

How to Handle an Employee's Return from Overseas Travel & Other Risks in the Face of Coronavirus

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SUMMARY: Discussions and concerns over the Coronavirus have started to ripple through the employment arena and employers are left figuring out how best to handle the impact of the virus. Employers need to navigate this novel issue and ensure that they are balancing the safety of their workers without violating employment laws. We have developed the following Q&A to educate employers about the Coronavirus and to provide guidance on making certain employment decisions.

All the way from the watercooler to the boardroom, everyone is talking about the Coronavirus. This is a particularly difficult issue to handle when employers are faced with an employee returning home from an overseas trip and other co-workers are concerned about this employee spreading the Coronavirus throughout the workplace. Here is what employers need to know, generally, about the Coronavirus and how to handle overseas travel of employees.

What is the current status of the Coronavirus outbreak?

The current outbreak of the Coronavirus, called Novel Coronavirus or COVID-19 was first reported late last year in Wuhan, China. The virus quickly spread throughout China and now the Centers of Disease Control and Prevention ("CDC") is reporting that at least 50 countries (including the United States) have confirmed cases of the Coronavirus. Sadly, the first deaths in the U.S. due to the Coronavirus were reported over this past weekend.

What are the symptoms of the Coronavirus?

According to the CDC, common symptoms can include fever, cough, and shortness of breath.

How does the Coronavirus spread?

Coronaviruses can spread through coughing or sneezing, or by touching an infected person. At this time, the CDC believes that Coronavirus symptoms may appear in as few as 2 days or as long as 14 days after exposure.

Are there currently any travel bans in place for China and Iran?

Yes. The CDC recommends that travelers avoid all nonessential travel (**Warning—Level 3**) to the People's Republic of China (excluding Hong Kong, Macau, and the island of Taiwan). Additionally, on January 31, 2020, the President of the United States issued a Presidential Proclamation on Novel Coronavirus ("Proclamation"). The Proclamation banned foreign nationals' entry to the United States (effective February 2, 2020) for those who have traveled to China within the last 14 days. While United States citizens, lawful permanent residents, and their families who have been to China in the past 14 days will be allowed to enter the United States, they will have to arrive through 1 of 11 designated U.S. airports and will undergo certain screening upon arrival. On February 29, 2020, the President also banned U.S. entry by Iranians or non-Americans who had been in Iran in the past 14 days.

Are there currently any other travel bans in place?

While not an official travel ban at the moment, the CDC has issued a **Warning—Level 3** for both South Korea and Italy, which means that all nonessential travel to South Korea and Italy should be suspended. The CDC also issued an **Alert—Level 2** for Japan, recommending that older adults and those individuals with chronic medical conditions should avoid travel to Japan. Finally, Hong Kong is on the **CDC Watch List—Level 1**, cautioning travelers who visit Hong Kong to avoid contact with sick people and clean their hands often. As COVID-19 continues to spread we suggest that employers routinely check the CDC's website for the most up to date information concerning travel bans.

Should employers suspend all non-essential international business travel?

At a minimum, employers should suspend all business travel to China and Iran. Similarly, business travel to high-risk areas, such as South Korea, Italy, Japan, and Hong Kong, should be avoided. As COVID-19 continues to spread we suggest that employers routinely check the CDC's website for the most up to date information concerning countries/regions where travel should be suspended. If international travel is absolutely necessary to a high-risk area, employers should respect an employee's request not to travel especially if the employee discloses (or the employer has knowledge) that the employee has a medical condition with a compromised immune system. Some prudent employers are suspending all non-essential international travel until further notice.

Can an employer restrict an employee's personal travel to high-risk areas?

No. Since employees may be traveling to their homeland to check on family and friends during this difficult time, restricting what countries an employee can travel to could be construed as a form of national origin discrimination.

Can an employer mandate that an employee not return to the office or worksite until 14 days after their arrival back to the United States if the employee traveled to a high risk country?

Yes. If an employee chooses to travel to a high risk country (based upon CDC recommendations), then it is reasonable to require the employee to remain away from the office for at least 14 days following his/her return to the United States. In fact, requiring an employee to return to work inside of a 14-day quarantine period is a bad idea. Arguments could be made that doing so violates the Americans with Disabilities Act and/or the Family or Medical Leave Act. Additionally, certain states like Maryland, make it illegal to fire an employee who was ordered to isolate or quarantine by the state Governor. See, § 18-906(e) of the Health-General Article of the Maryland Annotated Code. While no Governor has made such an Order at this time, this is something to watch if the Coronavirus continues to spread.

Can an employer mandate that an employee not return to the office or worksite until 14 days after their arrival back to the United States if the employee traveled to a country not on the CDC's high risk or watch lists?

We suggest having an open dialogue with such an employee before they return to the worksite or office. Technically, these employees will not be under a formal obligation to self-quarantine. Nonetheless, the employer (and the rest of the workforce) may have a strong preference that the employee remain home and self-quarantine. If the employer wants to encourage this behavior, they should consider allowing the employee to telework, and, if that is not an option, the employer should consider paying the employee for the time at home (especially if the employee is exempt under the FLSA). However, like many things, this approach does have some risks. An employer should be careful that it is offering the same benefits and options to all employees who are returning from overseas travel. To encourage (or force) one employee to stay home upon his/her return from a trip to Vietnam (as an example), but to allow a different employee to immediately return to the office upon his/her return from Australia (as another example), is subjecting the employer to a possible national origin discrimination claim.

Can an employee refuse to come to work because they are concerned about contracting the virus?

Under OSHA, an employee is only entitled to refuse to work if they believe that they are in "imminent danger" which typically means death or serious physical harm. At the moment, most work conditions in the United States are not putting workers in imminent danger. Therefore, an employee cannot refuse to come to work based upon a fear of the virus. Of course, an employer could allow the employee the option to use unpaid or paid leave (if applicable).

Are there other legal risks for employers?

Yes, the federal Occupational Safety and Health Act and many similar state laws may require employers to protect workers from exposure to airborne infectious diseases in the workplace, such as the novel Coronavirus. While there is no specific federal OSHA standard covering COVID-19, the Department of Labor, Occupational Safety and Health Administration, suggest that the General Duty Clause may apply as well as OSHA's Personal Protective Equipment standards, which require using gloves, eye and face protection, and respiratory protection. There are 28 OSHA-approved State Plans and California, in particular, has taken the position that its Aerosol Transmissible Diseases (ATD) standard is aimed at preventing worker illness from infectious diseases that can be transmitted by inhaling air that contains viruses such as COVID-19. The ATD standard is mandatory for certain healthcare employers in California. So, employers will want to check their State Plans if they operate in one of those 28 states.

What else should employers do?

We suggest that employers inform all of their employees about general steps that can be taken to protect against exposure to or spreading of the virus. The CDC website has a variety of resources on this topic. Some of the general suggestions are to:

- Avoid close contact with people who are sick
- Avoid touching your eyes, nose, and mouth
- Stay home when you are sick
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash
- Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipes
- Follow CDC's recommendations for using a facemask
 - Not recommended for those who are well, for protection against respiratory diseases, including COVID-19
 - Recommended for those who show symptoms of COVID-19 to help prevent the spread of the virus to others
 - Recommended and considered crucial for health workers and people who care of someone in close settings (at home or in a health care facility)
- Wash hands often with soap and water for at least 20 seconds, especially after going to the bathroom, before eating, and after blowing your nose, coughing, or sneezing
 - If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

If you have questions regarding how to handle employment situations as concerns about Coronavirus continue to mount, please contact the employment attorneys at Paley Rothman.