



## 5 Legal Pitfalls to Avoid in the Face of Pandemic from an Employment Law Expert

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**Nick Cianci**

President, Compass Total Benefit Solutions, LLC

As of March 1, 2020, the [coronavirus](#) has been detected in 60 locations worldwide. The World Health Organization has declared the outbreak a "[public health emergency of international concern](#)" (PHEIC). Alex M. Azar II, the Health and Human Services Secretary, declared a public health emergency (PHE).

While this might not be a breaking headline in the sea of Coronavirus news stories, the state of emergency has many employers wondering how to ensure the safety of their employees and patrons. Moreover, how do you prepare for a potential outbreak while avoiding legal pitfalls?

At this time, [nonpharmaceutical intervention](#) is the only strategy available to combat the pandemic. There is no vaccine available for prevention and no approved medication available for treatment.

The lack of available treatment leaves healthcare and long-term care facilities, especially vulnerable to an outbreak. In Kirkland, Washington, health officials are investigating a [COVID-19 occurrence](#) that has hospitalized two individuals from the Life Care Center nursing facility.

The cases include a 40-year-old female healthcare worker and a resident in her 70's. Both tested positive for the disease and have been hospitalized. The resident is in serious condition. Back at the Life Care Center, more than 50 residents have experienced flu-like symptoms and will be tested for coronavirus.

Dr. Jeffrey Duchin, health officer for Seattle and King County [comments](#),

*"In addition, we're aware of a number of individuals associated with the long-term care facility who are reportedly ill with respiratory symptoms or pneumonia, and we're in the process of investigating this situation as an outbreak... We're in the beginning stages of our investigation."*

The Washington nursing facility has suspended visits from family, volunteers and vendors, put admissions on hold, and are working with the support of the [Centers for Disease Control and Prevention](#).

What actions can you take with the threat of an outbreak? An employment law expert Steven Schwarzberg [published](#) a few tips for employers to focus on pro-active procedures to anticipate concerns about coronavirus.

## **OSHA's "General Duty Clause"**

The General Duty Clause requires employers to provide a place of employment free from hazards likely to cause death or serious harm to employees.

This leaves employers with the duty to protect their employees from a pandemic virus.

## **Protecting America's Workers Act (PAWA)**

This federal act expands the coverage of the general duty clause to the public sector.

## **Screening**

There are two circumstances in which an employer can require medical testing. The first is if the exam is directly related to the job and a necessity of the business. The latter is if the employee poses a reasonable threat to the health and safety of himself or others.

An employer can also require an employee to produce a doctor's note if they have returned from an affected area or exhibit symptoms of the disease. Do not request a medical diagnosis; instead, ask whether the employee is fit to return to the workplace.

## **Discrimination**

The notion of advanced outbreak in China has led to anti-Asian discrimination in some cases. Avoid heightened scrutiny for illegal discrimination by treating all employees equally. Review the company's anti-discrimination, harassment, bullying, and retaliation policies.

## **HIPAA**

Primarily, employers must keep all medical information confidential. You may not disclose who is or who is believed to be infected. An exception exists to protect the lives of others if there is a genuine risk of an employee passing infection.

Employers should always communicate information consistent with the guidelines from the CDC and official sources to avoid providing opinions or misinformation about the virus. Follow pandemic [preparedness protocols](#) that were developed by the CDC in response to influenza and repurposed for COVID-19.

This is not a comprehensive list. Consult legal counsel with a specialty in employment law.