



## Monday, October 27 Ebola Workplace Update

### Insights

10.27.14

As we expected, the concerns raised by the NYC physician testing positive after returning from aiding West African Ebola sufferers triggered a legal response to more aggressively quarantine certain categories of people rather than waiting until they develop a fever or present other symptoms. New York and New Jersey implemented strict institutional quarantine for individuals returning from providing aid in those countries and applied it to a returning nurse.

Over the weekend, the Obama Administration spoke out against the states' approach and reputedly interceded with the states' governors to moderate the approach. While the New York and New Jersey public seem to strongly favor a strict quarantine approach, many public health officials continue to strongly believe that a quarantine response is not necessary before the person presents the symptoms, mainly a fever. They propose monitoring the individual because until he or she presents symptoms, the person is not infectious. However, the NYC press and the public discussed in detail the activities and travel of the NYC physician before he checked himself into Bellevue with a fever. People who rode on subways with the physician were even concerned although the likelihood of infection seems extremely low. The public health authorities are concerned that the addition of a mandatory quarantine upon return will further discourage aid workers from going to affected countries.

The nurse has been released from a New Jersey facility today to return to Maine and the New Jersey government stated that Maine will determine what approach to employ. The states have somewhat moderated the approach. The nurse, who has not (yet) tested positive, has retained a noted civil rights lawyer to investigate legal action. Other states are considering a similar approach to New York and New Jersey. Follow this LINK to an especially passionate criticism of the NY/NJ approach. Follow this LINK to detailed guidance from the CDC on Friday.

### Employment Law Concerns

Our responsibility is to apply these developments to the analysis employers must apply when they have an employee returning from providing care in West Africa or returning from other African countries or after traveling in a plane or subway car with a potentially infected person. While the NY and NJ actions may strengthen an employer's position that it may exclude an employee from work for a set period if they have been providing care in affected countries, the state actions do not at this point necessarily trump the CDC guidance that an employer should evaluate each person based on their specific activity and the degree of "direct" exposure, coupled with whether they present symptoms.

symptoms.

We believe that there is little doubt that Ebola will be found to be a disability condition under the Americans With Disabilities Act based on the possibility of serious long term effects. Such effects would seem to distinguish the disease from seasonal and even Pandemic flu. Similarly, an employee who suffers adverse employer action would certainly also argue that they were wrongly perceived as having a disability condition under the ADA.

Under the ADA analysis, the employer should review the individual facts through the prism of the CDC guidance to determine if the employee can perform the essential functions of the job or constitutes a direct threat to safety. The employer would follow CDC clinician classifications and review the employee's history to determine if he or she experienced "direct contact" as defined by the CDC. I doubt that the CDC will take a more conservative stand unless we see further US transmissions. As we have explained, the employer must weigh the concerns and engage in risk management.

Should you have more questions, please review our archived [Ebola Workplace Concerns webinar](#) from last Friday and visit our [Ebola Resource Center page](#).

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### ***Related People***

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