



October 27 Monday Morning Ebola Update

Insights

10.27.14

As we expected, the NYC doctor who tested positive for Ebola triggered a response demanding more quarantine response for individuals returning from providing aid in West Africa. New York and New Jersey have both imposed quarantine obligations upon healthcare personnel returning from affected West African nations. This response was not surprising given the public demands for such an action.

However, the CDC continues to promote not quarantining such individuals unless and until they manifest symptoms such as a fever. The relevant public health authorities are concerned that the added burden of an automatic quarantine upon return is unnecessary and will further discourage aid workers from going to affected countries.

President Obama spoke out against the measures and reputedly contacted Governor Christie over the weekend, with New Jersey and New York clarifying their approach today. See also this NYT piece on the Administration's efforts and New York's response.

This blurb just in from the Wall Street Journal at 10:15 this morning.

Nurse Under Ebola Quarantine to Be Released From Newark Hospital

Gov. Chris Christie said that a nurse being held at a Newark hospital would be allowed to leave Monday and would be privately transported back to Maine.

Mr. Christie had faced criticism in recent days after the nurse, Kaci Hickox, documented her isolation in Newark. He had also faced sharp attacks from medical health professionals and civil liberties groups on the mandatory quarantine for travelers returning from Ebola-ravaged countries.

Mr. Christie's office said she would be subject to a strict mandatory quarantine under New Jersey's laws in Maine, but officials there would regulate it.

Many commentators and health authorities oppose the measure but Ebola is a polarizing issue and a majority of people seem to desire the "better safe than sorry approach." [This linked article especially vigorously attacks the procedure.](#)

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An irate nurse plans to legally challenge the approach.

But my issues go to the employment context.

We caution employers against assuming that these State actions support employers in becoming more aggressive in "quarantining" individuals that they believe may have been to affected countries or in a general sense, "exposed" to Ebola sufferers in a casual fashion, such as sharing a flight. We believe that it is likely that Ebola will be deemed a disability condition under the ADA because of the possible long term effects or that employees could claim that they suffered adverse action because their employer wrongly perceived them as having a disability condition. If an employee has a disability condition under the ADA, the employer must individually analyze each situation and apply the applicable CDC guidance in determining if the employee presents a direct threat to safety or is unable to perform the essential functions of the job. The CDC guidance emphasizes taking action based on the specific facts of possible exposure and the likelihood of direct contact. Under this analysis, a returning healthcare worker to a hospital might justify some amount of exclusion from work, but it is difficult to see an employer justifying their taking the same approach simply because the individual was in Africa or perhaps on a plane or in a subway car with someone who later tested positive.

[For further information, please view our archived webinar from last Friday.](#)

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