

What Employers Should (and Should Not) Say to Employees to Manage the Challenges of the Coronavirus

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With COVID-19 now a global pandemic causing unprecedented workplace disruptions, employers need to carefully consider how they will keep their employees informed. In a recent [webinar](#), [Nick Reiter](#), partner and co-chair of Venable's Labor and Employment Group, and Andrew Moesel, senior vice president of global issues and crisis management at Ketchum, Inc., shared their insights on best practices for how, what, and when to communicate with employees as the crisis evolves.

1. How much communication is too much (or too little)?

As a general rule, it's better to over-communicate in this situation. Employers should consider setting up communication portals for all COVID-19-related updates. This will help create an expectation among employees that their employer will be a careful and credible source of information; that they are thinking and planning ahead for various scenarios; and that clear and consistent policies will be in place so that employees know what to expect and what will be expected of them.

2. May an employer require disclosure of an illness?

Yes, but an employer should carefully think about the scope of the disclosure requirement and the precise questions it asks employees. Now that the World Health Organization has declared COVID-19 a pandemic, an employer may inquire about an employee's COVID-19 symptoms, which include fever, shortness of breath, or cough. Employers should generally begin with broad questions such as, "Are you feeling okay?" rather than specific questions about underlying medical conditions. If the initial general inquiry leads to information suggesting an employee may be symptomatic, then the employer should inquire further on the specific symptoms the employee is experiencing and consider some of the precautionary measures discussed below, such as quarantine or a doctor's certification (or both).

3. May an employer require an employee to stay at home?

Yes, but a consistent stay-at-home policy is a must. Employers should plan for a variety of contingencies related to employees who might have come in contact with the virus (including employees who recently visited high-threat geographic regions) or who are displaying symptoms. Inconsistent policies may lead to disparate treatment claims. For example, an employer should not send home one employee who is coughing while allowing another employee with similar symptoms to

continue working from the office. Similarly, if an employer requires quarantine for an employee who has traveled on a cruise ship or to a restricted country, the same policy must be applied to all similarly situated employees. Employers may require a doctor's note before allowing a symptomatic employee to return to work, but the doctor's note should only certify fitness to resume work and not disclose any additional medical information.

4. What happens when there is a confirmed or possible case?

In the event of a confirmed or suspected coronavirus case in the workplace, employers should be candid with staff about the safety risk while concurrently reminding staff about the preventative measures in place, such as quarantine periods, sanitization of work spaces, monitoring of symptoms, and social distancing. The disclosure to staff should not reveal the identity of anyone confirmed or suspected to have contracted COVID-19. Disclosure of identity information may lead to HIPAA or other privacy-related violations. In many instances, an employer need only disclose that an "individual" previously in the employer's premises is suspected or confirmed to have contracted COVID-19. Disclosing whether that individual is an employee (as opposed to, say, a customer or vendor visiting the premises) is usually not required. Of course, as new information about COVID-19 develops, employers should consult OSHA and similar government agency websites for new guidance regarding responses to suspected COVID-19 exposure in the workplace. See <https://www.osha.gov/SLTC/covid-19/>

5. What should employers tell employees about travel activities?

Travel information is not subject to the same legal protections as medical information, which means employers have much more latitude when making employment decisions based upon employees' travel activities. Mandatory disclosure of employees' personal travel activities is typically permitted. Employers should also be aware that workers' compensation or OSHA rules may apply in the event an employee contracts COVID-19 during work-related travel. Employers should consider banning travel to countries flagged by the CDC and requiring teleworking periods for employees returning from such countries or who have recently embarked on cruise ships.

6. What else should employers do to minimize risks?

One of the biggest risks is employees who want to drag themselves into work while feeling ill. Employers should encourage their employees to err on the side of caution when it comes to entering the workplace while feeling under the weather. Where possible, employers should enable employees to work remotely, both to protect the well-being of the entire staff and to lower the employer's future litigation risk should an infection spread. Of course, not all employees may perform their jobs remotely. To further discourage sick workers from coming to work and "toughing it out," employers should consider temporarily enhanced leave policies. One cost-effective approach is to permit employees who have used all of their paid time off and sick leave to run a negative paid time off balance, which can be gradually replenished when the employees return to work.

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