

# COVID-19: Risk Management of the Worksite

## B

### The Three Be's

1. Be flexible;
2. Be mindful; and
3. Be safe.

**Flexibility.** You must be flexible with your policies and practices. This includes sick leave, vacation time and/or other paid time off as well as flexible with work schedules and remote work. You should review policies and procedures to ensure they are compliant with public health directives. These policies and procedures can be emergency or temporary lasting through the end of July/August and possibly even December.

**Mindful.** There are many laws which are relevant to this current pandemic, including, for example, the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Occupational Safety and Health Act (OSHA), Workers' Compensation Laws, and the Families First Coronavirus Response Act (FFCRA). These laws are playing a major role in how employers handle COVID-19 in the workplace. Among other things, these laws require:

1. **ADA** – covered employers to provide reasonable accommodations to employees who have a disability unless doing so would cause an undue burden.
2. **FLSA** – payment of minimum and overtime wages along with record keeping.
3. **FMLA** – up to 12 weeks of job protected unpaid leave.
4. **OSHA** – a safe work environment.
5. **Workers' Compensation Laws** – tort immunity for employers where an employee is injured on the job or suffers an occupational disease while at work.

6. **FFCRA** – paid sick leave to employees with COVID-19 or who exhibit signs or symptoms of COVID-19, or who are caring for family members with COVID-19 or family members who are showing signs or symptoms of COVID-19 along with expanded paid leave under the FMLA for employees who are caring for children under age 18 who are not in school because of COVID-19.

**Safety.** The best way to control a hazard is to eliminate it. Many employers, as recommended by OSHA, have developed an infectious disease plan that provides a guide for protective actions to be taken in the workplace during a pandemic. OSHA has also developed a comprehensive guide for employers which provides guidance in managing COVID-19 that incorporates guidance from various health directives, including those from the Centers for Disease Control.

OSHA recommends that an employer:

1. require its employees to wash hands frequently;
2. provide employees with soap, hand sanitizer with at least 60% alcohol and tissues;
3. encourage sick employees to stay home;
4. send employees home who show up to work sick until they are no longer sick;
5. require employees to self-monitor and contact management if they become sick;
6. advise other employees if an employee they have come into contact with becomes sick and advise them to self-monitor;
7. proactively keep employees home if they have had contact with a sick employee;

(continued)

8. deep clean any equipment or areas used by a sick employee;
9. remind employees about respiratory etiquette;
10. discourage employees from using other employee's tools, phones and equipment;
11. regularly clean and disinfect surfaces with approved cleaning supplies that kill bacteria and viruses;
12. require social distancing among employees;
13. reduce hours, cut back staff or permit remote work to allow for social distancing;
14. assess employees' job duties as very high, high, medium and lower risk to determine which controls should be administered; and
15. implement controls, which include **worksite controls** that isolate employees from work related hazards such as increased ventilation or physical barriers; **administrative controls** which require action by the employer or the employee such as cross-training employees to perform multiple jobs, reducing work force, requiring employees to frequently wash hands, and providing up to date training; and **personal protective equipment** which are designed to protect employees that are specific to the worksite and the employee's job duties.

## Helpful government resources for employers to mitigate risk:

[www.dol.gov/coronavirus](http://www.dol.gov/coronavirus)

[www.eeoc.gov/coronavirus](http://www.eeoc.gov/coronavirus)

[www.osha.gov/SLTC/covid-19](http://www.osha.gov/SLTC/covid-19)



Jamie B. Dokovna, Esq.  
Shareholder  
Becker & Poliakoff  
Labor & Employment

**Becker**

[beckerlawyers.com](http://beckerlawyers.com)

561.655.5444

561.820.2890

[jdokovna@beckerlawyers.com](mailto:jdokovna@beckerlawyers.com)