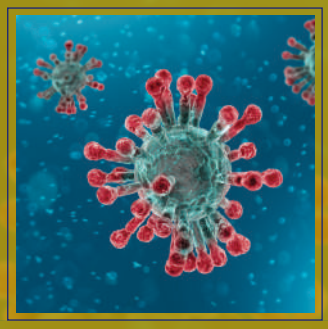

NECA Labor Relations

Top Ten NECA Contractor Coronavirus Labor and Employment Q&A

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

The following are general guidelines from NECA labor relations. Chapters and members are advised to consult their CBA and state and local laws for additional information.

1 Question: Can I send an employee who appears sick home? Can I ask questions about his or her health and symptoms?

Answer: Contractors can be proactive in sending employees home when they appear to have acute respiratory illness symptoms, such as coughing or shortness of breath. Generally, a Contractor can ask that employee to seek medical attention and get tested for COVID-19 when exhibiting these symptoms. Guidance from the Equal Employment Opportunity Commission (EEOC) indicates that if the situation is declared a "pandemic," Contractors could begin to ask the employees questions about their symptoms, or even take employees' temperatures. Until then, those types of inquiries are considered a prohibited medical examination under the Americans with Disabilities Act (ADA). Lastly, while you can legally require medical clearance for a return to work, be mindful of the delay in getting such doctor's notes in the current health environment.

Now that the World Health Organization (WHO) has declared a pandemic, the EEOC advises to check CDC and OSHA updates regularly to see how expansive medical examinations and inquiries can extend. This from the EEOC guidance:

"Direct threat is an important ADA concept during an influenza pandemic.

Whether pandemic influenza rises to the level of a direct threat depends on the severity of the illness. If the CDC or state or local public health authorities determine that the illness is like seasonal influenza or the 2009 spring/summer H1N1 influenza, it would not pose a direct threat or justify disability-related inquiries and medical examinations. By contrast, if the CDC or state or local health authorities determine that pandemic influenza is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination.

During a pandemic, employers should rely on the latest CDC and state or local public health assessments. While the EEOC recognizes that public health recommendations may change during a crisis and differ between states, employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information."

2 Question: What do I do if an employee reports a positive test?

Answer: If an employee does test positive for COVID-19, the Contractor should ask the employee to identify all individuals who have worked in close proximity with them during the previous 14 days. The positive employee and those employees can be sent home for a time period consistent with CDC recommendations, law and contractual obligations. While the employees should be informed that they have been exposed, it is important that the name of the infected employee is not disclosed, or the Contractor could risk a violation of confidentiality laws. These same precautions should be taken when an employee has a suspected but unconfirmed case of COVID-19, or when an employee self-reports that he or she has had contact with an individual who has tested positive for COVID-19.

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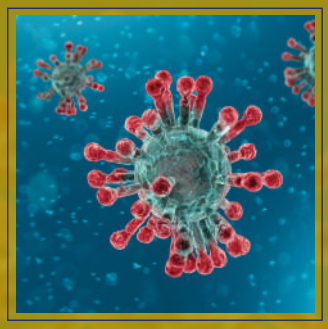

3 Question: Can an employee refuse to come to work or travel with no adverse employment ramifications?

Answer: A Contractor cannot literally force an employee to come to work or to travel for work. However, in most circumstances, that employee is subject to discipline and/or termination for such refusal. The Occupational Safety and Health Act (OSHA) provides that employees can refuse to work if they believe they are in imminent danger. Requiring an employee to travel to a country deemed as High-Risk by the CDC currently may rise to that level. However, the Centers for Disease Control (CDC) has determined that at this time most work conditions in the United States do not meet the elements required for the employee to refuse to work.

However, be mindful of a collective objection to working in a particular situation – perhaps with a colleague who just returned from overseas. Such activity could be protected as concerted by Section 7 of the National Labor Relations Act (NLRA). In addition, Section 502 could be invoked by the union to support a decision not to work in an "abnormally dangerous" situation – even in the face of a no-strike clause.

4 Question: Can a Contractor prohibit or regulate off-duty travel by employees?

Answer: Generally, no – unless a government mandate or restriction has made the travel illegal. Contractors should make efforts to educate their employees on travel and the areas that are on the watch or restricted list. However, Contractors may require an employee to inform the them if they are traveling to a High-Risk country as determined by the CDC. Contractors should also let employees know that, upon their return, they may be prohibited from coming to work for a period of time until the incubation period for COVID-19 has passed. As COVID-19 spreads across the U.S. and other regions, Contractors should consult the CDC or medical resources to make determinations based on the most up-to-date information.

5 Question: Must a Contractor continue to pay an employee that stays home or is sent home because of COVID-19?

Answer: The answer to this question depends on whether your CBA or another contract addresses such absences. For example, if the employee is SENT home, that may qualify as work-required leave. You may also need to check state law on sick and safe leave. Under the Fair Labor Standards Act (FLSA), the answer is generally no. FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires. Exempt employees properly paid on a salary basis would continue to receive full salary for any time worked during the workweek at issue.

6 Question: Can a Contractor charge leave for absences occasioned by COVID-19?

Answer: Again, you will need to consult your CBA or other employment contract as well as state law, but the FLSA generally does not regulate the accumulation and use of vacation and sick leave and would make no such requirement. Be advised that there is some discussion relating to a federal legislative appropriation and mandate on sick leave and coronavirus. Lastly, the Family and Medical Leave Act may come into play and require at least the provision of LWOP and job protection.

7 Question: Can a Contractor make changes to work schedules or duties in response to circumstances related to COVID-19?

Answer: It depends on whether your CBA has an "emergency or exigent circumstances clause" that relates to mandatory subjects of bargaining. Of course, the NLRA imposes on

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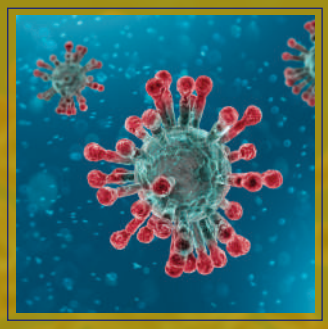

contractors the duty to bargain in good faith over mandatory subjects of bargaining such as wages, hours, and terms and conditions of employment, and Contractors who make unilateral changes may be subject to unfair labor practice charges that would apply even in emergency situations such as this one. The best course of action is to work with your NECA Chapter to engage the union on these issues and try to bargain an addendum or memorandum of understanding to cover the exigent (and likely temporary) circumstances.

8 Question: Can an employee claim workers' compensation if he or she contracts COVID-19 and alleges that it was because of the work environment?

Answer: Workers' compensation is statutory and very dependent on state law. That said, basic workers' compensation law requires that the contraction of a disease be "occupational" and that it arise out of the peculiar conditions of the workplace. Best advice is to refer all such claims to your insurer or third-party administrator and follow their guidance on time off and benefits.

9 Question: Can a Contractor institute a work travel-ban for employees?

Answer: Absolutely. A ban on nonessential work-related travel may be appropriate if employee travel would take them to areas where there is elevated risk of exposure or would otherwise cause unnecessary and elevated risk of exposure (e.g., certain airline or train travel). Situations should be evaluated on a case-by-case basis, considering guidance from the CDC and other organizations, the nature of expected travel and whether ready alternatives to travel might be available, such as videoconferences, postponement, and the like.

10 Question: What does a Contractor need to do if an entire job site is shut down and the owner or contractor prohibits all work for an extended period of time?

Answer: If the job site becomes inaccessible because of COVID-19, a Contractor should immediately consult the CBA, communicate with the NECA Chapter and the union, and be mindful of any obligations related to layoffs or shut-downs under the federal and state Worker Adjustment and Retraining Notification (WARN) Act. Events that trigger the requirements of the WARN Act are: 1) a plant closing resulting in employment losses of at least 50 employees; 2) a mass layoff of at least 50 employees where the employment loss consists of at least 33% of employment at the site; or 3) a mass layoff with an employment loss of 500 or more at a single site of employment, regardless of its proportion of total employment at the site or if the employment loss is part of a plant closing.

NECA will continue to monitor the coronavirus crisis. Please refer to the resources on the NECA website, which will be periodically updated.

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