

SCHOOLS CORNER

The DESE has issued its own guidance addressing school closures, field trips, large events and the 180 school day requirement.

<http://www.doe.mass.edu/sfs/emergencyplan/covid19.html>

In addition, the U.S. DOE has issued guidance and fact sheets related to COVID-19 and FERPA, providing services to students with disabilities and complying with ESSA.

<https://www.ed.gov/coronavirus?src=feature>

SAFE HAND WASHING



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Coronavirus (COVID-19): Addressing a Pandemic

On March 10, 2020, Governor Charlie Baker declared a State of Emergency to assist state and local health officials response to the coronavirus (COVID-19). Speaking to employers, Governor Baker advised that policies, including emergency preparedness and response plans be reviewed, along with sick leave policies, and workplace hygiene and travel policies. In addition, employers were advised to limit or cancel large events, and encourage or allow teleworking if possible.

We are closely monitoring this situation and are available to provide assistance and support as needed. Below is a summary of some of the FAQs related to Employees and Workplace Safety that we have received and some resources for employers.

Q: May employees be sent home if they display influenza or flu-like symptoms?

A: Yes. The CDC states that employees who become ill and experience symptoms at work during a pandemic may be asked to leave the workplace.

Q: What information may an employer request from employees who report feeling ill at work or who call in sick?

A: Employees may be asked if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. The ADA protects employees with disabilities but it does not restrict how you can interact with employees during a pandemic. For instance, during a pandemic, an employer may ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason, and employees can be required to be medically examined to determine if they have contracted the disease if an employer has a reasonable belief that employees will pose a direct threat due to a medical condition. When dealing with unionized employees always consult the collective bargaining agreement.

Q: Can an employee refuse to come to work due to fear of infection?

A: Generally not. Employees may only refuse to work where they believe that they are in imminent danger, which OSHA defines as “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”

Q: Does the federal Family and Medical Leave Act (FMLA) apply to this situation?

A: Employees requesting FMLA leave may be protected to the extent that they meet the FMLA-eligibility requirements. In general, employees are not entitled to take FMLA to stay home and avoid getting sick, however decisions should be made based on individual facts.

Q: Are employees who contract COVID-19 eligible for worker’s comp benefits?

A: Probably not. In order to be eligible for workers’ compensation benefits, claimants need to prove that the diagnosed illness arose out of and in the course of their employment, and not through other potential sources of exposure. Health workers and first responders on the front lines of the COVID-19 outbreak may have a stronger case.

In addition to the above, we have posted guidance materials on our website. This is a rapidly evolving situation and we will do our best to keep those materials up to date. Be sure to contact your NMP attorney if you have any questions.