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Client Alert: Coronavirus Guidelines for Ohio Employers

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Amid increasing concern over Coronavirus Disease 2019 ("COVID-19"), companies are taking steps to protect their employees and to prevent the spread of infection. It is important for employers to prioritize their employee's health, implement policies to limit the potential threat of infection, and to closely monitor the developing situation.

Be Mindful Of Legal Pitfalls. There are many important legal considerations before implementing policies relating to the virus. Some of the relevant concerns include the following:

- Inquiries to employees about medical conditions must be consistent with Americans with Disabilities Act ("ADA") guidance. Employers may ask employees about symptoms that are consistent with the Coronavirus, including cough, respiratory issues, sore throat and fever. Employers may also implement infection-control practices described below. However, employee health information must remain confidential under ADA. Thus, information about specific illnesses or exposure should be shared on a "need to know" basis that is job related and consistent with business necessity. Employers can notify employees or visitors of a possible exposure in the workplace, but should maintain confidentiality as required by the ADA. The communication plan discussed further below should emphasize planning and procedures, and not disclose specific health information of a particular employee. Contact counsel for specific guidance.
- Employers may make non-discriminatory inquiries to identify employees who may not be able to work. Thus, you can inquire whether the employee would need to care for a child in the event of school closures, care for other dependents, would have transportation issues if public transportation were unavailable, or would otherwise be considered high risk, but must so do in a non-discriminatory manner.
- You may require medical documentation to validate an employee's illness or confirm fitness for duty, but the Centers for Disease Control and Prevention ("CDC") recommends against this because doctors and hospitals may become overburdened with such requests.
- Telecommuting opportunities can be offered as a reasonable accommodation for those with disabilities that put them at high risk, and should be offered uniformly in a nondiscriminatory manner.
- Under Ohio law, employers may mandate using paid leave to cover absences consistent with the employer's policy. However, if an employee does not have any available PTO or if the employer is requiring the absence (i.e. mandatory quarantine period), providing paid leave may make more business sense and

employees in other states may have a legal right to paid leave for pandemic-related absences. It is best to address these types of questions to counsel to address on a case-by-case basis.

- FMLA may not be available to someone who has potential exposure, but does not currently have any symptoms, or who is caring for others with symptoms, since many cases of the virus are minor and would not meet the definition of a serious health condition. Requests for FMLA should be addressed with counsel on a case-by-case basis.
- Under Ohio law, it would likely be difficult for an employee to have a valid workers' compensation claim due to exposure to the virus in the workplace, unless the employee could show the hazards of the workplace subjected the employee to greater risk of contracting the disease than faced by the general public. This analysis may differ depending on the nature of the workplace and the risk presented.

Communication. Communication is essential. Employees should be timely notified of all policies and procedures implemented by the company to limit the spread of the virus. Employees should be freely encouraged to reach out to Human Resources or other appropriate personnel to ask any questions.

Remote Work/Limit Group Activities. Guidance from health experts suggests that the virus will continue to spread, and that social distancing is one of the most effective ways to combat the threat. Consider remote work arrangements whenever possible to avoid COVID-19 spread. Consider restricting conference attendance and other events with large group attendance. Consider limiting visitors unless business critical, and visitors who have traveled to high-risk areas until at least 14-days symptom free following their return.

Restrict Travel. Limit domestic and international business travel to business-critical only. Require any essential travel to be approved in advance by management. Encourage virtual meetings to decrease travel. Require notice for any out-of-country personal travel, particularly if the country listed is on the CDC's Level 3 Travel Health Notice list or an area with an extensive outbreak. Consider a 14-day work from home period for any employee who has traveled to an impacted area.

Implement Precautions To Prevent Infection At The Office. Focus heavily on sanitation efforts at the office, including high-contact surface areas such as doorknobs, counter tops, tabletops, bathroom fixtures, phones, keyboards, and tablets. Consider hiring a reputable cleaning company to address sanitation efforts. Increase employee access to hand sanitizer (including at entrance points and group areas), tissues, gloves, and disinfectant wipes. If an employee shows respiratory symptoms that coincide with COVID-19, such as fever and cough, make sure that employee immediately seeks medical attention and limits office contact until symptom free.

Emphasize Personal Prevention: Encourage employees to exercise good personal hygiene. Wash hands with soap and water often for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available. Avoid touching eyes, nose, and mouth with unwashed hands. Avoid close contact with people who are sick. Cover mouth and nose with tissue or sleeve (not your hands) when sneezing or coughing. Employees should stay at home if exhibiting signs of fever or sickness.

The coronavirus is a wake-up call for companies to review their policies and procedures about safeguarding employees, customers, visitors, and their operations. Businesses are encouraged to reach out to our legal team so we can assist with any questions.

If you have any questions, please do not hesitate to contact Rebecca Shope at rshope@shumaker.com or 419.321.1453 or Mechelle Zarou at mzarou@shumaker.com or 419.321.1460.

