

Coronavirus (COVID-19):

PRIMER FOR MISSOURI EMPLOYERS

Missouri employers are facing unique challenges due to the spread of COVID-19. Below are some tips for Missouri employers as they consider how to confront the employment law issues that may arise in this situation. The tips below are provided as a helpful first step. As issues arise, employers should consult their attorneys if they have further questions. For more information and up-to-date resources, visit mochamber.com/coronavirus.

Sending Employees Home	Employers have the ability to send employees home if they feel it necessary.
Travel	Employers can forbid work travel, but cannot limit personal travel or behavior.
Worker's Compensation	For workers' compensation benefits to apply, the employer must determine that the employee is at a greater risk of contracting the disease than the general public. This can be difficult to prove, especially in an area where the virus is prevalent. If the virus is not especially prevalent in the community, but is in the workplace, the employer may be liable. This includes liability for medical benefits, temporary total disability for time missed and death benefits in the worst-case scenario. If the worker is in the health care field, then the standard is much higher and liability likely exists. There are no benefits unless there is a positive test.
ADA	It is unlikely the ADA will be triggered because it's a transitory condition. There is a small possibility an argument could be made that the virus substantially limited a major life activity like breathing, but this is a bit of a stretch. At this time, an employer cannot take an employee's temperature before allowing them to come to work unless they are medical professionals. Wearing a mask is not an accommodation under the ADA and employers cannot be forced to allow employees to do so.
Sick Leave/FLSA	Generally, there are no regulations on sick leave unless FMLA is triggered. One possible issue is salaried workers who are working from home will likely be required to be paid full salary if they do some work during that time period.
HIPAA	If an employer has an employee test positive, they should inform any other employee who could have been in contact with the infected employee that they have been exposed and should self-quarantine for 14 days. However, employers should not identify the employee or employees who test positive.
Discrimination	Extra effort should be made to be conscious of the possibility of discrimination against employees because of national origin especially tied to COVID-19.
OSHA	OSHA recommends employers with a high- or medium high-risk of employee infection to develop a disease preparedness and response plan. However, there are no specific OSHA standards for COVID-19. Standard OSHA requirements will apply for health care workers and those dealing with pathogens.
Contracts	Most Force Majeure clauses in contracts probably do not cover a pandemic, but it depends on the specific language of each contract. Given the extent of the issue, it is likely that most players on both sides of contracts will be understanding. Opening communications with the other party as soon as possible is recommended.
FMLA	If covered (50 or more employees, employee has to work for a year, plus other standard requirements) FMLA would apply like it would for any other disease or malady. However, FMLA would not apply to people staying home in hope of not getting sick.
Cybersecurity	There are a growing number of COVID-19 cyber scams. Avoid unsolicited email links or attachments.
Chamber Benefit Plan Participants	Anthem will cover tests for COVID-19, but treatment would fall under normal plan operations: No waiver of co-pays, deductibles, etc.