

**Coronavirus**  
**and the Workplace:**  
***Are You Prepared?***



Proskauer»

# Agenda

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- Coronavirus and the Current Outbreak
- Employment Law Issues: Common Questions
  - Employee Travel
  - Disability Discrimination Law
  - Leave Issues
  - OSHA and Workplace Safety
- Planning for Possible Cases of the Coronavirus
- Additional Resources



# Coronavirus and the Current Outbreak

# About the Coronavirus

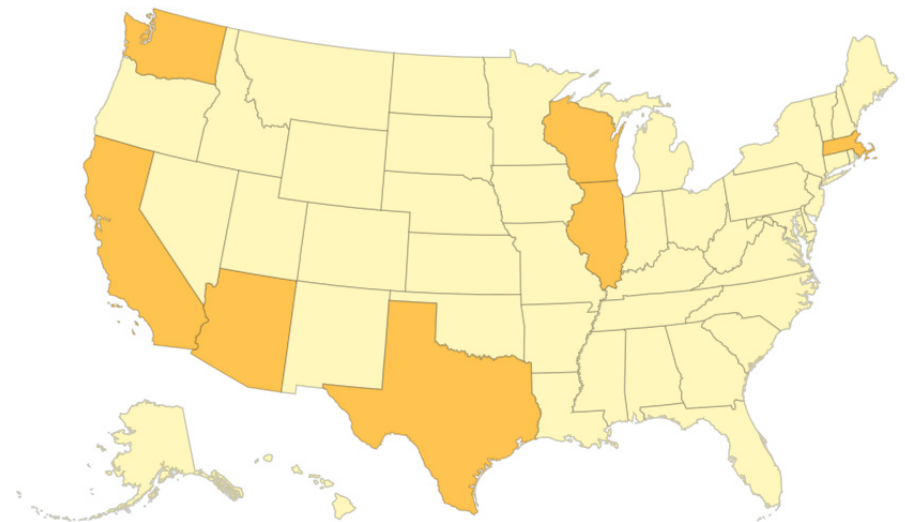
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- Coronaviruses themselves are not new ... you may have had one before.
- The 2019 Novel Coronavirus likely originated in Wuhan, China, where people likely contracted the virus from animals at a market.
  - Nearly 100,000 people have been infected worldwide.
  - More than 2,000 deaths worldwide, including 11 outside of China.
- The virus is now spreading from person to person.
  - Virus spreads through respiratory droplets when an infected person sneezes or coughs.
  - Researchers don't yet know how easily this strain of Coronavirus spreads between people.
- The World Health Organization (WHO) has declared a global health emergency.

# Coronavirus in the United States

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- On January 31, the US Dept. of Health and Human Services declared a public health emergency.
- As of February 20, there have been 15 confirmed cases in the United States.
- According to the CDC:
  - The **immediate** risk to the American public is considered low at this time.
  - More cases are likely to be identified in the coming days, including in the United States.
- In February 2020, the CDC issued Interim Guidance for Businesses and Employers.



Source: Centers for Disease Control and Prevention

# Symptoms and Complications

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- Incubation Period: Between 2-14 Days
- Common Symptoms:
  - Fever | Cough | Breathing Difficulties
- Symptoms and Complications in Severe Cases:
  - Pneumonia
  - Kidney Failure
  - Death
- Certain Groups May Be at an Increased Risk:
  - Older Adults
  - Individuals with Compromised Immune Systems or Certain other Preexisting Conditions

## Treatment and Precautions

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- There is currently no Coronavirus vaccine nor is antiviral treatment available.
- To prevent the spread of Coronavirus (as well as other contagious illnesses), the CDC recommends:
  - Washing hands with soap and water for at least 20 seconds or using hand sanitizer
  - Avoiding contact with eyes, nose, and mouth with unwashed hands
  - Avoiding close contact with people who are sick
  - Staying at home when sick
  - Covering your cough or sneeze
  - Cleaning and disinfecting frequently touched objects and surfaces
- The CDC recommends against the use of facemasks by the general public.

A person is silhouetted against a large window in an airport terminal. The person is holding a cup and standing next to a suitcase. Outside the window, an airplane is flying in a blue sky with some clouds. The overall scene is bathed in a warm, orange-red light, suggesting either sunrise or sunset.

# Common Questions Regarding Coronavirus and the Workplace



# Coronavirus and Its Impact on Travel

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- Travel Advisories:
  - CDC: Level 3 Travel Warning (the highest) for all of China – “Avoid nonessential travel.”
  - State Department: Level 4 Travel Advisory (the highest) for all of China – “Do not travel.”
- The U.S. is imposing quarantines:
  - If returning from Hubei province: 14-day mandatory quarantine.
  - If returning from elsewhere in China: Will be re-routed and subject to a health screening at select airports; followed by 14 days of “monitored self-quarantine.”
- The U.S. is suspending entry of foreign nationals who have traveled to China within the last 14 days.
- Other countries are limiting entry from China/Hubei province.
- Flight cancellations and routes to China being suspended.

## What If My Employees Travel to China for Business?

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- Consider whether to limit travel to affected areas.
  - OSHA General Duty Clause: Employers have a general duty to ensure a safe and healthy work environment.
- Be prepared to manage requests not to travel.
  - Under the ADA and related state/local laws, employees with certain medical conditions (such as those that compromise the immune system) may request not to travel to affected areas as a reasonable accommodation.
- Consider alternatives to travel:
  - Telecommuting
  - Video Conferences

## What If My Employees Travel to China for Business? (cont'd)

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- Best practices if requiring travel to affected areas:
  - Encourage employees who are travelling to check the CDC's Travelers's Health Notices — and information provided by the WHO, the State Department, and state & local governments — for each country to which they will travel.
  - Consider providing personal protective equipment if employees are likely to come into contact with affected persons.
  - State Dept. is recommending enrollment in its Smart Traveler Enrollment Program (STEP): <https://step.state.gov/step/>.

# What Can Employers Do About Personal Travel to Affected Areas?



- Employers may consider:
  - Providing information about current risks to discourage travel.
  - Requesting that employees notify HR of travel to affected areas.
  - Requiring employees to work remotely for 14 days after travel to affected areas.
- Employers should consult with counsel to discuss risks and practical considerations.

## What Can I Ask Employees Who Have Recently Traveled?

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- ADA prohibits employers from making **disability-related** inquiries, unless:
  - 1) The inquiry is job-related and consistent with business necessity, or
  - 2) The employer has a reasonable belief that the employee poses a **direct threat** to the health or safety of the individual or others.
- The following questions are **not disability-related** and may be asked:
  - Have you or someone that you live with traveled to China within the last 14 days?
  - Have you had contact or been in close quarters with someone who is infected with Coronavirus?
  - Have you or someone you live with visited a hospital where Coronavirus was being treated?
- Employers **do not** need to wait until an employee develops symptoms to inquire about potential exposure.

## What Can I Ask Employees Who Have Recently Traveled? (cont'd)

- **Employers should not:**

- Direct questions to employees on the basis of a protected characteristic.
- Ask employees if they have had contact with a person of Chinese national origin (as opposed to asking if they have been in contact with any person who may be infected with Coronavirus).
- Treat employees differently if they have had contact with a person of Chinese national origin.



## Can Employers Send *Symptomatic* Employees Home?

- Yes – employers can send an employee displaying symptoms of a contagious illness home even if contrary to employee’s wishes.
  - The CDC is advising employers to “actively encourage” sick employees to stay home.
- OSHA General Duty Clause – duty to maintain a safe and healthy work environment.
- Employers should consider adopting a general policy that employees with a potentially contagious illness must not report to work while they are sick.



## Can Employers Send *Asymptomatic* Employees Home?

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- **After Travel to China:** In accordance with official guidance regarding quarantine following potential exposure, employers can require employees returning from travel to China to stay at home for 14 days.
  - Consult with counsel if considering longer period.
- **After Travel to Other Affected Areas:**
  - If an individual employee reports contact with an affected person → yes
  - If no reported contact → consult with counsel
- According to the CDC Interim Guidance, employers may consider requiring employees who have a household member with the virus to notify the company.



# If I Send an Employee Home, Or an Employee Cannot Come To Work Because They Are Sick, Do I Have To Pay Them?

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- Employers must comply with all applicable **laws, policies, and contracts** regarding employee pay.
- **Federal Fair Labor Standards Act (FLSA):**
  - Non-Exempt: Must be paid for all hours worked, including if working from home.
  - Exempt: Must be paid full salary for workweek if employee works any part of it, except full day absences for personal reasons or in accordance with a disability/sick time policy.
- **Federal Family and Medical Leave Act (FMLA):**
  - Covered employers must provide eligible employees with up to 12 weeks of unpaid leave for their own serious health condition or to care for a parent, spouse, or child with a serious health condition.
  - Some states have their own “mini-FMLA” laws that may provide additional benefits.

# If I Send an Employee Home, Or an Employee Cannot Come To Work Because They Are Sick, Do I Have To Pay Them? (cont'd)

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- **Paid Sick Leave Laws:**

- Numerous states and cities have enacted paid sick leave laws, each with their own nuances.
- They generally provide a limited amount of paid leave when an employee or employee's family member is sick.
- Some laws also cover when a workplace or child's school/daycare is closed due to a public health emergency.

- **Paid Family and Medical Leave Laws:**

- Growing number of states enacting paid family and medical leave laws.
- Generally provide for partially paid leave to care for a family member with a serious health condition.
- Some (but not all) laws also provide paid leave for an employee's own serious health condition.

- **Immigration Law Considerations:**

- Consult with counsel with regard to H1-B or other work visa employees.

# What If an Employee Refuses To Come To Work Because of Coronavirus Concerns?

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- Answer may depend on whether there is potential risk of exposure at work.
  - ADA: Employees with certain medical conditions (such as those that compromise the immune system) may request to stay home as a reasonable accommodation.
  - OSHA: In certain limited situations, employees may refuse to come to work if they believe in good faith that they will be exposed to a dangerous condition and the danger of death or serious injury is imminent.
  - NLRA: Consider whether refusing to come to work may constitute “protected concerted activity.”

# Can Employers Require a Doctor's Note As a Condition To Return To Work?

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- Yes, if the employee was sick or displaying symptoms.
- If an employee was not sick/symptomatic, consult with counsel.
- Maintain confidentiality of medical information.



# What Steps Must Employers Take To Protect Employees From The Coronavirus?

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- Under OSHA, employers must maintain reasonably safe workspaces.
- **General Precautionary Measures:**
  - Provide hand sanitizer.
  - Ensure common-use surfaces are disinfected regularly.
  - Encourage (or require) employees who feel sick to stay home.
- **Personal Protective Equipment (PPE):**
  - OSHA generally requires protective equipment, clothing, and barriers be provided when necessary to prevent employees from being exposed to environmental hazards.
  - The CDC has issued PPE guidance specifically related to Coronavirus for employers in the healthcare industry - <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/infection-control.html>.

# If an Employee Is Diagnosed with Coronavirus, What Do I Need To Do?

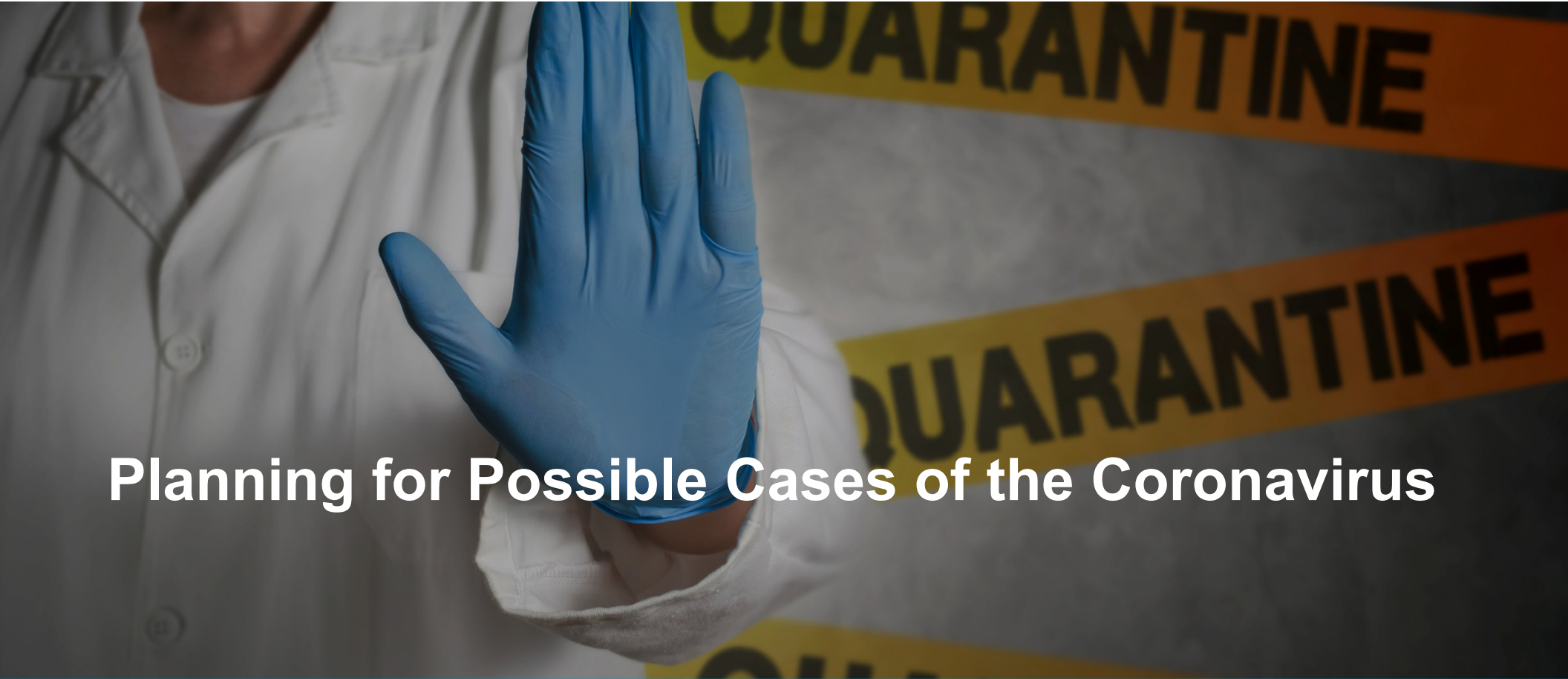
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- **OSHA Recordkeeping Requirement:**
  - Coronavirus is a recordable illness.
  - Employers should record workplace occurrences in their OSHA Form 300 log.
- **State and Local Reporting Requirements:**
  - Most employers do not have a general duty to report illness occurrences to the local health department.
  - However, some employers – such as health care facilities and schools – are required to report certain conditions.
    - Coronavirus is a reportable condition in NYC for such required reporters.

# If Someone in the Workplace Is Diagnosed with Coronavirus, What Can I Tell other Employees?

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- **As a general rule, do not disclose the identity of an employee diagnosed with (or suspected of having) Coronavirus.**
  - ADA: Employee medical information must be kept confidential and may only be shared in very limited circumstances.
- **What can you say?**
  - There has been a suspected/confirmed case of Coronavirus in the workplace.
  - The company is taking all appropriate steps to manage the situation in accordance with official guidance.
  - Refer employees to guidance materials provided by public health agencies.
  - Indicate to whom employees should direct questions/concerns (preferably HR or similar role).



# Planning for Possible Cases of the Coronavirus



# Consider Establishing a Communicable Disease Response Plan

- **Leadership and Communications:**

- Identify management and leadership responsibilities.
  - Designate a point of contact for employee communications, questions, and concerns (preferably HR or similar role).

- **Planning Considerations:**

- Prepare business continuation protocols for several contingencies, ranging from a moderate outbreak to a more severe pandemic.
  - Consider the various impacts, which could include business closures and employee absenteeism.
- Consider what modifications may be needed to pay, leave, and flexible work policies.
- Determine what, if any, PPE may be necessary.
- Look to guidance from public health agencies (including industry-specific guidance where applicable).

## Sectors at Heightened Risk for Contagious Illnesses

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- **Certain industries may be at heightened risk for the spread of contagious respiratory illnesses such as Coronavirus (e.g., healthcare, laboratory workers, airlines, border protection workers).**
  - Such employers may be subject to additional OSHA workplace safety regulations.
  - OSHA is presently recommending that airline and border protection workers consult with OSHA's MERS guidance.
  - The CDC and WHO have issued interim guidance on the Coronavirus for healthcare workers.

# Employee Communications

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- Provide employees with practical, fact-based information based on official guidance.
- Aim to reduce employee fear, anxiety, rumors, and misinformation.
- Goals:
  - Be informative.
  - Be reassuring.
  - Be sensitive to confidentiality.



# Handling Employee Questions, Complaints and Concerns

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- **Questions:**

- Employees should be directed to the company's designated point of contact for Coronavirus questions, who should:
  - Provide relevant company policies.
  - Direct employees to official sources (*e.g.*, CDC, WHO, etc.) for up-to-date information.

- **Complaints and Concerns:**

- Direct employees to the company's designated point of contact.
- Be aware of whistleblower laws:
  - OSHA provides whistleblowing protections for safety violations.
  - Some states (including New York and California) provide additional whistleblowing protections for healthcare employees.



# Additional Resources

## Additional Resources

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- Centers for Disease Control and Prevention (CDC)
  - <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
  - [https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html)
  - <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>
- World Health Organization (WHO)
  - <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- Occupational Safety and Health Administration (OSHA)
  - [https://www.osha.gov/SLTC/novel\\_coronavirus/standards.html](https://www.osha.gov/SLTC/novel_coronavirus/standards.html)
- U.S. Department of State
  - <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html>
- New York State Department of Health
  - <https://www.health.ny.gov/diseases/communicable/coronavirus/>
- California Department of Public Health
  - <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx>

# Proskauer's Coronavirus Response Team

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# Coronavirus and the Workplace: *Are You Prepared?*



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