

## Client Alert

### **What Employers Need to Know About the Ebola Virus and its Impact on Decision Making in the Workplace**

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Until recently, the Ebola virus was believed to be confined to locations outside the United States and the World Health Organization continues to assert that the chances of becoming infected with the Ebola virus are “extremely low,” even for those who have travelled to affected regions. More recently, however, there have been two new reports of health care workers in Dallas, Texas confirmed to have tested positive for the virus and there is increasing concern about the protocols now in place for dealing with the monitoring and treatment of those infected with or potentially exposed to the virus. Given that the Ebola virus can impact a wide range of industries and businesses, nationally and certainly internationally in those areas where more cases have been reported, employers must ensure they have appropriate procedures in place to protect their employees from the health risks associated with the West African epidemic and that which may soon be characterized as a pandemic.

In 2009, the Equal Employment Opportunity Commission (“EEOC”) published the [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) in connection with the H1N1 flu pandemic. Employers should review this guidance to get a better understanding of the types of actions they should consider taking in the event they believe an employee has been exposed to the Ebola virus. Employers should remain mindful, however, that an assessment of whether an employee poses a direct threat in the workplace must be based on objective, factual information, and “not on subjective perceptions . . . [or] irrational fears.” In other words, employers must rely on guidance from the Centers for Disease Control (“CDC”) as well as any state or local health authorities.

Although the CDC has not yet categorized the Ebola virus as a pandemic, it has issued recommendations for monitoring those individuals who have traveled to the affected areas. To that end, employers are permitted to question employees about their recent travels out of the country, even if such trips were for non-business related reasons. According to the CDC, individuals who have recently traveled to a country experiencing an Ebola outbreak and who do not experience any symptoms of the Ebola virus (and have had no known exposure to the virus)

should self-monitor for symptoms for a 21-day period after leaving the outbreak area. During this self-monitoring period, individuals —the CDC expressly states—“can continue [their] normal activities, including work.” The most recent CDC notice is available [here](#).

In light of the EEOC’s and CDC’s guidance, an employer could likely be deemed to be in violation of the law by selectively excluding an employee who recently traveled to an affected area, assuming that individual manifests no symptoms of the Ebola virus and has not been in contact with anyone that was experiencing symptoms of the virus.

On the other hand, an employer may require an employee to stay home from work until medically cleared if that employee *is* experiencing symptoms of the Ebola virus or otherwise has reported to his or her employer having had contact with an infected individual. In this, quite obviously, an employer must rely on employees’ candor and honesty as there is little basis on which, at least initially, to test the veracity of employees’ statements on the topic. Given the virulence of the disease, and the efforts of many to avoid unnecessary and ill-founded fear with respect to simple interaction among co-workers and others, all those implicated should carefully consider the exercise of sound judgment with respect to the workforces for which they are responsible.

As such, employers should continue to monitor the CDC website for further developments and consult with legal counsel to determine whether additional safety precautions are required.

If you require any additional information on this matter, or any other employment-related issue, please contact:

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