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## COVID-19 – Practical Guidance for Addressing the Evolving Challenges

**Legal Update**

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Information and updates regarding the coronavirus disease 2019 (COVID-19) and the implications for businesses and employees are literally flooding in on a daily, and even hourly, basis. Since the initial outbreak, Fredrikson & Byron lawyers have been and continue to advise and assist clients in developing response plans and practical solutions to the ever-evolving challenges presented by this virus.

In all of the myriad of situations posed by the coronavirus, there are a number of key areas for consideration and a number of important measures employers can implement to meet the challenges from a business, employee, customer relations and legal perspective.

### Establish a Response Team

Employers are establishing emergency response teams to include one or more members of executive management, human resources, legal counsel and others charged with gathering information, responding to questions, developing policies and responses to situations as they arise, and issuing communications to employees, customers and others.

### Keep Informed

Staying informed about developments allows for a proactive approach to meeting the challenges of this virus. There are a number of reliable resources for up-to-the-minute developments regarding the coronavirus and notices regarding actions, orders and directives of international entities and governments, and U.S. federal, state and local governments and agencies.

The Center for Disease Control (CDC) website has extensive information, including resources designed specifically for employers. One such resource is the *Interim Guidance for Businesses and Employers Plan, Prepare and Respond to Coronavirus Disease 2019*.

The World Health Organization similarly provides regular updates concerning the virus. The state health departments are also an excellent source of information. As an example, the Minnesota Department of Health has its own dedicated space for coronavirus information and a hotline for questions. Other sources, such as the Harvard Business Review and John Hopkins University publications, among many others, provide periodic information and articles.

## Notices and Information for Employees

Effective and frequent communication is a critical tool in this time of crisis. Employees should be informed about who within the company they should contact with questions and concerns, and they should be informed and provided updates regarding such matters as:

- Identifying symptoms and best practices for maintaining good health and avoiding the spread of the disease; and
- Company policies and directives relating to working in the office or on site, remote work arrangements, absences, medical and other leaves, return to work requirements, PTO, sick time and other compensation available for authorized absences, schedule and workflow changes due to developments, and other information relevant to their work during this period.

In regard to identifying symptoms and best practices for maintaining health, the CDC has issued a number of advisories, and continues to publish resources for employers and employees educating us all on what to expect from this virus and the steps we should be taking.

The CDC indicates that the following symptoms may appear 2 to 14 days after exposure to the coronavirus:

- Fever
- Cough
- Shortness of breath

The CDC recommends that individuals seek immediate medical attention if they develop emergency warning signs for COVID-19 which include:

- Difficulty breathing or shortness of breath
- Persistent pain or pressure in the chest
- New confusion or inability to arouse
- Bluish lips or face

The CDC directions for maintaining good health and avoiding spread of the virus are both simple and critical:

- Avoid close contact with people who are sick.
- Avoid touching eyes, nose and mouth with unwashed hands.
- Wash hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60 percent alcohol if soap and water are not available.
- If sick, stay home to keep from spreading illnesses to others.
- Cover a cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Practice social distancing such as avoiding hugs and handshakes and maintaining, where possible, a physical distance from others.

## Workplace Safety and Readiness

Companies are reviewing, developing and updating emergency preparedness plans, infectious-disease management plans and business continuity plans—or creating plans in instances where such plans are not in place.

Resources include:

- OSHA's recently issued Guidelines on Preparing Workplaces for COVID-19
- OSHA's guidance on infectious diseases
- OSHA's emergency action plan eTool

## Remote Work

Remote work arrangements are being explored and expanded as the situation develops day by day. Many employers have already put into place plans and programs to allow large numbers of workers to work remotely in an effort to avoid business disruption otherwise caused by the spread of the virus.

Companies that did not have existing remote work arrangements in place are developing remote work guidelines, agreements and policies to ensure that employees working remotely are:

- meeting productivity and other job responsibilities;
- actively working and available to, and in communication with, their managers and team members throughout the work day;
- notifying their manager of any absence from work and any PTO, sick time and other paid time off use; and
- with respect to nonexempt employees, accurately recording all time worked each day.

## Travel Restrictions, Work and Customer Meetings

Decisions regarding travel restrictions have, to a certain extent, been taken out of the employers' hands as the federal government has continued to expand international travel restrictions and the CDC has added more and more countries to its "Level 3" Travel Advisory.

As the virus has spread, businesses are issuing directives to their workforces regarding international and domestic travel. Many have already imposed, and many more are expected to impose, a moratorium on international travel, and restrictions or a moratorium on domestic travel, and are giving direction that the work should instead be accomplished via remote work arrangements. Similarly, in light of the CDC recommendations and federal and state government orders and recommendations, large meetings are being cancelled or postponed, and rescheduled as virtual meetings wherever possible to avoid business disruption.

Employers are also imposing requirements on employees who have returned from international travel and cruise ship travel, in particular, to protect against the potential spread of illness. Such measures have included, depending on the circumstances, requiring the individuals to work from home and/or stay home for the 14-day period recommended by the CDC, and provide a doctor's note that they may return to the workplace.

## Employee Absences, Leaves and Return to Work

Employers have and are developing guidance and policies for employees relating to leaves, absences and return to work requirements. As a general rule, employers may, if consistent with their policies, require employees to use as applicable accrued and unused vacation, sick time, PTO and other paid time for absences related to the coronavirus and any remaining absence may be unpaid. Federal and state Family and Medical Leave protections may come into play depending on the severity of the illness in particular circumstances, the medical treatment sought and received, and whether the employee was hospitalized.

## Federal, State and Local Government Initiatives

As of the publishing of this article, the United States Congress has already taken measures to attempt to alleviate the impact of the coronavirus on businesses and employees, and we expect further initiatives on the federal, and the state and local levels. One recent initiative is the Families First Act (H.R. 6201) which was recently passed by the House of Representatives and would provide for COVID-19 paid leave and paid FMLA. The FFA will be addressed in a separate article as more information becomes available.

On March 16, Minnesota Governor Tim Walz issued an executive order expanding eligibility for unemployment compensation benefits for those experiencing absences related to the coronavirus. Iowa has taken similar action. Additional examples are the

expanding mandatory closures and shutdowns (such as in Minnesota, New York, Pennsylvania and New Jersey), and other state measures such as mandated sick leave for employees in certain industries (Colorado).

## Notifications Regarding Infection

Employers are balancing privacy and other legal and workforce safety concerns when developing action plans for notifying others of a positive test for COVID-19. Employers should seek legal advice in developing workforce communications when an employee has informed the employer that he/she has tested positive for the virus. As a general guidance, the workforce may be informed that there has been a positive test without identifying the individual or specific medical information regarding the individual.

An example might be a notice to employees that an employee at a specific location has tested positive for COVID-19, is on leave and seeking treatment, and emphasizing the workplace sanitation and other measures that the company is taking in light of the notification and who to contact with any questions regarding those measures. Individuals who are determined to have been in contact with the tested individual should be given specific direction as to whether they need to be tested and subject to voluntary quarantine and any other applicable requirements.

## Planning for Potential Business Implications

As increasing numbers of state and local governments prohibit gatherings of people and order business, school and other closings, employers are proactively developing contingency plans for temporary or more permanent workforce reductions, compensation adjustments and other cost saving actions.

In planning and implementing workforce reductions, employers should seek advice of legal counsel to ensure compliance with federal, state and local human rights laws, workforce adjustment and retraining laws (the various WARN laws requiring in some instances advance notice to employees and others), and other applicable laws.

Similarly, employers should seek legal counsel in developing and planning for compensation adjustments and reductions to ensure compliance with federal, state and local human rights and wage and hours laws.

## Worker Compensation and Other Insurance Coverage

Companies are proactively engaging in discussions with their worker compensation carriers, comprehensive liability insurance and other insurance carriers to determine the areas, injuries and situations that are likely to be covered and those for which there is not likely to be coverage.

## Legal Implications

Various laws come into play as we advise and develop policies and plans to address the challenges of the coronavirus, including the Americans with Disabilities Act, Title VII and other federal anti-discrimination laws, state and local human rights laws, as well as HIPAA and other privacy laws, and evolving laws and orders specific to the current epidemic. These laws are not likely to specifically prohibit the plans, directives and measures that businesses are pursuing to address the virus and its impact but should be considered in consultation with legal counsel to ensure compliance and control legal risk.

Please reach out to the Fredrikson & Bryon Employment and Labor Team for questions or to seek assistance with respect to any matter related to the COVID-19 virus.