



5 Steps Healthcare Employers Should Take To Address COVID-19 Anxiety And Complaints Over Working Conditions

Insights

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Across the country, pockets of healthcare workers are protesting working conditions that they claim are unsafe and expose them to greater risk of contracting COVID-19. These protests have occurred in the form of work stoppages, demands for greater workplace protections, and attempts to publicly shame certain healthcare employers via news media and social media.

Among the principal concerns raised by frontline healthcare providers are lack of adequate PPE and training in the use of PPE, inadequate infection control procedures, and staffing shortages. In unionized settings, the protests have included grievances, unfair labor practice charges, and federal lawsuits filed by unions that represent the workers.

In this turbulent climate, healthcare employers must be especially prepared to respond to concerns raised by their employees. Not only will a proactive approach help to avoid disruptions and ensure appropriate patient care, but it will also demonstrate unwavering commitment to workplace safety. In turn, this will help your organization get ahead of possible employee job actions and potential union organizing. This strategy is especially important now as businesses begin to reopen and healthcare employers soon will begin permitting visitors to enter their facilities.

Here are five steps that healthcare employers can take to minimize the potential for employee job actions, union organizing, or other union actions at their facilities:

1. **Ensure the Particulars Of Your Safety Plan And Protocols.** An appropriate plan should include:

- **Source Control Methods and a Process for Screening for COVID-19 Symptoms or Exposure:** To address transmission of COVID-19, the [CDC's recently updated Infection Prevention and Control Recommendations](#) suggest implementing source control measures "for everyone entering a healthcare facility (e.g., healthcare personnel, patients, visitors), regardless of symptoms." Additionally, the CDC's updated guidance recommends actively screening "everyone for fever and symptoms of COVID-19 before they enter the healthcare facility."

As part of a screening process, consider creating a questionnaire designed to screen for COVID-19 infection or symptoms related to COVID-19. According to [EEOC guidance](#), you may ask employees if they are experiencing symptoms of the virus during this pandemic. For

COVID-19, symptoms include: a cough, sore throat, fever, chills, shortness of breath, lost sense of taste and smell, diarrhea, and nausea. The EEOC's guidance also provides that you may measure body temperature to employees before they enter the workplace to determine if they have the virus, especially where the testing is job-related and consistent with business necessity. You may also want to consider inquiring as to whether the employee lives with an individual with suspected or confirmed COVID-19. You should continue to consult with legal counsel regarding the continued advisability of these measures, as the applicable guidance is likely to change as the status of the COVID-19 crisis evolves.

Remember that information collected on your questionnaire and from temperature checks is considered medical information and must be maintained in a confidential file separate from the employees' personnel files.

- **Protocols for Employees Who Have Confirmed or Suspected COVID-19 or Who Have Had Exposure to the Virus:** The CDC's guidance on Risk Assessment and Public Health Management of Healthcare Personnel in a Healthcare Setting with Potential Exposure to COVID-19 provides recommended steps that you should take according to the level of risk exposure for healthcare providers, as well as reporting requirements. You should also develop a process for sending ill employees home and safely returning them to work following an absence related to COVID-19 illness or exposure. The CDC's Return to Work for Healthcare Personnel with Confirmed or Suspected COVID-19 provides helpful guidance. The EEOC also provides guidance on your right to request fitness-for-duty documentation from employees returning to work following confirmed or suspected COVID-19 infection.
- **Procedures and Schedule for Regular Sanitation:** The CDC's Interim Prevention and Control Recommendations for Patients with Suspected or Confirmed COVID-19 in Healthcare Settings provides guidance on implementing environmental infection control, including specific recommendations for cleaning and handling equipment. The CDC's updated Infection Prevention and Control FAQ's identifies specific PPE that should be worn by environmental services personnel. Your sanitation plan should include regular walk-throughs and audits of your facility with particular attention paid to patient care areas, restrooms, dining areas, breakrooms, and waiting areas.
- **Procedures for Ensuring Availability, Distribution, and Use of PPE:** The CDC has issued guidance on addressing PPE shortages and recommended Strategies to Optimize the Supply of PPE and Equipment. It is critical to establish procedures and contingency plans to ensure sufficient supply of PPE, that appropriate personnel receive necessary PPE, and that training is documented regarding the appropriate use and removal of PPE. Not surprisingly, the CDC and OSHA recommend that healthcare workers exposed to COVID-19 patients wear gowns, gloves, National Institute for Occupational Safety and Health (NIOSH)-certified, disposable N95 or better respirators, and eye/face protection (e.g., goggles, face shield). Ensure that healthcare providers "are educated, trained, and have practiced the appropriate use of PPE

healthcare providers are educated, trained, and have practiced the appropriate use of PPE prior to caring for a patient, including attention to correct use of PPE and prevention of contamination of clothing, skin, and the environment during the process of removing such equipment.” [The CDC’s guidance on Using Personal Protective Equipment](#) provides instructions for putting on and taking off PPE.

- **A Plan for Mitigating Staffing Shortages Caused by COVID-19:** Besides reviewing existing staffing policies and any applicable collective bargaining agreement, you should consider the CDC’s recommended [Strategies to Mitigate Healthcare Personnel Staffing Shortages](#).
 - **A Designated Taskforce:** If you have not already done so, consider establishing a designated taskforce comprised of key leadership officials in your organization during this public health crisis. The taskforce would be responsible for coordination of activities and communications concerning infection control and safety issues, employee relations (including any and all concerns regarding the availability and appropriateness of available PPEs), and reporting confirmed or suspected COVID-19 cases to appropriate internal or external authorities.
2. **Continue To Train Your Leadership As Circumstances Evolve:** Obviously, you should train all healthcare providers in appropriate infection prevention and control, as well as appropriate use of PPE. You should also train them in your established reporting procedures. To the extent appropriate, especially under pandemic conditions, you should also train employees who are not involved in hands-on care or contact regarding infection prevention and control measures in effect.
 3. **Update Policies:** Continue to update policies and procedures that safeguard your healthcare providers and patient population against transmission and spread of COVID-19. Some relevant policies that you may want to develop or update include: moonlighting, reporting non-compliance with safety protocols, disclosure of COVID-19 infection or symptoms, telework (including telehealth procedures), facility access (visitors, etc.), and sick leave.
 4. **Communicate With employees And, Where Applicable, Union Representatives:** Employees want to see and recognize your commitment to keeping them safe. Consider drafting a statement that conveys your commitment to ensuring workplace and patient safety. Keeping the lines of communication open between you and your employees is also key to staying informed about employee concerns and getting ahead of matters before they escalate to the level of employee job actions, union organizing, or other union activity such as filing grievances and lawsuits. If your employees are represented by a union, consider scheduling regular, collaborative labor-management meetings to discuss workplace safety concerns and issues.
 5. **Enlist The Assistance Of Legal Counsel:** Federal or state guidance and mandates related to COVID-19 are constantly evolving. Most recently, the president announced a three-phase plan for [“Opening Up America Again”](#) and some state governments have begun to lift their shelter-in-place mandates. It is important for healthcare institutions to stay informed of their legal rights and obligations in connection with their efforts to minimize the risk of staff and patient exposure

to COVID-19 while remaining fully operational. You can contact a member of our [Healthcare Practice Group](#) for additional information or assistance.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Healthcare Practice Group](#), or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert 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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