



County Risk Sharing Authority

a service program of the County Commissioners Association of Ohio

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RISK CONTROL SERVICE BULLETIN

CORONAVIRUS (COVID-19)

On Tuesday, Governor DeWine declared a state of emergency for the entire State of Ohio due to COVID-19. Yesterday, Governor DeWine confirmed the fourth COVID-19 case in Ohio. Federal, state, and local governments, including CORSA member counties, are working extremely hard to administer operational continuity plans that preserve life and safety, limit service disruptions, and protects county assets.

Plans vary based on the unique individual needs of a jurisdiction as well as the specific functions of appointing authorities and agencies. While this is an unprecedented time, it is a time to act calmly with an appropriate sense of urgency and to make operational decisions based on facts and context.

CORSA as the property and casualty risk pool of choice for Ohio Counties respectfully suggests that member counties, appointing authorities, and agencies consider the following employment practice considerations as a part of their continuous administration of operational continuity plans the following:

1. Be very mindful of applicable federal and state laws, regulations, and collective bargaining agreements that govern the workplace. Obtain legal guidance prior to taking employment actions; and
2. Use CORSA Risk Management Services. Attached is an Employer Checklist that you may find helpful when faced with COVID-19 employment issues. Additional Risk Control policies and services can be found at: www.CORSA.org.

This Risk Control Bulletin & Employer Checklist is not medical or legal advice and it should not be construed as such. Again, we strongly recommend that employment actions should only be implemented based on local needs after consulting with legal counsel. Should you have questions regarding this Bulletin or CORSA Risk Management services please contact Frank Hatfield, CORSA Risk Control Manager, at (614) 560-1474 or fhatfield@ccao.org

March 12, 2020

EMPLOYER CHECKLIST

- I. **Be Prepared and Develop a Plan.** Counties should develop a plan in order to ensure that they will continue to provide the necessary services to its citizens in the event of mass absences due to a pandemic. Counties should determine which employees are essential and non-essential in various agencies and offices. Essential employees should be advised of both their status and expectations during a pandemic. Additionally, Counties should revisit the best methods to advise the public and employees of any updates regarding the pandemic and level of services being provided.
- II. **Employees.** Actively encourage sick employees to stay home until they are free of fever or other symptoms. Employees should also be encouraged to stay home if they have a family member that is ill. During a pandemic, Counties should consider relaxing the requirement that a health provider's note be provided to validate an employee's illness, unless there is suspicion of sick leave abuse. Also, consider altering/implementing relevant policies in order to allow employees to work from remote locations.
- III. **Consider Applicable Leave Provisions.** There are many types of accrued leave and other leave benefit programs that a County employee may be eligible to use during and after a pandemic. Employers should review their leave policies and collective bargaining agreements with employees and supervisors to confirm awareness.
 - a. **Sick Leave.** Employees may use available sick leave for absence due to personal illness or the illness of the employee's immediate family member. Employees *may* also use sick leave for "exposure to contagious disease that could be communicated to other employees." Sick leave should be provided consistent with the relevant policy and/or collective bargaining agreement. As noted above, except in instances of suspected abuse, employers may wish to consider suspending the requirements to provide a note from a health provider.
 - b. **Discretionary Leave.** If an employee has no sick leave, the employer has the discretion to allow an employee to use other types of accrued leave in lieu of sick leave, such as vacation leave, personal leave and/or compensatory time-off. Again, if necessary, consider relaxing notice requirements in the policy or collective bargaining agreement. Unpaid leave may also be appropriate in the event that an employee lacks any accrued, but unused leave. If the County has a sick leave donation program/policy, sick leave donation may also be appropriate.
 - c. **Work-Required Leave.** In the event of a quarantine period, or because an employee has contracted (or is suspected of having contracted) COVID-19, the County may require the employee to not to report to work. However, the employee may be required

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to be paid in that scenario. However, be advised that there may be FLSA implications for exempt employees.

- d. **FMLA Leave.** Employees may be eligible to use Family Medical Leave consistent with the FMLA. If the employee satisfies FMLA eligibility requirements, the employee would be entitled to FMLA protections for the related absence. Again, supervisors should be advised of the requirement to immediately designate the leave as FMLA-qualifying. While on Family Medical Leave, employees would be required to utilize paid leave concurrent with the use of FML pursuant to the County's policy or be placed in an unpaid status.

IV. COVID-19 and the ADA. For ADA purposes, employees who have contracted the virus must be treated the same as non-infected employees, so long as the infected employees can perform their essential job functions without being a direct threat to the health and safety of others. If the employee poses a health or safety threat to the workforce, the County may place the employee on leave and/or require a medical examination. During a recognized pandemic, employers have greater latitude to ask questions of an employee regarding symptoms, so long as the information is kept confidential.

- a. **Medical Examinations and Inquires.** The ADA protects employees with disabilities, but during a global health emergency, as recently declared by the World Health Organization (WHO), employees can be required to be medically examined to determine if they have contracted the disease when an employer has a reasonable belief that employees will pose a direct threat due to a medical condition. WHO has raised its risk assessment of the COVID-19 to its highest-level. Because COVID-19 poses a direct threat to employee health and safety, the presence of observable symptoms may provide objective evidence for a disability-related inquiry or medical examination.

V. Practice Good Hygiene. Reinforce key messages with employees regarding hygiene practices. Encourage employees to stay home when sick. Remind employees of the proper coughing and sneezing etiquette. Educate employees regarding the importance of handwashing. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Remove candy dishes, community food and limit the sharing of pens and workplace equipment.

VI. Social Distancing. Consider social distancing where possible. Employers may consider using teleworking, alternative work locations, or alternative work schedules. Employers should also consider avoiding non-essential activities where employees might come into close contact with individuals who are ill.

VII. Business Travel. Consider whether employee business travel is necessary. All unnecessary travel should be cancelled or postponed during a pandemic. Use videoconferencing when possible.

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- VIII. **Monitoring Absences.** Designate an individual within your human resources department to monitor employee absence and prepare for any reassignments of essential functions during employee absences. Cross-train personnel to perform essential functions, so that the workplace is able to operate even if key staff members are absent.

- IX. **Consult Counsel.** When in doubt regarding the appropriate employment action related to the pandemic, please consult legal counsel.