The Association would like to share some information recently received from an HR attorney to his clients. We hope it will be helpful as you try to figure out how to appropriately respond to the Corona Virus outbreak. These are suggested guidelines and samples you can implement. Things are changing very rapidly, but his advice for all clients, as of right now, is threefold:

1. Address it – send out company or church-wide communication
2. Hold a leadership meeting - discuss action plans and additional benefits or deviations from normal policy
3. Be mindful of employment law implications

1. Address It

You know your people are all talking about this. Give them reassurance that leadership is aware of the situation and will act if, and when appropriate. A sample email could look like:

[Greeting],

As you are all aware, the Coronavirus, or COVID-19, has affected the United States and organizations around our country are taking great steps to contain and slow the spread of the virus.

The speed at which the outbreak takes place matters tremendously for its consequences. That is why many large gatherings have been canceled around the country. The idea is to slow the spread of the disease, or “[flatten the curve](https://www.vox.com/2020/3/10/21171481/coronavirus-us-cases-quarantine-cancellation),” so that our health care systems can handle the influx of patients they are expected to receive.

Most people, around 80% globally, can recover from the virus by just staying home and resting up. The other 20% do need to seek medical attention, typically to be prescribed medication. A small percentage of those who need medical attention do develop pneumonia or other serious complications. We’re seeing that to be especially true for the elderly: those over 70, or those over 60 with other serious health conditions.

We want you to rest assured that our leadership team is taking this seriously. At this point in time, our local area has not been hit especially hard by the disease. If containment becomes more challenging, we will look at work from home options, reduced staff, and even total shut down if necessary.

Our main goal is member and employee safety. To that end, we encourage all staff to follow contact and hygiene recommendations from the CDC, and to practice social distancing when possible. If you do start to feel sick, please do us all a favor and stay home and seek medical treatment if necessary. [if you decide to offer anything right away to staff insert that here. Many of my clients have already purchased hand sanitizers, devoted employees to disinfect the office, or increased sick leave options.].

We are also \_\_\_\_\_ [If you are going to relax your sick time off policies, insert that here, so employees don’t feel like they need to come into work - I'd bold this section if you decide to do something like that. If you don't increase sick leave, you could remind employees of time off options available to them.]

Our leadership team is meeting \_\_\_\_\_\_\_ to discuss additional measures we may take. If you have any questions, concerns, or suggestions please send them to \_\_\_\_\_\_\_.  We understand this is a scary topic, and we want you to know that we are taking steps to protect our team.

[Sign-off]

The sample above is lengthier than many of you will send out, but I do believe it is important to show your staff that you are taking the matter very seriously.

2. Leadership Meeting

Your leadership team needs to balance the interest of the church or company with that of your employee’s safety. This calculation becomes especially tricky for service industries (restaurants, retail and healthcare). Some items to discuss:

·         Sick Leave Options – I’m seeing a wide variety of approaches here. Some companies are providing an extra X days of sick leave. Others are not counting time off for illness against personal time off banks through the end of April. There’s no limit to what you can do.

·         Short Term Disability – it might be worth contacting your insurance carrier to see if your short-term disability policy could be beneficial in this situation.

·         Quarantine Time – many companies are issuing mandatory quarantining for employees that travel, whether for work or personal reasons, to higher risk areas. If you do this, make sure you are consistent across the board. The general rule of thumb here has been two weeks – that’s how long the virus can stay in the body before symptoms appear.

·         Pausing Upcoming Travel – Consider what travel is necessary for your staff. Again, when they return do you want to implement a quarantine time before they return?

·         Slow-down or Shut-down – It may become necessary to slow down operations, allowing more remote work, or even shutting down the company entirely. Make sure you have a plan in place for what that looks like. How will it be communicated to your staff? What type of financial impact will it have? Does your insurance policy cover total shutdowns? What communication should go to clients and customers? Being ahead here will matter tremendously.

3. Remember Employment Laws

Employee health is protected by a number of regulations and departments, such as the ADA, FMLA, HIPAA, EEOC & OSHA. This is an area that intersects with numerous legal responsibilities. The easiest way to think of this is just like any other illness or injury – what do you do when people need time off for being sick? That’s how this should be handled as well. Important items to consider:

1.       **We must keep member and employee health information confidential**. Should one of your workers test positive for COVID-19, simply need to tell other workers who’ve come in contact with them that an employee tested positive - you don’t need to give the name of the employee with the virus, and in fact you can’t give the name. If that employee works from home, you can say Joe is working from home, not Joe has Coronavirus and will be working from home. There’s no need to get into the details.  
  
Keep confidential health information confidential.

 2.       The legal community seems to all agree that **COVID-19 would qualify employees under both the ADA and FMLA**.   
  
Under the ADA, employers with 15+ employees need to provide **reasonable accommodations** for an employee with COVID-19. Taking a few weeks of unpaid time off will almost certainly be a reasonable accommodation. Please don’t automatically fire someone who now has taken too many days off under your leave policies. Look carefully at ADA implications and call counsel if you desire to take action against any employee.

FMLA applies to companies with 50+ employees within a 75-mile radius. Again, this virus would qualify as a serious health condition under the FMLA. That means job protection for up to 12 weeks whether the employee is sick or if an employee has to care for a sick family member.

 3.       **Workers compensation & unemployment insurance could come into play** – Neither of these should have significant implications. For workers' compensation, employees will need to show that they contracted the virus due to work, which will be difficult unless you’re a healthcare worker. But even if an employee is eligible, they’ll only be eligible for benefits while they’re sick – once they’ve recovered (in most cases about two weeks) they will not be able to continue collecting benefits. Similarly, unemployment would only kick in while an employee is unable to work, which should generally be less time than the waiting period to receive the benefits.

Those are the main legal items to consider, but below are some of the most frequently asked questions regarding employees who are sick at work:

 Common Questions

**Can we send employees to the doctor or home if they are coughing or appear sick?**

You can require they go home but you can’t force them to go to the doctor (but you can ask them to). If the employee refuses to go to the doctor you can require that they either provide documentation that they are not infectious or that they appear without symptoms before returning to work.

**What if an employee says they don’t want to travel for work – to a place like Seattle for instance?**

I’d handle this on a case-by-case basis. Can you send someone else? Can it be done via teleconferencing? There are a lot of traps here – work with me or another trusted partner to make sure you handle this appropriately.

**Can we take an employee’s temperature?**

As of yesterday, you can. I am not advising it for my clients, as there are less invasive ways to promote health and safety, but the EEOC has said in past opinions that if a disease is classified as a pandemic then employers are allowed flexibility to perform some medical testing that is not normally allowable. Again, remember that you can send someone home, but I’d still be careful about forcing “medical exams”

I hope you find the above information helpful, please feel free to share it with anyone who you think could also use this information. We will share more pertinent information as available.