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Maintaining a Safe and Healthy Work Environment During the Coronavirus Pandemic

Employers planning to remain operational during the coronavirus pandemic should keep their obligations under the Occupational Safety and Health Act (the “OSH Act”) top of mind. The OSH Act’s chief mandate is to “assure safe and healthy working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.” As if assuring safe and healthy working conditions during these uncertain times wasn’t difficult enough, coronavirus implicates regulations promulgated under the OSH Act that would not apply to most workplaces under normal circumstances.

The Occupational Safety and Health Administration (“OSHA”)—the federal agency that administers and enforces the OSH Act—has implemented regulations to effectuate the OSH Act’s chief purpose of developing and maintaining safe and healthy work environments. Some of these regulations are implicated by coronavirus due to its airborne transmissibility. For instance, pursuant to 29 C.F.R. § 1910.132:

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, **shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of...environment...encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.**

Federal regulations also require employers to provide employees with respirators, if necessary, to protect their safety. See 29 C.F.R. § 1910.13. Recently, OSHA issued a memorandum with guidance on complying with these regulations in light of the coronavirus pandemic, which can be found [here](#).

To remain compliant with the OSH Act, OSHA has advised employers to require employees to wash their hands frequently, to wipe down all surfaces in the workplace with disinfectant and cleaners, to require employees to remain at least six feet apart except when necessary to perform essential job functions, and to provide tissues and hand sanitizer to employees and to customers.

In observance of these guidelines, we recommend that each employer send an organization-wide memorandum—emphasizing that the organization values employees’ health and safety—discussing: (1) the most recent guidance from OSHA, the Centers for Disease Control, the World Health Organization, and state and local agencies, and (2) what the employer is doing to protect employees by meeting those guidelines. In this memorandum, the employer should encourage employees to practice good hygiene. In effectuating its commitment to safety and health, the employer

should take actions to ensure employees manifesting symptoms of coronavirus are sent home. Absent extenuating circumstances, such employees should remain in self-quarantine for 14 days after exhibiting symptoms.

A measure that appeared drastic and reactionary only a few weeks ago—but that is now becoming widely implemented—is requiring **all** employees capable of doing so to work from home. If you do choose to implement a work-from-home policy and a large number of employees will be working on company servers, ensure that the company's IT systems are capable of handling the increased remote utilization and that IT representatives are available to assist users, many of whom may not be familiar with remote login procedures. Also ensure that employees are complying with the organization's security expectations and requirements (and consider recirculating such expectations and requirements). If employees will be using company property to work from home, such as laptops, phones, tablets, etc., track the equipment closely, and require employees to sign an acknowledgement and receipt form regarding the use, care and return of this property. Check whether the law in the jurisdictions where employees are performing work requires expense reimbursement for using personal devices to perform work. For instance, California requires an employer to reimburse an employee for all necessary expenses incurred in the performance of the employee's duties, which may require the employer to reimburse the employee for certain personal devices, along with a portion of phone and internet service costs. Note also that an employer is required to comply with the OSH Act even when employees work from home, meaning that an employer should endeavor to ensure that employees believe their home work environments do not pose safety or health risks.

Finally, for employees who are permitted to work from home on a temporary basis during these unprecedented times, remote work policies should protect the organization from subsequent requests from employees to regularly work from home after the dust settles, both as a personal preference and as an accommodation under the Americans with Disabilities Act. Specifically, communications allowing an unusually significant amount of remote work should clarify that such permission is limited to these extreme circumstances, an acknowledgment that employees likely will be unable to perform all essential functions during this time, and that following conclusion of the coronavirus pandemic, employees will be expected to resume all expectations and duties of their positions.

In addition to federal standards, many states have their own OSHA-approved workplace safety and health plans, which, in most circumstances, establish safety requirements above those required by OSHA. Twenty-two states have such plans approved for all employers in the state. And six states have plans that apply only to state and local employees. These plans can be found [here](#).

Lastly, the U.S. House of Representatives recently passed a sweeping emergency response bill titled the Families First Coronavirus Response Act ("FFCRA"), which, if approved by the U.S. Senate, will impose additional obligations on some employers. Specifically, within one month of enactment of the pending FFCRA, the Secretary of Labor is required to promulgate an emergency standard for health care sector employees and employees in other sectors whom the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration identifies as having elevated risk, requiring such employers to develop and implement a "comprehensive infectious disease exposure control plan."

Because the norms about workplace safety are continually changing in response to coronavirus, employers must regularly check international, federal and state guidelines and requirements. Ensuring your workplace is safe and healthy is not only legally required, but will keep your employees feeling secure during these difficult times.

[Click here](#) to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.

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