

Part II- Staffing Decisions and the Coronavirus: How to Address Employees' Concerns and Keep Your Workforce Healthy

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As Bodman continues to receive questions about staffing in light of the COVID-19 ("Coronavirus") outbreak, we have prepared additional scenarios that you may encounter with suggested approaches to handling them.

In general, employers should remind their employees to wash their hands on a regular basis and to cough and sneeze into a tissue. Employers should also share the symptoms of the Coronavirus with their workforce and ask that those employees with symptoms stay home.

Question: *An employee has requested to work away from asymptomatic employees who are of Iranian and Chinese descent because his 80 year-old mother lives with him, and he worries that he may become sick and spread the disease to his more vulnerable mother. Do we have to accommodate him?*

Answer: While you do not have a duty to accommodate this specific employee by moving the location of his work, you are obligated under OSHA to keep your workplace free from recognized hazards that are likely to cause death or serious physical harm. You can encourage all of your employees and this particular individual to remain vigilant about hand washing and coughing and sneezing into a tissue. You can also provide disposable wipes so employees can wipe down commonly used surfaces such as doorknobs, keyboards, remote controls and desks before each use. If you are using new chemicals to sanitize your workplace, keep in mind that there may be OSHA requirements you will need to follow. Any individual who shows signs of a respiratory illness should be separated and sent home immediately. You should also remind this employee that your company does not discriminate on the basis of race and national origin.

Question: *If a number of employees seek transfers to avoid having to work with the employees who are of Iranian and Chinese descent based on fear of infection, could an Iranian-American or Chinese-American employee have a discrimination claim against the company?*

Answer: The Company should exercise caution before granting transfer requests based on employees' fears about working with other employees. Employees seeking to avoid working with those who are a different race or national origin may create a hostile work environment and expose the Company to a discrimination claim.

Question: *If I refuse to transfer the employee and his mother gets sick and dies, is the Company liable?*

Answer: No. Assuming that you have not required an employee to work near someone who has symptoms of the Coronavirus and that you have encouraged all employees to regularly wash their hands and use sanitizing wipes to clean all commonly used surfaces, you have adopted the strategies recommended by the CDC and OSHA and therefore have not breached the duty of care owed to your employees. Moreover, if you have adopted the best practices recommended by the CDC and OSHA, it will be unlikely that this employee and his mother's estate can establish that you caused the mother's death.

Question: *Can we prohibit our employees from traveling?*

Answer: No. You can, however, provide employees with updated travel guidance from the CDC about high-risk areas. Additionally, you can advise employees that if they travel to a high-risk area, they may be required to remain on leave or work from home for a 14-day period before returning to work. You should be sure to apply this requirement uniformly across your workforce.

A myriad of situations may arise regarding the Coronavirus. Please contact any member of **Bodman's Workplace Law Group** if you need assistance. We will be providing frequent updates and additional FAQs as the situation develops.

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