

## **Alert** | OSHA/Labor & Employment



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### **Coronavirus and the Occupational Safety and Health Act: What Employers Need to Know**

As the novel coronavirus (Coronavirus) continues to spread in China and around the world, employers may want to consider steps to take in addressing the Coronavirus in the workplace. The Occupational Safety and Health Administration (OSHA) recently published a webpage that provides workers and employers with interim guidance and resources for preventing exposure to the Coronavirus. [See the OSHA 2019 Novel Coronavirus webpage.](#)

Because few cases have been reported in the United States, the first question employers should consider is whether they have a duty to take any measures to prevent or reduce the likelihood of employee exposure to the Coronavirus. That is, do their employees have any risk of exposure? Unfortunately for employers, the short answer is: It depends. (*We recognize that non-lawyers despise this answer, but in this case, it's true!*) If an employer has no basis to believe that its employees are at risk of exposure to the Coronavirus, then the Occupational Safety and Health Act (the Act), does not impose any affirmative duties on an employer to engage in abatement or prevention efforts.

If, however, an employer reasonably believes that its employees are at risk of exposure to the Coronavirus (possibly because an employee's relative just returned from a trip from the Hubei Province in China), or if employees operate in a potentially high-risk industry for exposure (health care, airline, border protection, waste management), employers should consult and follow the Centers for Disease Control and Prevention's recommendations regarding prevention and exposure. Employers should also require employees who may be exposed to do the following to prevent additional employee exposure:

- Frequently wash their hands with soap and water;
- Avoid touching their eyes, nose, or mouth with unwashed hands; and
- Avoid close contact with people who are sick or who may be exposed.

Additional precautions include, among other things, wearing gowns, gloves, and NIOSH-certified disposable respirators. Certain employees could be exposed to the Coronavirus by handling potentially contaminated waste; employers should ensure that such employees are fastidious in wearing appropriate personal protective equipment like puncture-resistant gloves and face and eye protection.

Although the Act does not have a standard governing exposure to the Coronavirus or communicable illnesses generally, the above-referenced prevention and control measures may potentially trigger certain employer obligations under a variety of standards under the Act, including personal protective equipment, respiratory protection, sanitation, bloodborne pathogens, as well as the Act's General Duty Clause, which requires employers to provide employees with places of employment free from recognized hazards. Prevention and control measures may also trigger certain employer obligations under federal, state, and local laws, including, but not limited to Title VII of the Civil Rights Act and the Americans with Disabilities Act.

Unlike the common cold or flu, OSHA considers an employee infected with the Coronavirus a recordable injury that must be indicated on an employer's OSHA 300 log.

Finally, the lack of information regarding the Coronavirus may understandably alarm some employees and lead them to ask questions or raise concerns about safety and health conditions at their workplace. Employers should be mindful that the Act prohibits retaliating against workers for raising such concerns, and employers are encouraged to work collaboratively with employees to address them.

Given the above, we strongly encourage employers to consult with legal counsel to determine whether there is a risk or potential risk of employee exposure to the Coronavirus, how best to prevent or minimize employee exposure, and how to ensure compliance with the Act when implementing prevention and control measures to protect employees from exposure to the Coronavirus.

If your company has issues that deal with varying facts or other legal concerns, please [explore our firm's broad capabilities](#), as GT can help address a wide variety of related matters.

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