

Coronavirus disease 2019: What are the obligations of an employer?

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Note: the coronavirus outbreak is a fast-developing situation, and local health agencies should be consulted for the latest news and directives.

In December 2019, authorities in Wuhan, Hubei province, announced a cluster of cases of pneumonia associated with the Huanan/South China Seafood Wholesale Market, for which a cause had not yet been identified. On Jan. 8, coronavirus 2019 (COVID-19), a disease caused by a virus named SARS-CoV-2, was identified as the cause of the illness. Dozens of other provinces in China have confirmed imported cases from Wuhan. Cases have also been exported from Wuhan into several other countries.

Employers are understandably concerned for the health of their employees and the continuity of their business. In this document, Lockton's experts address employer and employee considerations.

Employer considerations: Property and casualty liabilities

General liability

The primary liability exposure for employers will be alleged negligence. For example, employers may face assertions that they failed to protect a customer or other third party from being exposed to the virus.

Liability of directors and officers

Suits may arise against directors and officers in the event a company is considered inadequately prepared to handle a pandemic that negatively impacts the business. Shareholders may allege directors' and officers' failure to perform the necessary contingency planning or failure to disclose the risks a COVID-19 outbreak could have on the company's business and financial results.

Workers' compensation and employers' liability

In considering coverage for workers' compensation claims, providers determine whether the injury occurred within the affected individual's scope of work. Exposures to pandemic-type illnesses may also produce employers' liability claims alleging contraction of the related illness due to employer negligence.

Recent global regulatory changes, such as the Duty of Care Act, force companies to adhere to a standard of reasonable care when directing employees to perform duties on behalf of the company. Countries such as Australia, the U.K. and India have enacted this regulation. Companies that neglect their duty of care can be accused of an act of negligence and face legal action on behalf of the affected employee.

Property or business interruption

If organizations are forced to temporarily close their operations due to pandemic or disease, they may try to seek business interruption coverage under their insurance coverage. Most policies trigger coverage for business interruption only after the policyholder has experienced a direct physical loss to the premises in question caused by a covered peril.

Employer considerations: Employee benefits and rights

The increased number of infected people worldwide is forcing governments and employers to change their policies and legislation to help contain the rapid spread of COVID-19. The situation has sparked alarm around the world as COVID-19 is now spreading across Europe, Asia and the U.S., and the number of infected people outside China is expected to exceed those within the country. The two major hubs of COVID-19 are currently Italy and Iran, but the situation is evolving very quickly.

Government approaches around the world

While the World Health Organization has declared a global health emergency, many countries introduced temporary emergency measures.

- Japan's officials in Hokkaido declared a state of emergency because of the increased number of infected people in the area.
- Switzerland banned all gatherings of more than 1,000 people until Mar. 15, 2020.
- Mongolia closed its borders to China and temporarily banned arrivals from Japan and Korea.

Most governments around the world have established a 14-day quarantine requirement for visitors and employees who traveled in affected areas.

Employers approaches around the world

With the rapid spread in Europe, COVID-19 is becoming an immediate threat to all employers and especially multinational employers.

In the absence of specific provisions and clear guidelines from most governments on the employer's labor obligations toward affected employees, many companies are taking immediate steps to help prevent a further spread of the virus by mandating employees to work from home (when possible) to avoid any potential infection within the workplace. While employers do not have a legal obligation to report an infected employee in most of the countries around the world, employers should still ensure that any affected employee is placed in quarantine to avoid the spread of the virus within the workplace. In addition, in most countries, the employer is forbidden from terminating affected employees, unless they are not cured by the end of the long-term leave. Employers should consult with their local legal counsel before terminating such employees.

Internal communication

Employers should closely monitor any government updates on the current situation and publish an internal communication noting the following:

- Traveling guidelines, including prohibition from traveling when sick.
- Who to contact if employees develop symptoms.
- Preventive measures.

Employers should update these internal communications as the situation develops. In addition, employers may want to inform employees traveling for business outside China of emergency measures and notices (if any) regarding COVID-19 that the destination countries have imposed.

Employee rights in China

The Chinese government has confirmed that all necessary medical treatment expenses for confirmed cases in China will be fully covered by the government. The major insurance companies in China also confirmed they will cover COVID-19 under the existing life and medical insurance.

On Jan. 25, 2020, the Chinese government issued new employment rules for dealing with the COVID-19 that prohibit employers from unilaterally terminating sick employees' employment contracts or initiating a layoff or a workforce reduction due to a COVID-19 outbreak. In addition, employers are mandated, in accordance with the new legislation, to pay all the salary and benefits of their employees who meet any of the following conditions:

- Are a suspected patient.
- Have come into close contact with a COVID-19 patient or a suspected patient.
- Are unable to work due to Chinese government quarantine or another government-imposed emergency measure.

Local employment bureaus will be providing notices and guidance to affected employers and are expected to increase labor supervision and enforcement to ensure employee's rights and interests are protected.

Next steps

Employers should closely monitor any new guidance or regulation to ensure compliance with government regulations. Employers should be prepared for a potential disturbance in production and a likely increase in employees taking leave.

Employers who did not already take these measures to contain and avoid the spread of COVID-19, should consider implementing the following guidelines without delay.

- Arrange for telecommuting and working from home, when possible.
- Develop and implement a detailed action plan with steps to prevent and deal with an outbreak of COVID-19 within the workplace (i.e., providing enough supplies of alcohol wipes and gloves in the workplace, and offering rehabilitation for sick employees returning to work, etc.).
- Direct employees to report suspected cases of COVID-19 within the workplace.
- Screen employees and customers before allowing them to enter the workplace, so long as it is possible logistically and compliant with privacy regulations.



Employee considerations: Prevention and travel considerations

At the time of publication, no known treatment or vaccine is available for COVID-19. As a result, education around the disease and ways to prevent infection is critical. Please check the Centers for Disease Control and Prevention (CDC) for the latest [travel health notices](#).

Those traveling or currently on the ground in the affected areas should exercise extreme caution.

- Avoid direct contact with animals, alive or dead, and surfaces that maybe contaminated with droppings.
- Avoid activities where you're likely to be exposed to large groups of people.
- Avoid people who are obviously sick.
- Maintain good personal hygiene.
- Wash your hands frequently, carry hand sanitizer and avoid touching your face.
- If there is any suspicion of infection, local health authorities should be contacted immediately. COVID-19 shares many symptoms with the common cold, including runny nose, headache, cough, sore throat and fever.

Chinese officials have restricted travel in and out of Wuhan and other cities in the Hubei Province.

For employees returning from China in the last few weeks and feeling sick:

- Reach out to your doctor. Let them know before coming into the doctor's office about your recent travel and symptoms.
- Avoid contact with others.
- Do not travel while sick.
- Cover your mouth with a tissue when coughing or sneezing.
- Wash your hands frequently with soap and water.

It's important for everyone to stay informed of the developing story and any precautions needed. Visit the CDC's dedicated [COVID-19](#) page for updates and more information. Frequent hand washing and avoidance of sick individuals is encouraged.



Business travel accident and medical insurance coverage

Travel accident and medical policies are often secured to facilitate the movement and payment for an injured or sick employee. While there is no exclusion for medical evacuation if someone were to be diagnosed with COVID-19, the voluntary evacuation of employees is typically not covered. Any covered evacuations are subject to the approval of health authorities in both the originating and receiving country. For example, if the U.S. government were to decide not to allow the medical evacuation of a patient known or suspected to have COVID-19, the insurer could be stopped from performing the services.

Another consideration is the availability of flights and possible cancellations of evacuation flights due to security concerns. This may result in evacuation carriers willing to repatriate an employee but unable to proceed due to logistics and restrictions.

Conclusion

The World Health Organization is working around the clock to monitor the public health emergency. For the latest details about COVID-19, visit the [WHO website](#).

The outbreak of COVID-19 is wide ranging in its spread and has affected many companies and organizations around the world both directly and indirectly. Companies face risks to their employees as well as to their revenues. By staying informed on the latest developments, developing or activating contingency plans, educating employees to prevent the spread and infection of the disease, and using available insurance, companies can reduce the impact of this outbreak.



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