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### LABOR & EMPLOYMENT PRACTICE GROUP

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*We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.*

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## CORONAVIRUS ALERT

As fears over the outbreak of the coronavirus known as 2019-nCoV (or COVID-19) continue to grow, employers are likely to be faced with difficult questions about how best to protect their employees and workplaces from the spreading infection.

First, some basic facts about COVID-19:

1. The word “coronavirus” refers to a family of respiratory viruses which includes viruses that cause common colds, as well as more notorious viruses such as SARs and MERs. Coronaviruses are not new, although COVID-19 is a new strain of coronavirus.
2. Symptoms of COVID-19 typically appear two (2) to fourteen (14) days after exposure, and include fever, cough, and shortness of breath.
3. COVID-19 spreads person-to-person, through exposure to respiratory droplets produced when an infected person coughs or sneezes. It is not spread through the air, but can be spread by touching surfaces that have the virus on them and then touching mouths, noses, or eyes.
4. Individuals can avoid contracting COVID-19 by avoiding close contact with people who are sick, avoiding touching their eyes, noses, and mouths, staying home when sick, covering coughs and sneezes with a tissue or their elbows, and washing hands with soap and water frequently for at least twenty (20) seconds. (If soap and water is not available, hands should be cleaned using hand sanitizer which is at least sixty percent (60%) alcohol.)
5. Surfaces and objects which are frequently touched (*e.g.* doorknobs, computer keyboards) should be regularly cleaned and disinfected using regular household cleaning sprays or wipes.
6. People who are well are *not recommended* to wear facemasks. Facemasks are only recommended for healthcare workers and individuals who are already ill.

While considerations may vary depending on an employer's size and industry, the following guidelines are most likely to help protect workplaces from becoming vectors for the spread of COVID-19:

1. Encourage sick employees to stay home, and provide them with the necessary sick leave and remote working flexibility to ensure your employees are able to stay home when ill. This is particularly important for employees showing signs of respiratory illness. Employees should stay home until they are free of fever (100.4 degrees Fahrenheit or greater) and other symptoms for at least twenty-four (24) hours. Employees caring for sick family members should also be shown flexibility.
2. Do not require a healthcare provider's note for employees who are sick with respiratory illnesses to allow them to return to work. If COVID-19 spreads, it is likely healthcare providers and medical facilities will be extremely busy and unable to provide timely documentation.
3. If an employee becomes ill during the work day, separate the employee from other employees and send the employee home immediately to prevent the spread of illness to other coworkers.
4. Routinely clean all frequently touched surfaces, such as workstations, countertops, and doorknobs, and provide employees with disposable cleaning wipes to allow for frequent cleaning throughout the day.
5. For employees who may have upcoming voluntary travel planned, encourage employees to consult the Centers for Disease Control's ("CDC") Traveler's Health Notice for updated guidance and recommendations on travel restrictions related to COVID-19.
6. With respect to work-related travel, consult CDC guidelines before determining whether to permit or require work-related travel, particularly international travel, and be prepared to cancel any work-related travel to and from areas the CDC has identified as posing a risk for community transmission. In particular, take note of those areas for which the CDC has recommended suspension of non-essential travel, and from which the United States has limited the ability to enter the country.

Employers may request employees provide information concerning their travel plans to facilitate effective risk assessment, and, depending on where an employee travels to and when, employers may also request employees who have travelled to high-risk areas during a period of active COVID-19 transmission, or who have otherwise been exposed to COVID-19, work from home or otherwise remain absent from the workplace during the virus's fourteen (14) day incubation period. Employers who choose to exclude certain employees from the workplace on this basis should be mindful of issues related to paid leave and employee privacy. For example:

- Employers should evaluate whether applicable state and/or local laws (such as New York City's Earned Sick & Safe Time Act or New York State's Paid Family Leave Act) cover employees' use of paid time off in connection with not only an employee's own illness, but also in connection with a relative's illness, mandatory or voluntary self-quarantine in connection with exposure to COVID-19, and/or school or business closings ordered in connection with a COVID-19 outbreak;
- Employers should also consider whether an employee's COVID-19-related absence could be covered by the federal Family and Medical Leave Act – although illnesses of short duration (such as a cold or regular flu) generally are not covered by the FMLA, a longer-term respiratory illness could render an employee eligible for unpaid FMLA leave;

- While employers can ask whether employees have traveled to areas affected by COVID-19 and/or otherwise been exposed, the Americans with Disabilities Act and other federal, state, and local laws prohibit employers from administering medical tests to test employees for COVID-19 (or any other illness);
- Employers should avoid making assumptions about employees' COVID-19 exposure based on protected characteristics, such as race, ethnicity, or national origin, and any policies enacted to combat COVID-19 should be enforced uniformly and consistently; and
- In the event an employee is absent from the workplace related to COVID-19 exposure or illness, the employer must be mindful of maintaining the privacy of the affected employee's medical status, and should not share information about the reason for the employee's absence. Any coworkers exposed to COVID-19 by virtue of their interaction with the absent employee should be told only that an unidentified coworker with whom they have had contact has been exposed to or diagnosed with COVID-19.

Any employer facing questions about COVID-19 should contact their Meltzer Lippe attorney for personalized guidance.