



A New Wave in Workplace Law

Inside Counsel Conference 2020 February 26–28, 2020

GUIDANCE FOR EMPLOYERS ON THE NOVEL CORONAVIRUS

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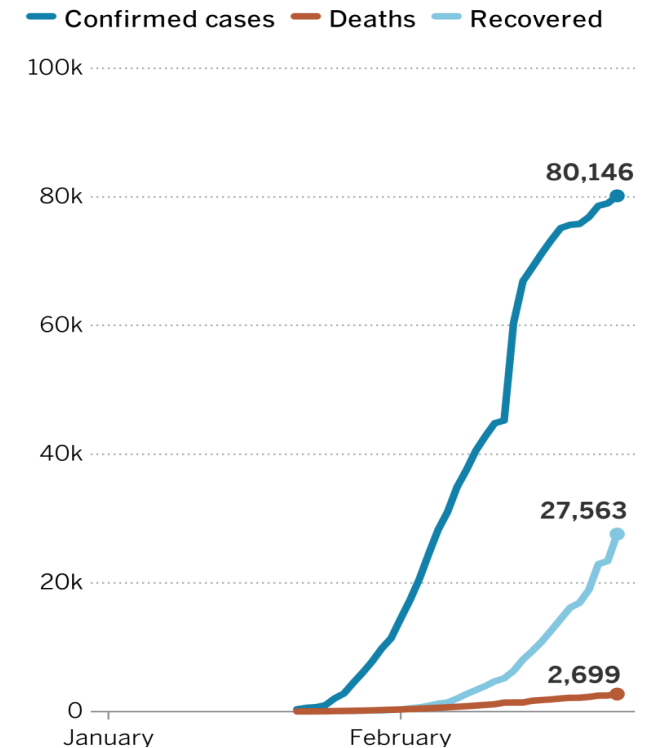
February 28, 2020

BACKGROUND

- Good news- not widespread in U.S. and a majority of individuals recover.
- Coronaviruses are a family of virus that can cause fever, respiratory problems, and sometimes gastrointestinal issues.
- The latest novel coronavirus is being labeled COVID-19.
- The outbreak was first detected in December in Wuhan, the capital of China's Hubei province.
- Spreads through coughs and sneezes like a common cold. You can also likely acquire the virus after touching a surface containing the virus and touching your mouth. 1 person on average spreads it to 2-3 others.
- Individuals in more than 47 countries have been infected.
- Has not yet been declared a pandemic.

Coronavirus cases

As of 7:15 p.m. Monday, 80,146 cases of the new coronavirus and 2,699 deaths worldwide have been confirmed.



Johns Hopkins University

BACKGROUND

- Japan to close all schools through March. Schools closed in China, as well.
- 69 confirmed cases in the United States; (42 from single cruise ship- U.S. employees apparently spoke with infected employees without protection).
- First possible community transmission case in U.S. confirmed yesterday (2/27).
- Recently, a significant increases in number of cases in countries such as Japan (186), South Korea, Italy, and Iran (245; 26 deaths).
- European stocks down 2.5% on Thursday morning. U.S. stocks down approximately 3,800 points on Dow Jones since Monday. Thursday (2/27) was largest single day drop in history of Dow Jones.
- CDC believes the you may be may be able to be spread COVID-19, like the Zika virus, prior to showing symptoms. Officials are not sure if the virus can be spread by handling or touching objects where the virus may have been present.
- Miami-Dade schools to start having international students register at remote sites.

CONSIDERATIONS FOR WORKFORCES THAT TRAVEL

- The Department of State's Travel Advisory for China is currently a Level 4—Do Not Travel to China due to novel coronavirus.
- Any U.S. citizen returning to the United States who has been in Hubei province, China in the previous 14 days may be subject to up to 14 days of quarantine.
- Any U.S. citizen returning the United States who has been in the rest of mainland China within the previous 14 days may undergo a health screening and possible self-quarantine.
- On January 31, President Trump signed a proclamation barring entry to the United States of most foreign nationals who traveled to China within the past 14 days.

- 1** Exercise normal precautions
- 2** Exercise increased caution
- 3** Reconsider travel
- 4** Do not travel

travel.state.gov

CONSIDERATIONS FOR EMPLOYERS

- Educate all employees about how the coronavirus can be contracted.
- Establish a point of contact in human resources or elsewhere in your company for employees that have concerns.
- Remind employees about policies concerning absences and working from home, including vacation, sick pay, FMLA, and short term disability.
- Train supervisors on overreaction impacts and importance of adhering to antidiscrimination policies.
- Keep track of updates from CDC and WHO.
- Employee personal travel:
 - Employers cannot prohibit otherwise legal activity, such as personal travel abroad by an employee. This includes pregnant employees or those with a medical condition.
 - Employers should advise employees traveling to areas where Coronavirus is an issue to take proper precautions.

CONSIDERATIONS FOR EMPLOYERS

Plan for business interruptions; have a plan in place to have employees working from home.

Educate your supply chain.

Attempt to schedule more teleconferences in lieu of travel.

Can you ask employees to stay at home if they exhibit symptoms of coronavirus or the flu? Yes. Ask them to seek medical attention and get tested for COVID-19.

Can you ask an employee why he or she missed work? Yes. Can you ask them to leave work? Yes, under most circumstances.

CONSIDERATIONS FOR WORKFORCES THAT TRAVEL

- Issues concerning employees returning from travel:
 - Can employer require a medical examination? Generally, no.
 - Pursuant to the Americans with Disabilities Act (ADA), employers can require a medical evaluation only if it is job-related and consistent with business necessity.
 - The ADA allows employers to request medical information or order a medical examination when an employer has a reasonable belief (based on objective evidence) that an employee poses a “direct threat” because of a medical condition.
 - The state department restrictions on travel to China and new DHS restrictions make employer decisions to require returning employees to stay home for up to 14 days more likely to be found reasonable.
 - The Equal Employment Opportunity Commission directs employers to take direction from the CDC or state/local public health authorities in determining whether an illness is a direct threat.

CONSIDERATIONS FOR WORKFORCES THAT TRAVEL

- Response to employee's objection to traveling:
 - Under the federal OSH Act, employees can only refuse to work when a realistic threat is present. Travel to China likely meets this threshold. A reasonable person would agree that there is a real danger of death or serious injury.
 - Working around other people or the public does not meet this threshold. An exception would be employees in the medical field if proper protective equipment is not provided.
 - If employees in your workplace are required to clean up or be exposed to blood or other bodily fluids as part of their regular job, they must be provided bloodborne pathogen training and proper personal protective equipment (e.g. gloves/goggles) and the company must develop an exposure control plan.
 - Can you ask employees to stay at home if they exhibit symptoms of coronavirus or the flu?
Yes, you can ask them to stay at home to help prevent the spread of the virus.

MASKING THE PROBLEM?

- Under OSHA’s respiratory protection standard, a respirator must be provided to employees only “when such equipment is necessary to protect the health of such employees.”
- OSHA rules provide guidance on when a respirator is not required: “an employer may provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard” (29 C.F.R. 1910.134(c)(2)).



[saturdayeveningpost.com](https://www.saturdayeveningpost.com)

MASKING THE PROBLEM?

- The World Health Organization (WHO) has stated that people only need to wear face masks if they are treating someone who is infected with the coronavirus.
- Doctors agree that the best defense is simply washing your hands.
- There are more appropriate measures of defense than wearing a surgical mask or respirator.



smartairfilters.com

MOST EMPLOYERS DO NOT HAVE TO ALLOW EMPLOYEES TO WEAR A MASK

- The consensus is face masks are only necessary when treating someone who is infected with the coronavirus.
 - So, masks are likely not necessary to protect the health of most employees.
- The use of the word “**may**” in OSHA’s respiratory protection standard makes it clear that when a respirator is not necessary to protect the health of employees, it is within the discretion of the employer to allow employees to use a respirator.

CAN AN EMPLOYEE SIMPLY REFUSE TO WORK?

- An employee's right to refuse to do a task is protected if all of the following conditions are met:
 - Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and
 - You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; and
 - A reasonable person would agree that there is a real danger of death or serious injury; and
 - There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.
- At this point in the outbreak, the conditions are likely not met.



HAZARD COMMUNICATION REQUIREMENTS

- OSHA’s Hazard Communication standard addresses the issue of communicating information concerning hazards of chemicals and appropriate protective measures to employees.
- 1910.1200(h)(1): “Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their **initial assignment**, and **whenever a new chemical hazard** the employees have not previously been trained about is introduced into their work area.”
- A comprehensive hazard communication program should include container labeling and other forms of warning, safety data sheets and employee training.
- Ensure that employees that are conducting non-typical tasks (e.g., cleaning issues) are properly trained on that task.

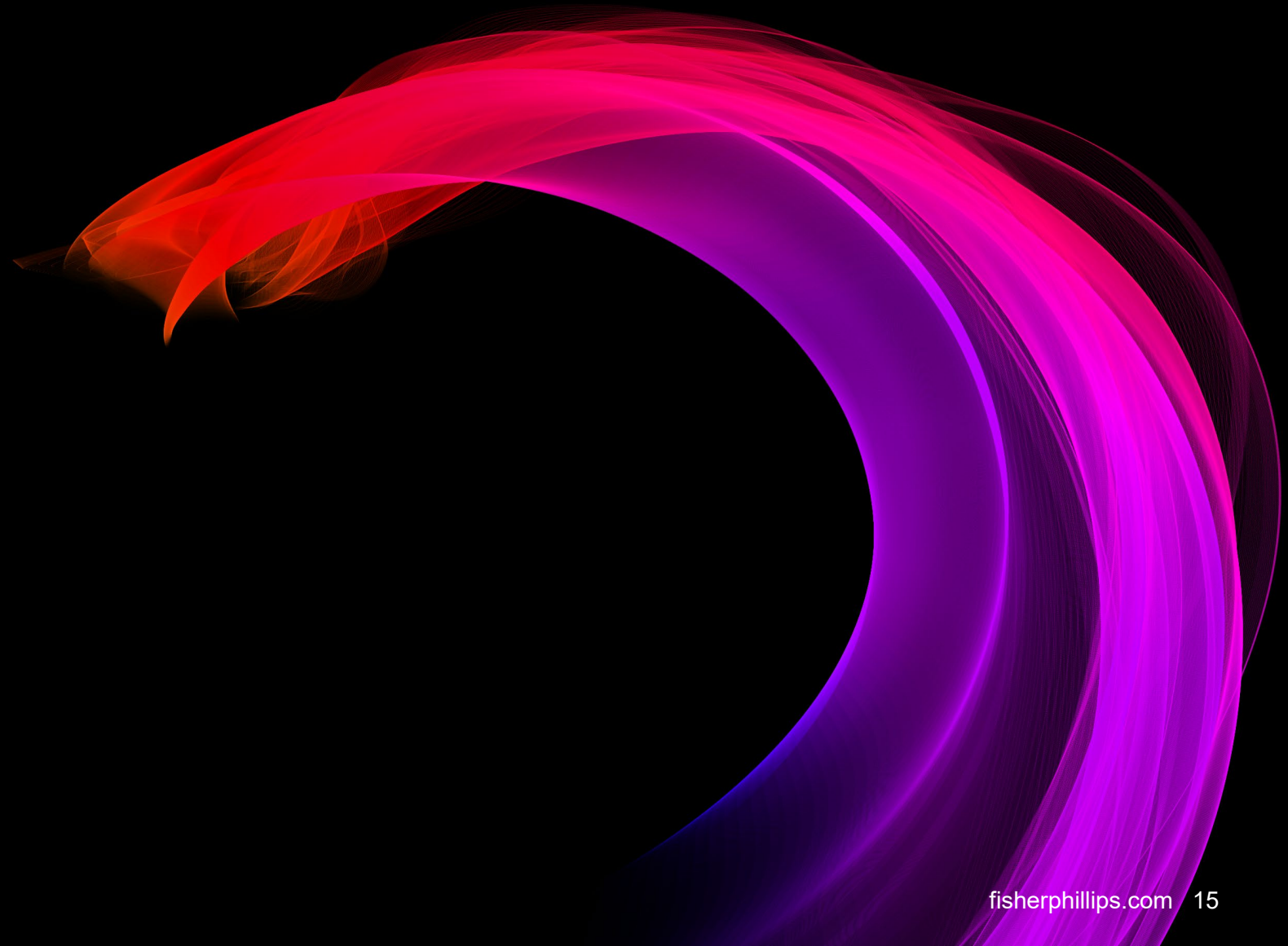


**HAZARD
COMMUNICATIONS**

PRACTICAL TAKEAWAYS

- Encourage employees to wash their hands. Ensure that proper hand washing tools/soap is available.
- Educate your workforce.
- Allow employees to work from home if possible.
- Encourage employees to not return to work until their temperature drops below 100.4 Fahrenheit for at least 24 hours.
- Encourage employees to not touch their faces, eyes, and mouth.
- Increase custodial/sanitizing schedules to the extent possible.
- Encourage employees to contact a doctor if they develop symptoms of the coronavirus and be tested.

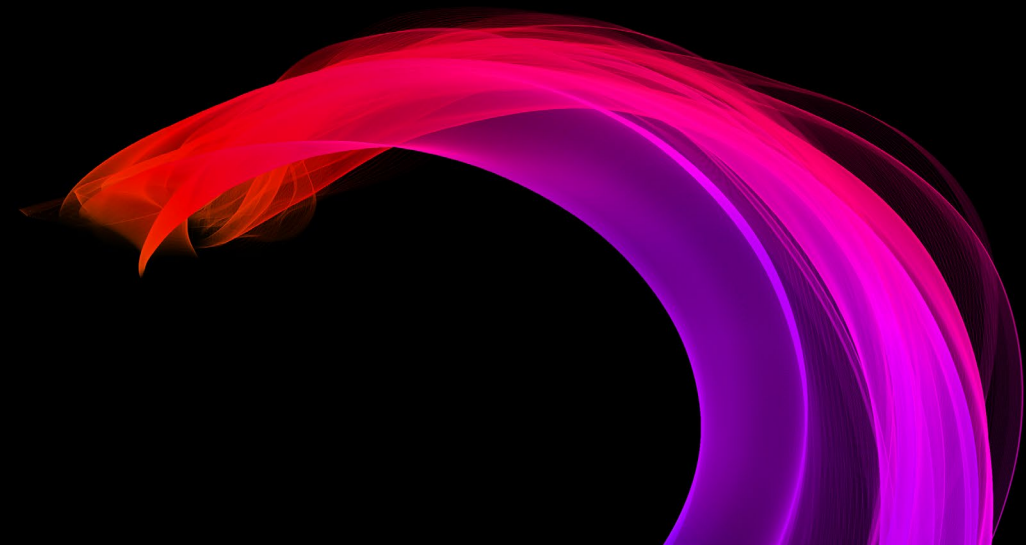
Questions?





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Thank you

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