Risk Management Bulletin

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COVID-19: Response Guidance for Businesses

Preparing Workplaces for COVID-19 Outbreak

As per the CDC, the following is Interim Guidance Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

Businesses and employers can prevent and slow the spread of COVID-19. Employers should plan to respond in a flexible way to varying levels of disease transmission in the community and be prepared to refine their business response plans as needed. According to the Occupational Safety and Health Administration (OSHA), most American workers will likely experience low (caution) or medium exposure risk levels at their job or place of employment (see OSHA guidance for employers for more information about job risk classifications).

Businesses are strongly encouraged to coordinate with state

Workers' Compensation and COVID-19

Workers' Compensation does not cover preventative medicine or treatment and there are standards for communicable diseases.

We continue to recommend, in concert with the workers' compensation insurers, that employees who feel they have been exposed to COVID-19 in the workplace seek initial treatment and testing via their private healthcare providers.

In the event the employee tests positive for COVID-19 and believe the exposure arose out of employment and occurred within the course of employment, at that time a claim for benefits under workers' compensation should be filed.

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and local health officials so timely and accurate information can guide appropriate responses.

Local conditions will influence the decisions that public health officials make regarding community-level strategies. CDC has guidance for mitigation strategies according to the level of community transmission or impact of COVID-19.

All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in their workplace. This may include activities in one or more of the following areas:

a. **reduce transmission among employees,**
b. **maintain healthy business operations, and**
c. **maintain a healthy work environment.**

Reduce Transmission Among Employees

Actively encourage sick employees to stay home:

- Employees who have symptoms (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home.

- Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments.

- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC recommended precautions.

Identify where and how workers might be exposed to COVID-19 at work:

- See OSHA COVID-19 external icon webpage for more information on how to protect workers from potential exposures and guidance for employers, including steps to take for jobs according to exposure risk.

- Be aware that some employees may be at higher risk for serious illness, such as older adults and those with chronic medical conditions. Consider minimizing face-to-face contact between these employees or assign work tasks that allow them to maintain a distance of six feet from other workers, customers and visitors, or to telework if possible.

Separate sick employees:

- Employees who appear to have symptoms (i.e., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day should immediately be separated from other employees, customers, and visitors and sent home.

- If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). The fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

Educate employees about how they can reduce the spread of COVID-19:

- Employees can take steps to protect themselves at work and at home. Older people and people with serious chronic medical conditions are at higher risk for complications.

- Follow the policies and procedures of your employer related to illness, cleaning and disinfecting, and work meetings and travel.

- Stay home if you are sick, except to get medical care. Learn what to do if you are sick.

- Inform your supervisor if you have a sick family member at home with COVID-19. Learn what to do if someone in your house is sick.

- Wash your hands often with soap and water for at least 20 seconds. Use hand sanitizer with at least 60% alcohol if soap and water are not available.

- Avoid touching your eyes, nose, and mouth with unwashed hands.

- Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow. Throw used tissues in the trash and immediately wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer containing at least 60% alcohol. Learn more about coughing and sneezing etiquette on the CDC website.

◦ Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection. To disinfect, use products that meet EPA's criteria for use against SARS-CoV-2, the cause of COVID-19, and are appropriate for the surface.

◦ Avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.

◦ Practice social distancing by avoiding large gatherings and maintaining distance (approximately 6 feet or 2 meters) from others when possible.

Maintain Healthy Business Operations

Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace. Implement flexible sick leave and supportive policies and practices.

◦ Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies.

◦ Maintain flexible policies that permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures. Additional flexibilities might include giving advances on future sick leave and allowing employees to donate sick leave to each other.

◦ Employers that do not currently offer sick leave to some or all of their employees may want to draft non-punitive "emergency sick leave" policies.

◦ Employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or to return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.

◦ Review human resources policies to make sure that policies and practices are consistent with public health recommendations and are consistent with existing state and federal workplace laws (for more information on employer responsibilities, visit the Department of Labor's and the Equal Employment Opportunity Commission's websites).

◦ Connect employees to employee assistance program (EAP) resources (if available) and community resources as needed. Employees may need additional social, behavioral, and other services, for example, to cope with the death of a loved one.

Assess your essential functions and the reliance that others and the community have on your services or products.

◦ Be prepared to change your business practices, if needed, to maintain critical operations (e.g., identify alternative suppliers, prioritize existing customers, or temporarily suspend some of your operations if needed).

◦ Identify alternate supply chains for critical goods and services. Some good and services may be in higher demand or unavailable.

◦ Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.

◦ Talk with business partners about your response plans. Share best practices with other businesses in your communities (especially those in your supply chain), chambers of commerce, and associations to improve community response efforts.

Determine how you will operate if absenteeism spikes from increases in sick employees, those who stay home to care for sick family members, and those who must stay home to watch their children if dismissed from childcare programs and K-12 schools.

◦ Plan to monitor and respond to absenteeism at the workplace.

◦ Implement plans to continue your essential business functions in case you experience higher than usual absenteeism.

◦ Prepare to institute flexible workplace and leave policies.

◦ Cross-train employees to perform essential functions so the workplace can operate even if key employees are absent.

Consider establishing policies and practices for social distancing. Social distancing should be implemented if recommended by state and local health authorities. Social distancing means avoiding large gatherings and maintaining distance (approximately 6 feet or 2 meters) from others when possible (e.g., breakrooms and cafeterias). Strategies that business could use include:

◦ Implementing flexible worksites (e.g., telework)

◦ Implementing flexible work hours (e.g., staggered shifts)

◦ Increasing physical space between employees at the worksite

◦ Increasing physical space between employees and customers (e.g., drive through, partitions)

◦ Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events)

◦ Downsizing operations

◦ Delivering services remotely (e.g. phone, video, or web)

◦ Delivering products through curbside pick-up or delivery

Employers with more than one business location are encouraged to provide local managers with the authority to take appropriate actions outlined in their COVID-19 response plan based on local conditions.

Maintain a Healthy Work Environment

Consider improving the engineering controls using the building ventilation system. This may include some or all of the following activities:

◦ Increase ventilation rates.

◦ Increase the percentage of outdoor air that circulates into the system.

Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors:

◦ Provide tissues and no-touch disposal receptacles.

◦ Provide soap and water in the workplace. If soap and water are not readily available, use alcohol-based hand sanitizer that is at least 60% alcohol. If hands are visibly dirty, soap and water should be chosen over hand sanitizer. Ensure that adequate supplies are maintained.

◦ Place hand sanitizers in multiple locations to encourage hand hygiene.

◦ Place posters that encourage hand hygiene to help stop the spread at the entrance to your workplace and in other workplace areas where they are likely to be seen.

◦ Discourage handshaking – encourage the use of other noncontact methods of greeting.

◦ Direct employees to visit the coughing and sneezing etiquette and clean hands webpage for more information.

Perform routine environmental cleaning and disinfection:

◦ Routinely clean and disinfect all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails, and doorknobs.

» If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.

» For disinfection, most common EPA-registered household disinfectants should be effective. A list of products that are EPA-approved for use against the

virus that causes COVID-19 is available here. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).

◦ Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.

◦ Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks, other work tools and equipment) can be wiped down by employees before each use. To disinfect, use products that meet EPA's criteria for use against SARS-Cov-2, the cause of COVID-19, and are appropriate for the surface.

Perform enhanced cleaning and disinfection after persons suspected/confirmed to have COVID-19 have been in the facility:

◦ If a sick employee is suspected or confirmed to have COVID-19, follow the CDC cleaning and disinfection recommendations.

Advise employees before traveling to take additional preparations:

◦ Check the CDC's Traveler's Health Notices for the latest guidance and recommendations for each country to which you will travel. Specific travel information for travelers going to and returning from countries with travel advisories, and information for aircrew, can be found on the CDC website.

◦ Advise employees to check themselves for symptoms of COVID-19 (i.e., fever, cough, or shortness of breath) before starting travel and notify their supervisor and stay home if they are sick.

◦ Ensure employees who become sick while traveling or on temporary assignment understand that they should notify their supervisor and promptly call a healthcare provider for advice if needed.

◦ If outside the United States, sick employees should follow company policy for obtaining medical care or contact a healthcare provider or overseas medical assistance company to assist them with finding an appropriate healthcare provider in that country. A U.S. consular officer can help locate healthcare services. However, U.S. embassies, consulates, and military facilities do not have the legal authority, capability, and resources to evacuate or give medicines, vaccines, or medical care to private U.S. citizens overseas.

Take care when attending meetings and gatherings:

◦ Carefully consider whether travel is necessary.

◦ Consider using videoconferencing or teleconferencing when possible for work-related meetings and gatherings.

◦ Consider canceling, adjusting, or postponing large work-related meetings or gatherings that can only occur in-person.

◦ When videoconferencing or teleconferencing is not possible, hold meetings in open, well-ventilated spaces.

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> ## What Workers' Compensation Insurance Companies are telling clients in response to COVID-19 Claims
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> *"It is possible that some of our insureds' employees will file workers' compensation claims related to COVID-19.*
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> *We will investigate any COVID-19 claim received, evaluating the facts and circumstances of each claim.*
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> *But keep in mind that the workers' compensation system is not the appropriate starting point for COVID-19 concerns, testing, and treatment. Claims involving communicable disease are typically not considered compensable for employees who are at no greater risk than the general public; however, if an employee can prove that the disease was caused or aggravated by the conditions of employment, the claim may be deemed compensable.*
>
> *There may be employees who are concerned they may have contracted COVID-19 through work. Those employees should be directed to call their healthcare provider for advice on testing and treatment. If an insured employee tests positive for the virus and alleges that he/she contracted the disease at work, please promptly report the claim to us, and we will perform an appropriate claims investigation."*

Workers' Compensation and COVID-19

The 'BUT FOR' test:

- One test to determine if the workplace exposure provided an increased risk it to ask the question: "BUT FOR the employment, was the employee at any greater risk of contracting the virus than their exposure in the general public?"

- In the cases of frontline healthcare providers, the answer to the BUT FOR question would be 'yes' as they are exposed daily to COVID-19 patients as part of their employment.

What to do when an employee tests positive for COVID-19:

1. Any employee who is showing signs of illness, to include but not limited to: cough, fever, runny nose, our clients should require that employee to stay away from work for the CDC's recommended 14 days to monitor for illness and increased temperature.

2. If after those 14 days no symptoms develop, the employee can return to work. In the event an employee is diagnosed with COVID-19 and has been at work, those who have worked closely with or within the same proximity/building/department should be notified of the potential exposure and advise employees who begin to feel ill to self-quarantine. We recommend that employers do not divulge personal information about the infected employee so as to not infringe on a person's rights under HIPPA. An exposure notice advising of where, perhaps the department, and dates of the exposure would suffice as proper notification.

3. In the event that a co-worker then becomes ill and is diagnosed with COVID-19, at that point the employee should be asked if he/she feels the exposure was work related and offer the employee the DWC-1 Employee Claim form.
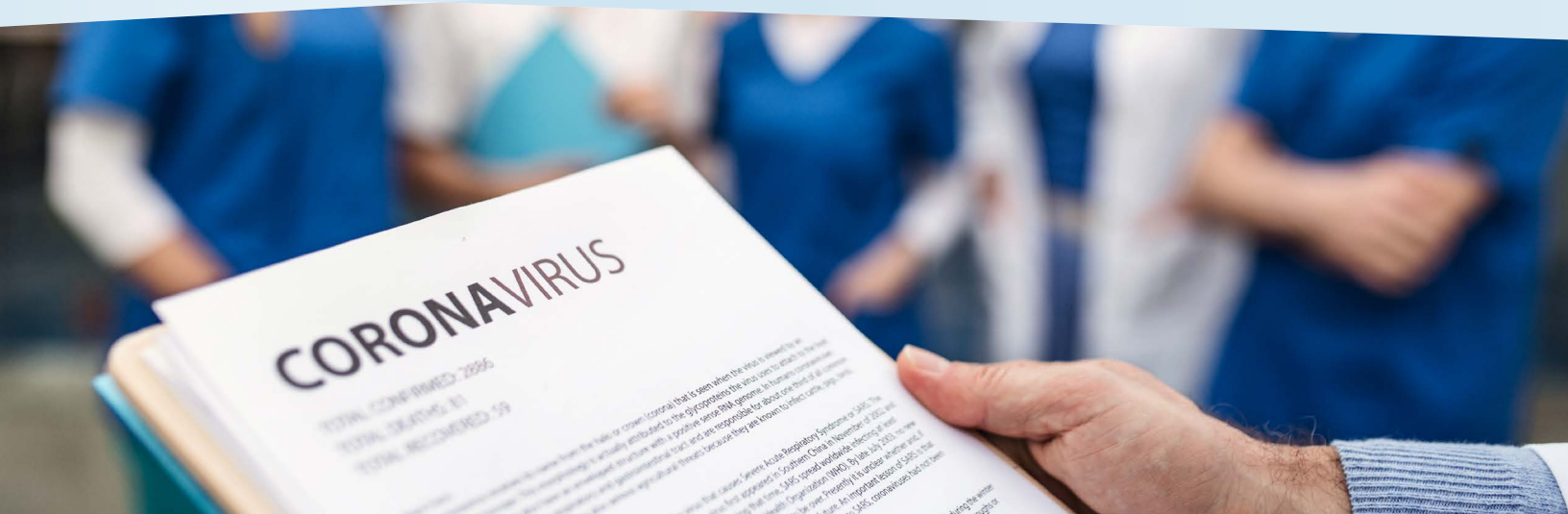
4. Remember, offering the claim form and filing the claim is not an admission of liability. The best protection for our insureds is to allow the claim to be filed and the insurance company to delay and investigate to determine compensability under aoe/coe (arising out of employment and occurring within the course of employment).

An informal survey taken by Leavitt as found there have been very few COVID-19 claims filed as workers' compensation as of the date of this report. It remains to be seen what the applicant's attorneys will do and if there will be an influx of cases under workers' compensation as the days and weeks progress.

Due to closures, work stoppages and social-distancing, combined with our clients taking preventative steps in requiring sick employees to stay home and self-quarantine, it is hoped the exposure potential has been severely curtailed.

There is case law that could support an applicant's claim under the greater exposure argument:

◦ **In 2015 a Disneyland employee claimed workers' compensation for measles during the 2015 outbreak.** The Disneyland employee claimed that because he/she was regularly exposed to extremely large, general public groups, including those who had not been vaccinated for measles, visiting Disneyland that the workplace increased the exposure beyond that of someone who didn't have large general public exposure. The courts found the measles claim compensable under workers' compensation.

◦ **Valley Fever cases:** (Tim Abernathy v. Harris Wolf California Almonds /Ranulfo Cruz v. Hall Management) It was determined that "the employee's risk of contracting the disease from the employment must be materially greater than the general public or more common at the place of the employment than among the public." The Workers' Compensation Appeals Board further opined that "while applicants are not required to establish to medical certainty, they are required to establish that the employment caused or contributed to their disease to a reasonable medical probability."

As with any other claim made under workers' compensation, reporting a claim is not an admission of liability. If, in the event an employee alleges the workplace as the source of their exposure and subsequent diagnosis of COVID-19, the best protection is to file the claim with the workers' compensation insurer so that it can be delayed, investigated and defended or paid.

Only insurance companies can make the legal determination of the threshold of compensability. Employers are never the arbiters of coverage.