



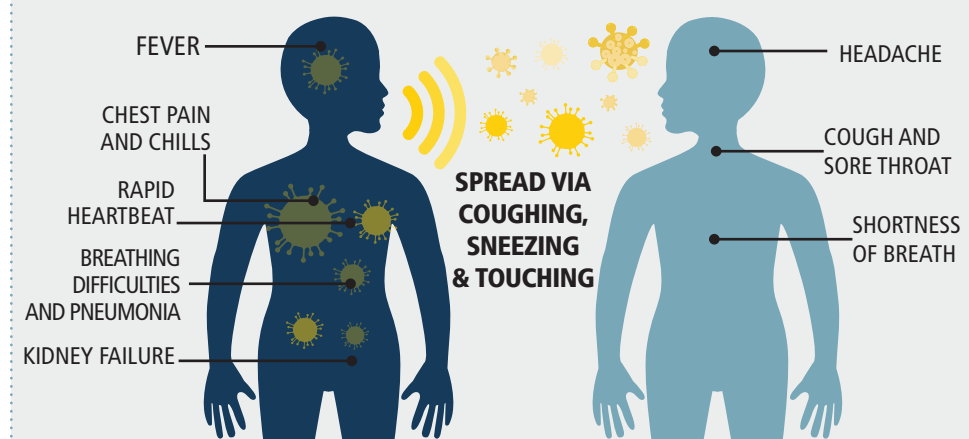
LEADERS' CHOICE
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NEWS ALERT

Safety and Compliance

Employer Guide for Dealing with the Coronavirus

SYMPTOMS OF COVID-19 AND HOW IT SPREADS



AS THE outbreak of the coronavirus (COVID-19) grows and spreads worldwide and in the US, employers will have to start considering what steps they can take to protect their workers while fulfilling their legal obligations.

Employers are in a difficult position because it is likely that the workplace would be a significant source of transmission among people. And if you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause.

Also, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave issues. And workers who are sick, or have family members who have been stricken, may ask to take time off under the Family Medical Leave Act.

COVID-19 explained

According to the Centers for Disease Control, the virus is transmitted from coughing, sneezing and touching, and it enters through the eyes, nose and mouth.

Symptoms include a runny nose, a cough,

a sore throat, and high temperature. After two to 14 days, patients will develop a dry cough and mild breathing difficulty. Victims also can experience body aching, gastrointestinal distress and diarrhea.

Severe symptoms include a temperature of at least 100.4°F, pneumonia, and kidney failure.

Employer concerns

OSHA – OSHA's General Duty Clause requires employers to protect workers against "recognized hazards" to safety or health which may cause serious injury or death.

According to an analysis by the law firm Seyfarth Shaw: If OSHA can establish that employees at a worksite are reasonably likely to be exposed to the virus (likely workers such as health care providers, emergency responders, transportation workers), OSHA could require the employer to develop a plan with procedures to protect its employees.

Protected activity – If you have an employee who refuses to work if they believe they are at risk of contracting COVID-19 at work due to the presence or probability that it is present there, what do you do?

Under OSHA's whistleblower statutes, the

employee's refusal to work could be construed as "protected activity," which prohibits employers from taking adverse action against them for their refusal to work.

Family and Medical Leave Act – Under the FMLA, an employee working for an employer with 50 or more workers is eligible for up to 12 weeks of unpaid leave if they have a serious health condition. The same applies if an employee must care for a family member who has been stricken.

The virus would likely qualify as a serious health condition under the FMLA, which would warrant unpaid leave.

What to do

Here's what health and safety experts are recommending employers should do:

- Consider restricting foreign business trips to affected areas for employees.
- Perform medical inquiries to the extent legally permitted.
- Impose potential quarantines for employees who have traveled to affected areas. Ask them to get a fitness-for-duty note from their doctor

See 'Contact' on page 2



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H.R. Study

Paid Sick Leave Can Reduce Workplace Injuries

A NEW STUDY has found that workers who are provided with paid sick leave are less likely to suffer workplace injuries than those without access to such leave.

Researchers at the National Institute for Occupational Safety and Health found that private sector workers who have access to paid sick leave were 28% less likely to suffer non-fatal industrial injuries.

Interestingly, workers in some fields of employment deemed among the riskiest were the most likely to benefit from paid sick leave.

They include construction, manufacturing, agriculture and health care, according to the study, published in the *American Journal of Public Health*.

Workers in these sectors commonly experience muscle soreness, pain, sprains, strains and tears; fractures; cuts and lacerations; or more chronic injuries including herniated discs, cartilage damage and spinal cord injuries, the study said.

The study found health care practitioners and technicians without access to paid sick leave were 18% more likely to suffer a non-fatal work-related injury than workers in the same jobs who had access to paid sick leave.

A construction worker without access to paid sick leave was 21% more likely to suffer a non-fatal work-related injury than a fellow worker with access to paid sick leave.

Researchers' conclusions

Access to paid sick leave might reduce the pressure to work while sick out of fear of losing income, according to the research. Fewer people working while sick, and therefore performing at reduced functional capacity, might lead to safer operations and fewer injuries.

"The potential safety benefit observed in our study extends previous research demonstrating that paid sick leave is associated with shorter worker recovery times and reduced complications from minor health problems," the researchers wrote. "Paid sick leave also enables workers to care for loved ones and can help prevent the spread of contagious diseases."

The researchers also noted that companies may enjoy better productivity if absenteeism is reduced thanks to offering paid sick leave, or via a reduction in what they termed "presenteeism" – the problem of sick workers continuing to work despite being ill, which can affect their job performance, not to mention sicken more staff.

The research also suggests that a family member's hospitalization increased the probability that a worker would suffer a severe occupational injury by 9%.

Paid sick leave is considered a non-wage benefit that employers are not required to offer their workers.

Although the 1993 Family and Medical Leave Act requires public agencies and private sector establishments to provide up to 12 weeks of leave to eligible workers, this leave can be paid or unpaid. ❖



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Infected Employees Must Avoid Contact with Others

before returning to work.

- Train your staff about how to reduce the chances of contracting the virus, and what to do if they think they have caught it.

If an employee may have the virus, experts recommend that you:

- Advise them to stay home until symptoms have dissipated.
- Advise them to seek out medical care.
- Make sure they avoid contact with others.
- Contact the Centers for Disease Control and local health department immediately.

- Contact a hazmat firm to clean and disinfect the workplace.
- Grant leaves of absence and work-from-home options for anyone who has come down with the coronavirus.

If there is an epidemic, consider whether or not to continue operating. If you plan to continue, put a plan in place. You may want to:

- Set a plan ahead of time for how to continue operations.
- Assess your staffing needs in case of a pandemic.
- Consider alternative work sites or let staff work from home.
- Communicate with suppliers about possible disruptions.
- Consider alternative vendors should yours be unable to work. ❖

Can You Legally Refuse to Hire Nicotine Users?

U-HAUL INTERNATIONAL Inc. made a big splash recently when it announced that, starting Feb. 1, it would not hire nicotine users in the 21 states where barring someone for the habit is legal.

While its decision made headlines since it's a national company, more and more employers have been opting to forgo hiring people who smoke, vape or use chewing tobacco.

The moves make sense as employers look to trim their health insurance costs, but also because studies have shown that nicotine users are less productive, take more breaks and miss more days off work than non-users – not to mention they face significant added health risks.

Although U-Haul subsidiaries operate in all 50 US states, the policy is being implemented in the 21 states that do not have discrimination protections for smokers on their books.

Those states are: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maryland, Massachusetts, Michigan, Nebraska, Pennsylvania, Texas, Utah, Vermont, Virginia and Washington.

Benefits of a no-nicotine policy

A 2013 Ohio State University study that reviewed smoker absenteeism, productivity and health insurance, found that they cost their employers an average of \$6,000 more per year than those who have never smoked.

There also are other indirect effects on productivity, such as an increased rate of early retirement in smokers, the study found.

Other studies have found that tobacco users have an increased risk of short-term illness, and a higher risk of developing chronic illness, resulting in even more missed days and significantly higher health care costs.

Smokers can also have a negative impact on employee morale, as non-smoking colleagues may perceive that they abuse their breaks and do less work as a result.

No-go in California

Employers who are considering similar policies need to tread carefully. Twenty-nine states and Washington, D.C. bar such policies explicitly or implicitly either through laws or regulations.

California employers also would not be able to implement such policies as doing so would breach State Labor Code.

Labor Code sections 96(k) and 98.6 prohibit employers from discharging an employee or discriminating against any employee or job applicant for employment because they engaged in lawful conduct on their own time during nonworking hours and away from the employer's premises.

Also, smoker-free policies may be challenged on privacy grounds as an improper attempt to monitor and regulate personal conduct.

There are no federal laws barring action against nicotine users. For example, nicotine addiction is not a disability under the Americans with Disabilities Act.

Additionally, employers who have tough rules on nicotine use may have a harder time attracting talent, potentially causing them to miss out on strong candidates who use nicotine products.

What you can do

All this said, you can still regulate and limit an employee's nicotine use in the workplace. It's wise to have policies in place that bar smoking and vaping on the premises to protect customers, the general public and your non-smoking employees from second-hand smoke and vape.

Studies have shown that the best way to get someone to quit smoking is not through punitive measures, but through incentives. Many wellness plans include smoker cessation programs that provide incentives to employees who quit smoking.

Some of these programs impose surcharges on nicotine users that are then used to cover claims and pay for administrative expenses under the employer's group health plan. ❖



Cal/OSHA Regulations

New Rules Require You to Provide IIPP on Request

NEW CAL/OSHA regulations will require employers to provide access to their injury and illness prevention programs upon request.



Under the new rule, which is expected to take effect in April, employers will be required to provide a copy of their IIPP within five days upon an employee's or an employee's representative's (a lawyer's) request. The employer can provide it in electronic or printed form.

That said, the new rule excludes requests for records of the steps the employer has taken to implement and maintain the IIPP.

This was excluded at the behest of employers who raised concerns that allowing such requests would give attorneys a green light to file requests in hopes of discovering errors or "improprieties."

Despite the current absence of a rule, many employers already provide employees access to the IIPP through the availability of printed and/or electronic copies.

"For employers that do not currently provide such access, they will need to ensure that employees can access a free copy of the IIPP directly or through a designated representative upon request," Cal/OSHA's board staff wrote in the "Final Statement of Reasons" for the rulemaking package. "As such, providing access need not be a complex procedure requiring costly development."

Employer groups had lobbied for a 10-day window for providing the IIPP, while labor groups wanted a faster timeline of just 48 hours. The board compromised with the five-day rule.

The rule was needed because the current IIPP standard does not explicitly state that employees should have access to their company's IIPP.



Current IIPP standard

Every employer in California is required to have an effective IIPP. This basic safety program for your workplace addresses the hazards your employees face at work each day, and it must be in writing.

Cal/OSHA has a [guide for creating an IIPP](#).

But, you should not just create an IIPP because you have to. Going through the process of creating an IIPP – as well as updating it periodically – can also help your organization by:

- Preventing workplace injuries.
- Reducing your workers' compensation insurance rates.
- Helping you to find ways to boost your workflow.
- Improving the bottom line of your business. ❖



ELEMENTS OF AN EFFECTIVE IIPP

- The plan is in writing and reflects what you actually do.
- A point-person in charge of managing the IIPP process.
- Input from department heads and employees
- Requiring that everyone follows the rules of the program.
- A system for reliable, prompt communication between supervisors and line employees on safety.
- Conducting regular inspections to identify hazards.
- A framework for investigating accidents and illnesses, to discover the cause and to prevent recurrence.
- Requiring that hazards are corrected promptly when found.
- Training employees on the hazards they may encounter at work.
- Documentation of training and workplace inspections.

