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## PERSPECTIVE

## An employer response plan for COVID-19

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As cases of the novel coronavirus (COVID-19) continue to surge in the United States, employers all over California are grappling with contingency plans for dealing with the virus. Although information from the Centers for Disease Control and Prevention and state authorities changes hourly, here are some advisable steps that California employers should consider incorporating into their contingency plans:

### 1. Contact Local Authorities

Employers should contact their local health department to coordinate how to respond to a suspected or confirmed case in the workplace, including whether the workplace must be closed and/or disinfected, and procedures for quarantining employees. Employers should visit the California Department of Public Health's website for daily updates (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>).

### 2. Consider Reporting Obligations

If an employee is infected on the job, the federal Occupational Safety and Health Act requires employers: (1) to record the illness on their OSHA Form 300 log; and, in some situations (2) to file a report with OSHA. Employers should consult with counsel to determine if they must file a report with a state or local health department, which may impose additional requirements.

### 3. Determine Whether to Close and Disinfect the Workplace

If there is a confirmed case of coronavirus in the workplace, employers should consider closing and disinfecting the workplace. Consult with your local health department and the CDC's Interim Guidance for Businesses and Employers to Plan and Respond to coronavirus Disease 2019 (COVID-19) to assess the risk of exposure and determine the proper course of action (<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>). The California Division of Health and Safety (Cal/OSHA) has advised that employers that are not otherwise covered by the Aerosol Transmittable Diseases Standard (e.g., healthcare providers including hospitals, medical offices, outpatient medical facilities, etc.) should follow the CDC's Interim Guidance.

The CDC Interim Guidance, supported by Cal/OSHA, includes routine cleaning measures such as: (1) providing tissues, no-touch disposal trash cans, and hand sanitizer for use by employees; (2) placing hand rubs

in multiple locations or in conference rooms to encourage hand hygiene; (3) providing disposable wipes so that commonly used surfaces such as doorknobs, keyboards, remote controls, and desks; and (4) performing routine environmental cleaning of shared workplace equipment and furniture. The CDC also has prepared Environmental Cleaning and Disinfection Recommendations for suspected/confirmed cases of COVID-19 in businesses (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>).

### 4. Communicate with Your Employees

The CDC recommends that employees should be made aware of potential workplace exposure so that they can seek medical care if necessary and take steps to prevent further transmission. Employers should consider the best means of reaching all employees. An email communication is likely to be the easiest and fastest method in most workplaces, but depending on the circumstances employers may want to consider alternative methods (e.g., phone call, text message) of reaching employees who may not have regular email access.

In light of the World Health Organization's pandemic designation of COVID-19, employers should familiarize themselves with the United States Equal Employment Opportunity Commission's "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act" guide ([https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)). In a March 4 news alert, the EEOC reminded employers of its 2009 guidance and made clear that the prohibitions set forth in the Americans with Disabilities Act do not interfere with or prevent employers from following the CDC's Interim Guidance for Business and Employers.

Some key takeaways from the EEOC's pandemic guide are that employers: (1) may encourage teleworking and require the adoption of infection-control practices, such as regular hand washing; (2) need not wait until an employee returning from travel develops symptoms to inquire about exposure to the coronavirus; (3) may require employees who have traveled to affected areas or were otherwise potentially exposed to stay home; and (4) may ask employees about the reason for their absence from work.

In connection with any such communications, employers should also be mindful of confidentiality requirements under the ADA and California law, which generally prohibit employers from revealing an employee's medical information. In addition,

employers communicating to employees the existence of a positive diagnosis in the workplace should ensure that such communications are based on official guidance from the CDC, WHO, local health authorities, and other official sources. While employers can require a worker to provide information about recent travel to countries considered to be high-risk, the California Labor Commissioner's Office specifically noted in FAQs it published in response to COVID-19 that employees have a right to medical privacy and an employer's questions cannot intrude on that right ([https://www.edd.ca.gov/about\\_edd/coronavirus-2019/faqs.htm](https://www.edd.ca.gov/about_edd/coronavirus-2019/faqs.htm)).

### 5. Consider the Employment Law Implications of Closing the Workplace

If employees are able to work from home during any temporary office closure, employers may want to clearly communicate the parameters of any work-from-home arrangement. In that regard, employers may want to ensure that non-exempt employees are able to track their time, whereas if employees are not able to work from home, employers will want to consider whether to provide pay during the closure or allow employees to draw on accrued paid time off. In addition, employers will want to consider whether the localities in which they operate impose limitations on an employer's ability to change or cancel an employee's shift without notice, and if so whether such laws contain an exception to such limitations that may apply to the coronavirus outbreak.

Employers should also consult with counsel with respect to potential implications of the federal Worker Adjustment and Retraining Notification Act and California WARN Act. The California Employment Development Department advises employers that are planning a closure or major layoff to get help through the "Rapid Response program" — whereby the EDD's Rapid Response team will meet to discuss the employer's needs, help avert layoffs, and provide on-site services to assist workers facing job losses ([https://www.edd.ca.gov/Office\\_Locator/](https://www.edd.ca.gov/Office_Locator/)).

California employees may use paid sick leave to take care of themselves or the employee's family members due to COVID-19. This can include a self-quarantine as a form of preventive care if the employee has had potential exposure to COVID-19, or when the employee has traveled to a high-risk area. An employee also may apply for Paid Family Leave if the employee is unable to work due to the employee caring for an ill or quarantined

family member ([https://www.edd.ca.gov/Disability/How\\_to\\_File\\_a\\_PFL\\_Claim\\_in\\_SDI\\_Online.htm](https://www.edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm)).

Employers should keep up to date with all local, state, and federal laws. As legislation is being drafted and passed on an expedited schedule, employers should monitor and comply with any applicable rules concerning sick leave under both California and federal law (as this article is being written, the US Senate is voting on an emergency family and medical leave expansion act and emergency paid sick leave act). Employers should consistently be on the lookout for any new legislation or executive orders. To keep informed of the latest developments, employers can visit Proskauer's Coronavirus Resource Center (<https://www.proskauer.com/market-solutions/coronavirus-covid-19-resource-center>).

### 6. If the Workplace is Closed, Prepare to Re-Open

To prepare to re-open the workplace, employers should consider what additional measures may be necessary to prevent future exposure and whether certain employment policies should be temporarily modified. This may include: (1) providing hand sanitizer and disinfectant wipes; (2) modifying leave policies; and (3) increasing cleaning frequency.

Depending on the risk of exposure, employers also may consider advising potentially exposed employees to: (1) work from home; (2) monitor for symptoms; and (3) to report if they or someone they live with has a confirmed or suspected coronavirus case. For employees who return to the office, employers should consider other ways to continue to practice social distancing — such as staggering shifts, providing alternative forms of transportation, and allowing employees to work in unoccupied offices or conference rooms. Social distancing and other preventive measures should be guided by the latest information available from the WHO, CDC and other health agencies and compliant with anti-discrimination and harassment laws. To stay informed, employers can visit Proskauer's Coronavirus Resource Center (<https://www.proskauer.com/market-solutions/coronavirus-covid-19-resource-center>). ■

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