

CORONAVIRUS

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COVID-19: Mitigating Risk Using Evolving Guidance

The coronavirus (COVID-19) outbreak has been rapidly spreading worldwide, now including in the United States. This Alert summarizes the available resources and practical steps for employers responding to COVID-19 in the workplace.

Assessing Risk in the Workplace

Employers are likely to face situations where employees are showing symptoms of COVID-19, are confirmed to have COVID-19, have been exposed to a person with COVID-19, or have traveled to a Level 2 or 3 region, as defined by the CDC. Employers should use the [CDC's risk assessment guidance](#) to determine the appropriate steps to take in response to each case.

Assessing level of risk:

The CDC guidance provides a framework for employers to identify the level of risk based on the nature of the employee's exposure to the virus:

- **No Risk:** Interacting with a person with symptomatic laboratory-confirmed COVID-19 that does not meet any of the high-, medium-, or low-risk conditions, such as walking by the person or being briefly in the same room.
- **Low Risk Exposure:** Travel from any country not listed in the medium- or high-risk category. Being in the same indoor environment with a person with symptomatic laboratory-confirmed COVID-19 for a prolonged period of time, but not meeting the definition of close contact.
- **Medium Risk Exposure:** Travel from mainland China outside Hubei Province or Iran, travel from a country with widespread sustained transmission, other than China or Iran, or travel from a country with sustained community transmission. Close contact with a person with symptomatic laboratory-confirmed COVID-19. On an aircraft, being seated within six feet of a traveler with symptomatic laboratory-confirmed COVID-19, which is around two seats distance. Living in the same household as, being an intimate partner of, or providing care in a non-health care setting to a person with symptomatic laboratory-confirmed COVID-19, while consistently using recommended precautions for [home care](#) and [home isolation](#).
- **High Risk Exposure:** Travel from Hubei Province, China. Living in the same household as, being an intimate partner of, or providing care in a non-health care setting for a person with symptomatic laboratory-confirmed COVID-19, without using recommended precautions for home care and home isolation.

Actions to take after assessment:

Once the level of risk has been assessed, employers can follow the CDC's guidance for actions to take for employees that are asymptomatic but have had exposure:

- **Low Risk Exposure:** No restriction on movement. Self-observation.
- **Medium Risk Exposure:** Recommendation to remain at home or in a comparable setting. Practice social distancing. Different levels of monitoring and observation based on the type of contact or travel.

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- **High Risk Exposure:** Quarantine in a location to be determined by public health authorities. No public activities. Daily active monitoring, if possible, based on local priorities. Controlled travel.

Monitoring State Developments – State of Emergency

As COVID-19 spreads and the number of cases continues to spike up, many states have declared a state of emergency. On February 29, Washington first declared a state of emergency after the first death from COVID-19 occurred in the state. On March 1, it was Florida after two residents tested “presumptively positive.” On March 5, California made a declaration after the state confirmed its first death from COVID-19. Maryland followed suit the next day after three residents tested positive. New York made the declaration on March 7 and Maryland on March 8. States continue to make similar declarations as COVID-19 spreads into new areas.

The main purpose of these declarations is aimed at freeing up money and other resources for emergency management. These declarations are routinely made in advance of perceived disasters such as hurricanes and snowstorms to make sure that resources are allocated to the localities that need to prepare for situations that may worsen. State of emergency declarations can remove some of the red tape in hiring contractors and using state funds and in some cases also allow the state’s National Guard to aid in a disaster response.

In the case of COVID-19, a declaration may expedite the processes related to procuring testing supplies and leasing lab space, and allow emergency services personnel to transport patients more efficiently to quarantine locations that are not hospitals. New York’s declaration signaled that a declaration can increase enforcement against certain issues such as price gouging. Usually, a state of emergency does not restrict people’s movement or automatically close government offices or facilities. As cases of COVID-19 will continue to rise in the following weeks, employers are encouraged to monitor relevant state developments.

Staying Informed

CDC Health Alert Network

CDC has a [Health Alert Network \(HAN\)](#) page, which is CDC’s primary method of sharing cleared information about urgent public health incidents with public information officers; federal, state, territorial, tribal, and local public health practitioners; clinicians; and public health laboratories. To date (as of March 12, 2020), HAN has published four updates on COVID-19, the latest being “[Updated Guidance on Evaluating and Testing Persons for Coronavirus Disease 2019](#)” published on March 8, 2020. While HAN is primarily a resource for public health professionals, employers may wish to stay updated and receive alerts by signing up for the HAN email updates [here](#).

Employers should also regularly monitor the current guidance on COVID-19, which includes:

- [Ropes & Gray COVID-19 FAQs](#). Ropes & Gray has a list of frequently asked questions and answers that provides some initial guidance on how to navigate and mitigate the challenges posed by events related to COVID-19.
- [The Centers for Disease Control \(CDC\) COVID-19 Website](#). The website provides information and guidance from CDC.
- [The CDC Interim Guidance for Businesses and Employers](#). The guidance outlines recommended strategies for employers to use now such as actively encouraging sick employees to stay home, performing routine environmental cleaning, and advising employees before traveling to take certain steps. The second part of the

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guidance touches on planning for a possible COVID-19 outbreak in the U.S. including recommendations for creating an infectious disease outbreak response plan.

- [The CDC Interim US Guidance for Risk Assessment](#). The CDC also provides employer guidelines for risk assessment (discussed above).
- [The World Health Organization \(WHO\) Coronavirus disease 2019 website](#). The website provides information and guidance from WHO.
- [The Occupational Safety and Health Administration \(OSHA\) COVID-19 Website](#). The website provides information for workers and employers on COVID-19.
- [The Office for Civil Rights \(OCR\) February Bulletin: HIPAA Privacy and Novel Coronavirus](#). The bulletin highlights relevant areas of the HIPAA Privacy Rule reminding covered entities of the key requirements related to the use and disclosures of patients' protected health information (PHI) and rules related to reporting to governmental and other authorities (discussed below).

Further Guidance for Health Care Facilities and Professionals

The CDC provides separate resources and guidance for health care facilities, which can all be accessed [here](#) and include:

- [Steps Healthcare Facilities Can Take](#). Guidance includes steps on being prepared, communicating with staff and patients, protecting the workforce, and protecting patients.
- [Interim Guidance for Healthcare Facilities](#). Guidance outlines goals and strategies for health care facilities to prepare for and respond to community spread of COVID-19.
- [Strategies to Prevent the Spread of COVID-19 in Long-Term Care Facilities](#). Outlines recommendations specific for nursing homes, including skilled nursing facilities, and much of the guidance can also be applied in assisted living facilities.
- [Interim Guidance for Risk Assessment for Healthcare Settings](#). The CDC published a separate risk assessment guidance for health care personnel (HCP) intended to assist with assessment of risk, monitoring, and work restriction decisions for HCP with potential exposure to COVID-19.

In addition to the CDC resources, the American Health Lawyer's Association (AHLA) also provides a [Toolkit](#) on responding to COVID-19 for hospitals.

Reporting Obligations and OCR Guidance on HIPAA Privacy

The CDC strongly encourages employers to coordinate with state and local health officials so that timely and accurate information can guide appropriate responses in each location of operation. This means that employers should check with their [state](#) and [local](#) health departments to see if they require employers to report cases of COVID-19.

When reporting cases and making relevant disclosures, employers that are subject to HIPAA should refer to the [OCR guidance on HIPAA Privacy](#) to ensure that information is being shared in accordance with the HIPAA Privacy Rule. As a general matter, if there are mandatory reporting obligations by a local health department, employers would be allowed to release PHI without authorization.