID-19 [as] low” but encourages employers and individuals to prepare and take appropriate steps to protect against the spread of the disease.

Among its various guidance, the CDC recently published its Interim Guidance for Businesses and Employers (“Interim Guidance”). In the Interim Guidance, the CDC provides the following common-sense advice to employers:

- **Encourage sick employees to stay home:**
 - Employees who have symptoms of acute respiratory illness are recommended to stay home until they are fever free (< 100.4° F [37.8° C] using an oral thermometer), do not show signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants).
- **Separate sick employees:**
 - CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately.
- **Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees**

The CDC recommends that employers do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way. Employers should maintain flexible policies that permit employees to stay home to care for a sick family member.

In addition, the Interim Guidance reminds employers to perform routine environmental cleaning of all workplace surfaces, but does not recommend additional disinfection beyond regular cleaning at this time. All employers should read the Interim Guidance which contains additional information.

The CDC provides clear guidance that when enacting preventative protocols employers should remember to follow all requirements of federal, state and local law. For example, imposing travel-based restrictions should not be based on race, country of origin or other legally protected factors. Also, while the CDC recommends advising non-affected employees of the presence of COVID-19 among work colleagues, privacy laws must be respected. An employer should never identify employees who are sick by name, as this could be a violation of the U.S. Americans with Disabilities Act ("ADA") or a state law counterpart. In addition to checking the Interim Guidance regularly, employers should monitor local developments.

In addition to monitoring the CDC and other federal, state and local guidance, employers should contemplate their preventative strategies as they relate to their group health plan as well as human resources policies and procedures. They should also become familiar with their insurance coverage, and, if possible, enhance coverage as necessary.

Employer/Employee Concerns

As it relates to their group health plan and employee's health, employers should:

- Determine what office in their state, county, or parish is providing recommendations or updates as it relates to COVID-19 and inform employees that they will follow the recommendations of that entity as well as the CDC;
- Speak with their local officials to determine which hospital or health system is best equipped to handle individuals with potential exposure;
- Work with their carrier or TPA to ensure that their employees will not have network issues when utilizing the identified health system in the event an employee or dependent must be seen for potential coronavirus exposure;
- Check group health plans to ensure coverage is available for those traveling domestically and internationally;
- Check short-term disability insurance to determine whether coverage is available for quarantined employees; and
- Never use the group health plan as a basis to determine whether an employee or dependent has been exposed to make decisions about employment-related issues—this would be a clear violation of the Health Insurance Portability and Accountability Act ("HIPAA").

Of note, "Applicable Large Employers" should consider how their chosen measurement method (monthly method or measurement method) would impact benefit eligibility under the Affordable Care Act ("ACA") if an employee were quarantined for an extended period of time while traveling and is unable to complete work remotely during that time (such as on a cruise ship)

As it relates to their human resources policies, employers should:

- Consider requiring employees traveling to or from heavily impacted regions (as identified by the CDC) to self-quarantine for 14 days upon return to the United States;
- Work to make accommodations in order to minimize disruption to both their business and an employee's pay in the event employees are quarantined at home—this may include providing quarantined or other employees who are able to work while at home with necessary phone and computer equipment;
- Encourage hand washing and hand sanitation and, if appropriate, set up mobile hand washing or hand sanitation stations in the workplace;
- Consider whether employees should stop or limit non-essential travel--careful consideration should be given to the definition of non-essential and a clear communication strategy to employees should be developed;
- Designate a high-level officer or member of management to check the CDC website daily to see the latest tracking of the virus' spread—this person should be the in-house resource and should be involved in all COVID-19 related decisions; and
- Ensure that employees of Chinese descent, or who carry a Chinese passport are not subjected to any rules, standards, quarantines, work from home rules or policies that are more rigorous than those for employees who are not of Chinese descent – policies should be dictated by risk and geography, not background or ethnicity.

Employers that are subject to the federal Family and Medical Leave Act ("FMLA"), or a state counterpart, should ensure they are prepared to receive an influx of FMLA requests if employees or their family members are exposed or become ill from the virus, or have to care for family members who are ill.

Employers that have a disaster response policy in place should review the communication protocols in the event of widespread absences. These protocols will come in handy when communicating with employees. Management should anticipate and prepare for how you will answer the plethora of questions that will almost certainly be raised.

Employers should not panic or overreact but rather engage in sound business contingency planning. Begin by developing contingency plans based upon the industry you are in, the size of your business and how you will operate in the event absenteeism rates greatly exceed those of a normal flu season. Use this opportunity to communicate with your employees about seasonal flu prevention strategies, such as minimizing contact and engaging in sound hygiene and sanitation.

Proper planning for and dealing with individualized employee situations implicates a whole range of employment laws, such as ADA, GINA, OSHA, Title VII and ERISA, as does the nature of your business. To deal with these legal issues, you should consult with your attorney.

Insurance Concerns

A major concern for all business owners is whether a wide-spread epidemic will cause businesses, government agencies and schools to close. This will interrupt business. An important question to ask is whether the company's insurance policies provide coverage for the loss of income and extra expense incurred during the crisis.

The short answer is that traditional property and casualty insurance policies have limited coverage for outbreaks and epidemics like the COVID-19. The longer answer to this question varies by the type of coverage, policy and situation, so it is a good idea to talk with your insurance broker or consultant as part of your planning process.

Property Insurance

Within a Property Insurance Policy, “Business Income” and “Extra Expense” are the two coverages that potentially cover loss of income or extra expense claims. That extra expense may have allowed you to keep your business running at another location. The challenge is that insurance coverage is typically triggered when the physical officer incurs a “direct physical loss” or damage, for example, in the form of a fire or water damage.

Dealing with the presence of a virus on the property would therefore not normally trigger coverage. With that said, courts have ruled that contamination which renders a property unusable for its primary purpose may establish direct property loss or damage. Fortunately, from what is known right now, damage to property is probably not very likely.

What is more likely is that a company’s business will be disrupted because employees along the supply chain are either out sick or caring for others who are sick. Standard commercial insurance does not cover financial losses an insured company experience when its suppliers experience loss and cannot supply key materials or goods. Similarly, standard commercial insurance typically will not cover your company if your customers cannot accept goods due to a loss that they incurred.

Companies may want to talk with their brokers about “Contingent Business Income Insurance” and “Contingent Extra Expense” coverage. This coverage reimburses lost income and extra expenses resulting from damage or operational disruption at the location of a customer or supplier. Existing policies and endorsements or supplemental coverage policies should be read and reviewed carefully to understand what coverage is available and, importantly, what is not.

Travel Insurance

Facing reduced bookings by business travelers who are uncertain about whether an upcoming business trip will be canceled because of the spread of the virus, some major airlines are starting to publicly announce that they will permit cancellations for flights booked in the near future. Not all airlines have extended this offer, however, and many hotels, car rental companies and other travel-related businesses that charge for, or do not permit, changes or cancellations have not relaxed their rules. Companies that rely on business travel should consider reviewing whether to obtain travel insurance or require business travelers to obtain travel insurance for near-future reservations.

Workers’ Compensation

Workers’ Compensation insurance policies generally cover job-related illnesses or injuries. This coverage provides medical treatment, lost wage replacement and disability compensation. Ordinary illnesses, such as the common cold and other infectious diseases, are not compensable under Workers’ Compensation.

However, there are situations in which an ordinary illness or disease may be covered if a direct connection can be established between the office or plant and the circumstances through which the disease was contracted.

If an infected employee comes to work and subsequently infects other employees through their daily interactions at an office, the employee originally carrying the disease would not be eligible for Workers’ Compensation benefits, but it could be argued that the resulting illness to other employees has been the result of an accident causing bodily injury.

Insureds should consider all potentially applicable insurance policies when assessing potential coverage for COVID-19 related claims. Consulting with your insurance broker or consultant should place a company in good position to understand and possibly maximize insurance recovery in the event of a COVID-19 related loss.

Summary

There are indications that the spread of COVID-19 in the United States may be disruptive for businesses. Your company's management should continue to monitor the situation both nationally and locally. Employee relations, business continuity and insurance should all be considered as part of a preparedness plan—a plan that hopes for the best but plans for the worst. The Alera Group team is ready to help you with any or all of your planning.

Alera Group, Inc. hopes you have found this general information informative and instructive. The information contained herein is not intended to constitute legal or other professional advice and should not be relied upon in lieu of consultation with your own legal advisors. In the event you would like more information regarding your insurance coverage, please contact your local Alera Group firm.

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