

EMPLOYMENT LAWSCENE ALERT: CAN I SEND MY SICK EMPLOYEE HOME?

Many companies are currently wondering what to do if they know an employee or their family member is sick with coronavirus or the flu or if someone seems to be sick with the coronavirus or the flu. The CDC has issued Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19). The CDC has issued the following recommendations, along with other tips and guidance:

- **Actively encourage sick employees to stay at home.** This means that employees who have symptoms of respiratory illness (e.g., cough, fever over 100.4°) should not come to work until they are free of all such symptoms for at least 24 hours, without the use of medicine. Employees who are caring for someone who is sick may also refer to CDC guidance on how to conduct a risk assessment of their potential exposure and should also stay home if they are at risk of contracting a contagious illness. This may require employers to be more flexible with their sick leave policies and use of time off. If sick employees are encouraged or required to come to work for fear of losing their jobs, it could have a larger impact on your company by making more employees sick and further limiting the company's ability to conduct normal operations.
- **Separate sick employees.** Employees who show signs of respiratory illness while at work should be separated from other employees and sent home immediately.
- **Emphasize staying home when sick, respiratory etiquette, and hand hygiene.** Companies should emphasize that sick employees should stay home. Additionally, while at work, employees need to cover their noses and mouths while coughing and sneezing, use tissue, wash their hands, and use hand sanitizer frequently. Companies may consider putting up posters with reminders of these actions and providing tissues and hand sanitizer. The CDC has sample posters ([here](#)) that employers can post at their workplace that encourage employees who are sick to stay at home.
- **Perform routine cleaning.** Companies need to ensure that frequently touched surfaces - workstations, countertops, doorknobs - are cleaned and disinfected regularly. Companies may also consider providing disposable wipes for employees to use.

There are certain legal obligations regarding how companies treat sick employees. All Wisconsin companies with one or more employees are subject to the Wisconsin Fair Employment Act ("WFEA"), and all companies with fifteen or more employees are subject to the Americans with Disabilities Act ("ADA"). Both of these laws protect employees with disabilities and perceived disabilities, as well as employees who are associated with people with disabilities, from discrimination. However, these laws still allow companies to send an

employee who has or appears to have a contagious disease such as coronavirus or the flu home because that employee poses a direct threat of making other employees sick.

In conclusion, yes, sick employees who pose a risk of spreading a contagious illness to your other employees can be sent home from work and should be encouraged to stay home from work until they no longer pose such risk. In this instance, businesses may need to consider one-time, situation-based modifications to their sick leave and absenteeism policies that would allow employees to miss work and not be penalized for it. Employers should not make their decisions about sending an ill employee home based on fear but, rather, on rational, objective, and observable facts designed to protect the interests of all employees and to ensure that your company's continued operations are not placed at risk.