COVID-19:
Preparing employers for the coronavirus

Lockton Coronavirus Advisory Practice

March 5, 2020
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emeyer@lockton.com
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Director, Compliance Services
Lockton Benefits

Introduction and housekeeping
Lockton’s Coronavirus Advisory Practice

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COVID-19: A clinical look and best practices
Time to respond, not panic

01
CONTAIN THE SPREAD

- **Telemedicine**
- Avoid the ER and urgent care unless absolutely necessary
- Stay home when sick
- Practice enhanced hygiene
- Hold off on visiting nursing homes and long term care facilities unless absolutely necessary

02
MOBILIZE YOUR RESPONSE TEAM

- HR
- Risk management
- Environmental services
- Other key internal stakeholders

03
ACTIVATE YOUR PANDEMIC RESPONSE PLAN

- Refer to CDC/NIOSH public health guidance for businesses and employers
  

04
TRACK STATE/LOCAL PUBLIC HEALTH SITES

- Local public health authorities are now activated and providing community updates
  
Spread the facts not the disease

VULNERABLE GROUPS
- Age groups
- Comorbid conditions
- Immune compromised

TESTING
- Testing now local
- Call ahead to ER, urgent care or physician’s office if you suspect you are infected

VACCINE AND ANTIVIRAL DRUG DEVELOPMENT
- In the works
- Not ready in time to control the current outbreak
- Rely on enhanced hygiene practices

HEALTHCARE DELIVERY IMPACTS
- Hospital overflow
- ER wait times
- Drug supply

Evolving situation

Symptoms | Situation summary | Risk assessment
Stay up to date with the CDC (www.cdc.gov/coronavirus/2019-ncov/index.html).
# Practice enhanced hygiene & track CDC updates

## MEETINGS & WORKPLACE
- Default to virtual meetings
- Promote teleworking
- Sick employees stay home
- Designate isolation area if an employee becomes sick at work
- ‘No handshake’ policy
- Disinfect frequently touched surfaces often
- Hygiene reminders
- Hold off on large meetings and events, if possible, and provide virtual option

## TRAVEL
- Track CDC Travel site to assess current risk
- Communicate Spring Break travel hygiene tips
- Disinfect hotel, airplane, rental car surfaces
- Do not touch eyes, nose or mouth without washing hands
- Wash hands frequently
- Use hand sanitizer if handwashing area is unavailable (at least 60% alcohol content)
- Wash hands with soap and water for 20 seconds (sing Happy Birthday song twice)
- Use hand sanitizer if handwashing is unavailable
- Stay home if sick and isolate from family members (designated bathroom)
- If sick, have food/supplies delivered to home
- If sick, avoid pets or minimize contact with pets

## HOUSEHOLD
- Visit this link
- Visit this link
- Visit this link
Paul Primavera, EVP
Practice Leader,
National Risk Control Services

Aligning the business risks with your coverages
Expected impact of the coronavirus upon businesses

PROTECTION OF WORKERS & GENERAL PUBLIC
- Follow CDC guidelines for identification of risks and action plans to proactively manage the spread of the virus
- Implement modified business travel procedures of employees
- Cross-train employees (where possible)

ACCESS TO BUILDINGS & FACILITIES
- Perform routine environmental cleaning
- Update and test alternative remote work access procedures (telecommuting)

PRODUCTS & SERVICES
- Identify essential business functions, jobs and/or roles required to sustain your operations’ products and services

SUPPLY CHAIN MANAGEMENT
- Business Continuity Planning - evaluate critical elements within your supply chain process (raw materials, suppliers, subcontractor services/products, and logistics) required for your on-going business operation

A 2004 analysis found the SARS crisis resulted in a $40 billion global economic impact.
Commercial insurance implications from the coronavirus

Workers’ compensation

- Employees who are exposed or contract the virus while in the course of their employment
- Any potential further exposure from the injured worker to a spouse or applicable family member would be considered under the policy’s employers liability coverage

Commercial general liability

- Businesses’ legal liability to others from the virus would be considered under this coverage, applicable to the potential policy’s exclusions and limitations

Property

- Many property coverages will require physical damage, even for coverage extending to business interruption and/or civil authority

Individual insurance policies will need to be reviewed for specific grants of coverage and potential exclusions.
Prepared and reacting: The employment law issues
Americans with Disabilities Act

What can employers do?

• Medically examine employees if reasonable belief employee poses direct threat to others due to medical condition
• Direct employees to inform HR if they have been to a high-risk destination or have potentially been exposed to the coronavirus
• Inform employees if they may have been exposed to the virus at work (without revealing the source)
• Require a doctor’s note for return to work for employees who exhibit symptoms of the virus (but beware of state law restrictions)

What should employers not do?

• Medically examine (including fever screen) all employees
• Administer medical tests without showing a job-related necessity
• Refuse to accommodate employees who reasonably request leave or to work remotely due to illness or disability
• Terminate employees who contract the coronavirus
• Fail to keep an employee’s health information confidential
**Occupational Safety and Health Act**

**What can employers do?**
- Reference OSHA’s fact sheet regarding global health emergencies
- Assign a team to regularly monitor information posted by the CDC and OSHA
- Instruct employees to take common sense precautions to minimize infection risk
- Frequently sanitize work areas and provide access to hand sanitizer and antiseptic wipes

**What should employers **not** do?**
- Require nonessential travel by employees to affected areas
- Fail to record a worker’s verified coronavirus infection in the OSHA 300 log
- Provide medical opinions or misinformation relating to the coronavirus
**Other legal pitfalls**

- **Title VII of the Civil Rights Act of 1964**
  - Avoid targeting certain races or nationalities for screening or heightened scrutiny
    - May constitute illegal discrimination
  - Instead, treat all employees the same and reiterate anti-discrimination, anti-harassment, anti-bullying and anti-retaliation policies

- **Family and Medical Leave Act / paid sick leave laws**
  - Ensure FMLA obligations (including state law requirements) are being followed
    - Coronavirus may qualify as a “serious health condition”
    - Employees on FMLA leave will have reinstatement rights
    - Fear of the coronavirus does not typically qualify for FMLA leave
  - Abide by any state or local paid sick leave laws
Stacie Engelmann, SPHR
Human Resource Consulting
Kansas City Benefits Agency

Installing and administering effective HR policies
Employment policies & considerations

Infectious disease policy

- Right to exclude person(s) from workplace
- Employee responsibilities & requirements
  - Notification of possible exposure
  - Reporting process
- Supervisor responsibilities
- Social distancing guidelines
  - Travel or in-person meeting restrictions
- Privacy concerns
- Interaction with time off policies
- Return-to-work documentation
Employment policies & considerations

- **Telecommuting guidelines**
  - Case-by-case basis
  - Approval process
  - Expectations of employee

- **Laptop policy**
  - Expectations
  - Confidentiality safeguards

- **Facilities policies and reminders**
  - Conference rooms
  - Supplies

- **Time off policies**
  - Sick time, PTO, vacation
  - Reasons for use
Employment policies & considerations

• Fair applicability

• Encourage employees to create contingency plans
  – Schools, daycares

• Be reasonable!
Julie Gibson, SVP
Director of Marketing, Communications & External Affairs

Communicating in uncertain times
Why communicate?

CORONAVIRUS COMMUNICATIONS 101

• Information is coming at a rapid pace
• Employees are looking to leadership for guidance
• Don’t assume your people are informed
What to communicate

CORONAVIRUS COMMUNICATIONS 101

• Follow public health guidance first and foremost – don’t guess
• Balance business needs with employee concerns
  – Conflicting information
  – Employee needs
  – Remote work
  – Travel
  – Ongoing ability to do their job
How to communicate

CORONAVIRUS COMMUNICATIONS 101
• Empower a core, trusted team to make decisions quickly; select a spokesperson
• Establish a central source of truth for your company
  – Intranet page
  – Slack, Workplace, etc.
  – Email
• Communicate daily
  – Use common sense language and guidance
  – Avoid overreacting
  – Provide context and maintain flexibility for decision making
Use this situation to prepare for the next
Pam Popp
President, Lockton Retirement Services

The coronavirus and your retirement plan
• Average 9.5% drop
• Current market is consistent with other outbreaks
• Speed of the reaction is the primary difference
• Was the market overvalued anyway?

Sources: Citi Research, FactSet, Standard & Poor’s, MSCI, Bloomberg.
Time in the market remains more powerful than market timing

15-YEAR RETURN AS OF 12/31/19

S&P 500: $158,044.82
Investor Return: $120,427.49
$ invested: $75,000.00

$37,617 Cost of market timing
$45,427 Market return

Source: Morningstar.
Ethan McWilliams, MBA
Senior Compliance Analyst
Lockton Benefits

Your group health plan, HIPAA and other welfare plan issues
Welfare benefit plan sponsor considerations

• Can our medical plan adopt exclusions for coronavirus treatment?
  – Likely not, based on HIPAA and the ADA
  – No novel treatment or drug at this point
  – Provider coding may be inadequate to catch a hypothetical exclusion consistently
  – Consider the effects of the court of public opinion

• Can our medical plan implement a coronavirus benefit $dollar limit$?
  – No, inpatient and outpatient treatments are essential health benefits under the ACA

• How do recommended precautions associated with coronavirus interact with salary continuation, short-term or long-term disability programs?
Welfare benefit plan sponsor considerations

• How do the HIPAA privacy rules impact a sponsor’s ability to share health information about an employee with other employees, public safety officials, others?
  – Under HIPAA, much depends on whether the employer acquired the information through the health plan (a HIPAA-covered entity) or independently (from the employee/family).
  – If the information was not drawn from the health plan, HIPAA doesn’t apply (different result potentially for employers that are themselves “covered entities,” like healthcare providers)...but state privacy laws might apply, so continue to treat the information as sensitive.
  – If the information was drawn from the health plan, HIPAA allows protected health information (PHI) to be disclosed without authorization for treatment and health plan operations purposes, and to public health authorities to prevent or mitigate the spread of disease.
  – The employer can also share PHI with other individuals at risk of contracting or spreading a disease or condition if other law, such as state law, authorizes the covered entity to notify such persons to prevent or control the spread of the disease.

• State privacy laws typically have similar exceptions.
• Are there other state-level concerns to address?
  – State insurance departments requiring waiver of cost-sharing requirements related to coronavirus testing.
  – Won’t apply to self-funded ERISA plans, but should you follow this lead?
Matt Smith, ASA, MAAA
Director of Actuarial Services
Lockton Dunning Benefits

Prevention and treatment: Medical plan cost implications
Financial approach

• Self-funded
  – Employers should be aware of the risk for increased medical claims
  – Hold off on specific budget impacts until the situation emerges
  – Understand the key drivers of impact
  – Lockton is monitoring emerging experience as the virus spreads within the U.S.
  – Lockton is developing a cost model to assist employers in understanding their potential exposure

• Fully insured
  – Plan costs are known until plan renewal
  – Financial impact will be based on carrier underwriting
  – Lockton is surveying carriers on expected adjustments due to coronavirus
Cost Model (In development)

Static approach

- Population-based estimate that extrapolates from influenza costs
- Consulting with epidemiologists
- Comparison of flu with observed coronavirus incidence and severity

Data challenges

- Limited reliable data from epicenter in China
- Applicability of population-based approach for employer populations (younger/healthier)
- Understanding of the disease is still emerging

Dynamic model

- Calibrate impacts to employer plan populations
- Connect key cost drivers to specific employer demographics
- Adjustment for geography and industry
- Incorporate Infolock® data
## Impact influencers

### Age

- Under 40 - 0.2% mortality
- 40-49 - 0.4% mortality
- 50-59 - 1.3% mortality
- 60-69 - 3.6% mortality
- 70-79 - 8.0% mortality
- 80 and over - 14.8% mortality

### Disease

**Risk of ICU, ventilator or death compared to average case**

- Cancer - 3.5 times
- COPD - 2.6 times
- Diabetes/Hypertension - 1.6 times

**Lockton clients**

- COPD 0.7%, Hypertension 13.5%, Diabetes 4.9%

**Study sample**

- COPD 1.5%, Hypertension 16.9%, Diabetes 8.2%

### Site of care

- CDC testing for coronavirus is free
- Using a hospital for diagnosis & treatment of mild symptoms can escalate costs substantially
- Encourage members to seek care through telemedicine unless symptoms are severe

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Disease - Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis
Devin Beresheim, EVP
US Financial Lines Leader

D&O and cyber program considerations
D&O program considerations

01

DISCLOSURE & GUIDANCE

- Companies are updating and/or providing guidance around operations / financial results and risk factors
- In late January, SEC Chair Jay Clayton stated that he requested his staff to monitor coronavirus-related disclosures
- Volatility and inconsistency around market events and disclosure / Reg FD

02

UNPREPAREDNESS

- Companies, executives and boards are vulnerable to allegations involving mismanagement, lack of risk oversight and contingency / continuity planning
- Management and board must be engaged and communication must be consistent to allow each to carry out their duties effectively
- Potential for brand / reputational harm due to virus impact / handling

03

WORDING IMPLICATIONS

- Avoid any and all new or broadened exclusionary language relating to “coronavirus”, “BI/PD”, bankruptcy or breach of contract
- Special attention should be paid to knowledge / warranty statements
- Special attention should be paid to notices of circumstance in extenuating situations

04

UNDERWRITING IMPLICATIONS

- Meeting should include executive informed on company exposures
- Discussion regarding office or facility closings, supply chain disruption, revenue / expense / cash flow impact will likely be required
Cyber program considerations

01

REMOTE WORKFORCE

• Reliance upon VPNs and other remote applications may not support the bandwidth and other productivity levels - system failure of the organization’s infrastructure or SaaS provider could result

• Testing should be conducted to ensure systems are able to accommodate increased remote workforce

• Home and personal workstations are often less secure and more susceptible to hackers

02

DATA COLLECTION & PRIVACY

• Companies may be careless in sharing information they have regarding affected employees and others - privacy breaches could violate HIPAA, state laws and company privacy laws

• Companies may react to the epidemic by requesting information from customers, vendors and employees that they are not entitled to ask for

03

PHISHING

• High-profile global issues and crises are perfect fodder for hackers; using the coronavirus theme for phishing emails or other predatory techniques is prevalent

04

BUSINESS INTERRUPTION

• Interrupted suppliers and targeted attacks knowing the control rooms aren’t staffed adequately can result in easier prey from an adversary standpoint

• A company’s ability to operate and maintain its systems because of a quarantine or shutdown could potentially trigger BI coverage; unintentional or unplanned system outage coverage could be invoked but will most likely be aggressively disputed
Policymakers are responding

- $8.3 billion appropriations bill this week
  - Funds coronavirus research, preparedness and response
  - Any vaccines, therapeutics and diagnostics developed with federal funds will be made available to the commercial market and be affordable
  - $20M in loans available to affected small businesses
- New York has directed insurers to waive cost-sharing for coronavirus-related visits, including emergency room visits (does not apply to self-funded plans)
- Future federal action is expected – coverage mandates?
- How employers respond might impact policy responses in the future: Medicare for all; Rx pricing; surprise billing; paid leave; etc.
Questions?
Independence changes everything.