
RISK MANAGEMENT MEMORANDUM

TO: MENTAL HEALTH RISK RETENTION GROUP INSUREDS

FROM: RONALD ZIMMET, GENERAL COUNSEL

SUBJECT: REOPENING AND OPERATING AN OFFICE AFTER A COVID-19 SHUT DOWN

DATE: JULY 2, 2020

Risk management question:

We recently received a risk management question concerning reopening and operating an office after a Covid-19 shut down:

I have been hearing different things going around about COVID and what happens when employees return to work and then get COVID-19. Is there anything you recommend our company do to protect our employees, patients, and our agency should an employee get COVID-19 after returning to work? We are still working remotely and will be for a while, but we want to prepare for when we do come back to the office.

Employer and property owner duties:

Generally, employers and property owners have a duty to provide a safe workplace for employees and for persons invited onto the property. The standard of care is usually that employers and property owners must exercise due care in a reasonably prudent manner.

In the Covid-19 emergency, the determination of what constitutes due care should take into account guidance from the Centers for Disease Control and Prevention (CDC) and the Equal Employment Opportunity Commission (EEOC) as well as relevant laws, HIPAA and the Americans With Disabilities Act (ADA).

Resources:

There are several excellent government resources readily available online which are relevant to the question. The CDC has published an *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (Covid-19), May 2020* which is best to review in full. The CDC has also made available a *Resuming Business Toolkit - Coronavirus Disease 2019 (Covid-19)* which includes a series of easily followed checklists. The EEOC has published a guidance related to pandemics, including the Covid-19 emergency, which discusses the application of the ADA, *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act, updated March 21, 2020*. The Department of Health and Human Services has published a *Guidance on Preparing Workplaces for Covid-19*, which relates to the application of OSHA during the emergency.

Monitor developments

Because the information available about Covid-19 and circumstances are changing rapidly during the emergency, it is important to monitor federal, state, and local public health communications about Covid-19 regulations, guidance, and recommendations.

Guidance highlights:

Highlights from the various publications referenced above which are especially relevant to using due care in opening and operating an office are as follows:

- Require sick employees to stay home.
 - Sick employees should not return to work until the criteria to discontinue home isolation are met in consultation with healthcare providers.
 - Employees who are well but who have a sick family member at home with Covid-19 should notify their supervisor, follow precautions, and stay home.

- Conduct daily in person or virtual health checks before staff and others enter the building.
 - Check symptoms, temperature, and exposure to the virus.
 - When conducting in person health checks, use social distancing, barrier or partition controls, or personal protective equipment to protect the screener.
 - Maintain confidentiality of medical records from health checks.

- Encourage or require, as appropriate, all people in the building to wear a cloth face covering, especially in areas of significant community-based transmission.
 - Wearing a cloth face covering does not replace the need to practice social distancing.
 - Consider posting signs at entrances stating your policy about wearing cloth face coverings.

- Separate sick persons from others and send them home.
 - If it has been less than seven days since the sick person has been in the building, close off any areas used for prolonged periods by the sick person and wait 24 hours before cleaning and disinfecting the area to minimize potential for other persons being exposed to respiratory droplets.
 - Inform those affected about possible exposure to Covid-19, but maintain confidentiality as required by the ADA and HIPAA.
 - Instruct potentially exposed employees and others to stay home for 14 days, telework if possible, and self-monitor for symptoms.

- Educate employees about steps they can take to protect themselves at work and home.
 - Wash hands often with soap and water including key time such as before-and-after work shifts and breaks, after blowing the nose, coughing, or sneezing, after using

- the restroom, before eating or preparing food, after putting on, touching, or removing cloth face coverings.
- Avoid touching eyes, nose, and mouth with unwashed hands.
 - Make tissues available so people in the building can cover their mouth and nose with a tissue during a cough or sneeze.
 - Throw used tissues into no touch trash cans and immediately wash hands with soap and water.
 - Practice routine cleaning and disinfection of frequently touched objects such as workstations, keyboards, telephones, handrails, and doorknobs.
 - Avoid using other employees' phones, desks, offices, or other work tools and equipment.
 - Practice social distancing by maintaining a distance of at least 6 feet from others.
- Maintain healthy business operations
 - Maintain flexible sick leave policies that permit employees to stay home to take care of a sick family member or children including advances on sick leave and donated sick leave.
 - Do not require Covid-19 test results or healthcare providers notes for employees who are sick to validate their illness, qualify for sick leave, or return to work. The ADA allows employers to require return to work notes, but medical facilities are likely to be extremely busy.
 - The EEOC has issued a guidance which allows employers during the Covid-19 emergency to require medical examinations (asking questions about exposure to Covid-19 and symptoms of Covid-19 and measuring body temperature) of employees and to require employees to stay home when necessary to address the direct threat of spreading Covid-19 to others. The ADA also allows employers to require employees to wear personal protective equipment such as facemasks.
 - Support and encourage telework options, if possible.
 - Clean and disinfect high touch surfaces.

- Establish policies and practices for social distancing
 - Implement flexible work hours to limit the number of employees in the workplace at the same time.
 - Increase physical space between employees at the worksite.
 - Increase physical space between employees and patients or others.
 - Use visual cues such as decals or colored tape to indicate where to stand.
 - Postpone nonessential meetings.
 - Close or limit access to common areas where employees and others are likely to congregate.
 - Deliver services remotely.
 - Adjust business practices to reduce close contact with patients and others.
 - Cancel group events.
 - Modify or adjust seats, furniture, and workstations to maintain social distancing of at least 6 feet.
 - Limit use and occupancy of elevators to maintain social distancing of at least 6 feet.
 - Encourage the use of outdoor seating areas.

- Improve engineering controls using the building ventilation system.
 - Ensure ventilation systems operate properly.
 - Increase outdoor air ventilation.
 - Disable demand-controlled ventilation.
 - Open minimum outdoor air dampers as appropriate.
 - Check filters to ensure they are within service life and appropriately installed.
 - Keep systems running longer hours, 24-7 if possible, to enhance air exchange in the building space.
 - Consider using natural ventilation by opening windows if it is possible and safe to do so.
 - Ensure exhaust fans in the restrooms are functional and operating at full capacity.

- Give employees and others supplies to clean their hands and cover their coughs and sneezes.
 - Provide tissues and no touch trash cans.
 - Provide soap and water in the workplace. If not available, provide alcohol-based hand sanitizer that is at least 60% alcohol.

- Limit travel.
 - Minimize nonessential travel.
 - Monitor the CDC's travel health notices and the latest guidance and recommendations.

The CDC's *Resuming Business Toolkit*, referenced above, contains a series of helpful checklists which I encourage you to use.