



## *Coronavirus Employer Guide: Things to Consider*

### **1. Workplace preparedness**

1. Adopt Coronavirus preparedness policy
2. Provide updated contact information of all employees and circulate emergency contact details for key employees to address a crises response.
3. Carry out a risk assessment at the workplace, ensuring good hygiene practices in the common areas of the office and training employees on the key facts and risks. Provide necessary protective wear if infection at the workplace is imminent.
4. Update employee handbook for any policies or procedures (e.g. sickness absence, dependent care leave, flexible/home working) which may be affected by an outbreak of coronavirus.
5. Implement policy on anyone displaying signs or symptoms and steps employees should take if they suspect they may have come into contact with someone with coronavirus including details of the nearest medical center equipped to deal with the virus.

### **2. Contract Negotiations**

1. Force majeure clauses and application to current and future projects (government issued certificates of force majeure being issued by the Chinese government for suppliers impacted by the virus).
2. Impact to construction supply chain and cost/delay impacts
3. Impossibility/impracticability defenses
4. Consequential Damages
5. Waiver of Liability
6. Liquidated Damages
7. Choice of law/venue (especially international transactions or supply agreements)

### **3. Insurance**

1. Use of travel insurance to address potential event cancellations
2. Insurance coverage arising from exposure to a health crisis (business interruption etc.)

### **4. Employee Leave**

1. Employees requesting leave may be protected by the Family and Medical Leave Act (FMLA) to the extent that they otherwise meet FMLA-eligibility requirements. In the absence of state or federal protections, an employer's internal policies may extend protection to these individuals. Generally, employees are not entitled to take FMLA to stay at home to avoid getting sick. When in doubt, please work with your legal counsel to ensure legal compliance.

### **5. Wage Issues**

1. Other than limited state law exemptions, the Fair Labor Standards Act (FLSA) asserts that employers are generally not required to pay nonexempt employees for hours not worked. Thereby, nonexempt employees directed by their employer not to report to work and not to work from home generally need not be paid. These employees may be permitted to use accrued paid time off, including paid sick leave in jurisdictions with paid sick leave requirements.
2. If an exempt employee has performed any work during the workweek at home, the employee will be entitled to be paid for the entire workweek unless the employee is infected with COVID-19. Employers are not required to pay employees infected with COVID-19, but the must be allowed to use accrued paid time off including paid sick days.



## **6. Workers Compensation**

1. If an employee alleges that they contracted COVID-19 while at work, this may result in a compensable workers compensation claim but the likelihood of a successful claim would be very fact-specific. Workers compensation is a no-fault system, meaning the employee does not have to prove negligence on the part of the employer. The employee only must prove the injury occurred at work and was caused by their employment.
2. COVID-19 is not an “injury” but is instead analyzed under state law to determine if it is an “occupational disease.” To be an occupational disease, which varies by state, an employee must generally show two things:
  - a) the COVID-19 must be “occupational,” meaning it was contracted during the course of employment; and
  - b) the COVID-19 must have been contracted due to conditions specific to the work the employee is conducting and creates a risk of acquiring the disease in a greater degree and in a different manner than in the public generally.
3. Absent state or federal legislation on this topic, an employee seeking workers compensation benefits for a COVID-19 infection will have to provide medical evidence to support their claim. For example, the State of Washington is mandating workers compensation benefits to all health care workers and first responders who contract COVID-19 while responding to infected patients.

## **7. Reporting Requirements**

1. The Occupational Safety and Health Administration (OSHA) has deemed COVID-19 a recordable illness when a worker is infected on the job. This includes employees who are infected while traveling for work and employers must file appropriate reports with OSHA.