



New Developments About Coronavirus Transmission and US Travel Restrictions.

Insights

2.03.20

UPDATED February 3, 2020. As we stated in our January 27th Alert, employers must continue monitoring and responding to developments and acting accordingly to protect their employees, assets, and brand. The general approach toward managing employee issues has not changed much—even with the February 2nd US travel restrictions.

As of February 2nd, China had reported 14,411 cases, which has surpassed the 8,098 worldwide cases attributed to the 2003 SARS outbreak. While the increase in the number of novel coronavirus cases is worrying, China is believed to have massively underreported SARS cases. As of today, the Centers for Disease Control and Prevention has reported 11 U.S. cases, mainly returning travelers. At least two of these cases involved a returning traveler infecting someone in the U.S. with whom they had close contact.

The Department of Homeland Security now requires individuals who have been in China within the last 14 days to be routed through certain U.S. Airports, evaluated, and possibly be subjected to quarantine or self-quarantine. This approach supports employers who have required employees returning from China or other affected areas to stay at home for 14 days.

Typically, with most respiratory viruses, people are thought to be most contagious when they are most symptomatic (the sickest). SARS and MERS, our first two new 21st century coronaviruses spread only after a person presented symptoms, which made it relatively easy to isolate the virus and keep it from expanding in the overall population.

However, the Chinese have claimed that a person may be infectious before presenting symptoms, unlike SARS and MERS. Then, on Friday, January 31, Germany reported that an individual may have transmitted the virus before presenting symptoms. **As a result, the CDC site now states that the Virus may be Infectious before Symptoms present.**

Nevertheless, the message to employees should be that while serious, the 2019-nCov virus is unlikely to be the feared “big one.” Employers need to continuously update their employees so that employees do not panic and know that their employers are concerned about their wellbeing.

Sources of Guidance.

Please read our [January 27th Alert](#) for background on the 2019-nCov virus. Employers and the public should follow the [CDC](#), Department of Homeland Security, State Department, and to a lesser extent, the World Health Organization guidance (WHO guidance is not specifically tailored to the U.S., but WHO is coordinating Global efforts).

The Department of Homeland Security determines travel and entry restrictions and will work with the CDC to handle any short-term quarantines. Employers who properly follow the public health guidance are usually safe from successful discrimination, privacy, and ADA legal claims. Common sense and legal counsel are needed to apply specific facts to the broad guidelines, but so long as employers do not take knee-jerk actions, they should be able to protect their employees, customers, and business interests.

Brief Background.

While influenza and the 2019-nCoV coronavirus share some symptoms, the coronavirus is not a flu. [Coronaviruses](#) range from the common cold to SARS-CoV and 2012's [MERS \(Middle East Respiratory Syndrome\)](#). They differ from Avian (H1N1) influenza and swine flu. Pneumonia-like infections are serious but less easily spread than the seasonal flu.

What are the symptoms of the current coronavirus?

[The virus symptoms manifest as a mild to severe respiratory illness with fever, cough, and difficulty breathing.](#) The CDC believes at this time that symptoms may appear in as few as two days or as long as 14 days after exposure. Unfortunately, at this point [there is no easy way to test for the coronavirus.](#)

How is the current coronavirus transmitted?

The 2019-nCoV appears to have features similar to SARS and MERS, which generally spread between people who had "[close contact](#)" with one another. This could loosely be described as someone being coughed or sneezed upon.

One takeaway is that even if a person is infectious without symptoms, employees can still avoid the virus by avoiding unnecessary close contact, faithfully washing hands, sneezing into their arm, and stay home if any symptoms appear.

Considerations for Workforces That Travel.

[U.S. Government Guidance and restrictions.](#)

[The U.S. State Department has issued a Level-4 Warning recommending that travelers Do Not Travel to China,](#) which is an increase from the earlier Level 4 Warning against travel to Hubei Province of China, including Wuhan. Moreover, effective Monday, February 3, DHS has implemented the following restrictions - [Notice of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled from or were otherwise present within the People's Republic of China:](#)

American air travelers should be aware that if they have been to China in the last 14 days, they will be routed through one of eleven airports to undergo enhanced health screenings. As of this Notice,

the following airports were listed:

- • • • John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;
- Newark Liberty International Airport (EWR), New Jersey;
- Dallas/Fort Worth International Airport (DFW), Texas; and
- Detroit Metropolitan Airport (DTW), Michigan.
- • Any individual traveling from China who has either been in Hubei Province or other areas of the mainland

and

- • • is showing symptoms associated with the virus will be screened and subject to mandatory quarantine by medical professionals at a nearby facility.

If a traveler who spent time in China, but outside the Hubei province, is re-routed through one of the eleven airports and shows no symptoms following a health screening, they will be re-booked to their destination and asked to "self-quarantine" at their homes. See this link to actual Supplemental Instructions for Inbound Flights with Individuals Who Have Been in China.

Response to returning Employees.

The new DHS restrictions make employer decisions to require returning employees to stay home for up to 14 days more likely be found reasonable.

Response to Employees Traveling.

Employees who object on behalf of others or act in groups could be covered by the National Labor Relations Act's protection of concerted protected activity. You will want to proceed with caution and consult with your attorney before taking any steps in this regard. Moreover, under the federal OSH Act, employees can only refuse to work when a realistic threat is present. Therefore, if employees refuse your instruction to travel for business to any other country for fear of catching the coronavirus, try to work out an amicable resolution.

For example, the employer and the employee can check and discuss the [CDC](#) (avoid Nonessential travel), State Department ([Do Not Travel to China](#)), and DHS Travel Advisories, which provide guidance on China Travel.

The CDC is also advising that some individuals may be more at risk of infection than others in the general population. Thus, follow the CDC direction on pregnant employees or on related reproductive issues, and do not make decisions without medical support.

Moreover, actions by other countries, especially in Asia, may cause employee concerns, and absolute warnings and restrictions like those on China may not exist. **(See the List of Countries with Cases at the end of this Post). What Should We Do Next?**

At this point, the best course of action is to monitor information and educate your employees to reduce unfounded fears about travel, flying, and working with co-workers. Silence breeds suspicion and paranoia. Read the [linked article](#) about a traveler trying to board a U.S. flight wearing a full gas mask.

If any employee presents themselves at work with a fever or difficulty in breathing, this indicates that they should seek medical evaluation. While these symptoms are not always associated with influenza and the likelihood of their having coronavirus is extremely low, it pays to err on the side of caution.

The other critical step you can take at this point is to repeatedly, creatively, and aggressively encourage employees and others to take the same steps they should be taking to avoid the seasonal flu, which is already one of the worst flus in the last 10 years. For the annual influenza, SARS, avian flu, swine flu, and 2019-nCov virus the best way to prevent infection is to avoid exposure. Perhaps the most important message employers can give to employees is to stay home if sick. In addition, instruct your workers to take the same actions they would to avoid the flu. For example:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Surgical masks have not been proven to definitively protect someone because they may not be tight and allow droplets around the edges. However, masks prevent you from unconsciously touching your eyes, nose, and mouth, so they may offer a measure of protection.

Facts and Figures (Updated as of 2/2/20).

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1. CDC: United States: 260 total patients under investigation (11 positive, 167 negative, and 82 pending) - <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> 36 States have People Under Investigation (PUI).
2. WHO: Number infected worldwide: United States: 8Japan: 20Viet Nam: 7Australia: 12Cambodia: 1Thailand: 19Sri Lanka: 1Canada: 4Finland: 1Italy: 2Spain: 1United Kingdom: 2
3. United Arab Emirates: 5
4. Sweden: 1
5. Russian Federation: 2
6. Germany: 8
7. France: 6
8. India: 2
9. Nepal: 1
10. Philippines: 2
11. Malaysia: 8
12. Singapore: 18
13. Korea 15
14. China: 14411
15. https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200202-sitrep-13-ncov-v3.pdf?sfvrsn=195f4010_6

This Post provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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