



Employment Law Note

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The Monkeypox Virus: What Employers Need to Know About the New Public Health Emergency



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As employers continue to navigate the evolving stages of the COVID-19 pandemic in the workplace, we now face a new public health challenge: the monkeypox virus ("MPV").

On August 4, 2022, the Biden-Harris administration declared MPV a national public health emergency. On August 18, 2022, King County, Washington, followed suit at the local level. As of August 24, there were 311 confirmed cases of MPV in King County. While experts say this infectious disease is less deadly and contagious than COVID-19, employers must be prepared to address potential infections in their workplace.

MPV

According to the Centers for Disease Control and Prevention ("CDC"), MPV is part of the same family of viruses that causes smallpox. MPV symptoms are similar to smallpox symptoms and are rarely fatal. There are approximately 15,400 cases in the United States and no known fatalities.

MPV can spread through close contact with someone who has symptoms or by touching items that had touched the infectious rash or bodily fluids---such as unwashed towels, or by sharing utensils that came in contact with the infectious rash or bodily fluid. It can also be spread by respiratory secretions during prolonged, face-to-face contact, or during intimate physical contact.

Presently, there are no treatments specifically for monkeypox virus infections; however, antiviral drugs used to treat smallpox may be used to prevent and treat monkeypox infections.

Prevention Measures

Currently, the Occupational Safety and Health Administration ("OSHA") has not provided specific guidance regarding MPV. Employers in healthcare settings, however, are being urged by the CDC to follow its "Infection Prevention and Control of Monkeypox in Healthcare Settings" recommendations (accessible at https://www.cdc.gov/poxvirus/monkeypox/clinicians/infection-control-healthcare.html#anchor_165350886948).

Employers in non-healthcare settings may use many of the prevention measures used to prevent COVID-19 exposure. Such protocols include:

- Frequent handwashing with soap and water or using an alcohol-based hand sanitizer, especially before eating, touching your face, and after you use the bathroom.
- Remaining home if the employees feel ill or show any symptoms.
- Avoiding skin-to-skin contact.
- Avoiding sharing utensils or cups.
- Wearing gloves when touching bedding, towels, clothing, or any other materials.
- Routine cleaning of commonly touched surfaces.

Employers may also review and update their emergency action plans and safety programs to ensure they include infectious disease protocols and comply with OSHA and local health and safety regulations.

What Should an Employer Do if An Employee is Diagnosed with MPV?

The CDC recommends that people with MPV remain isolated at home or at another location for the duration of the illness, which may last anywhere from two to four weeks. Each case must be assessed on a case-by-case basis. Local health departments, such as King County, are

tracking and issuing guidance on how to address MPV cases. Employers should encourage employees who have been diagnosed with MPV to isolate themselves from work and consult with their healthcare providers.

These recommendations, however, do not apply in healthcare settings, such as hospitals, outpatient clinics, and specimen collection sites. Instead, healthcare providers should follow the CDC's "Infection Prevention and Control of Monkeypox in Healthcare Settings" (described above). Congregate care settings, such as correctional facilities and homeless shelters, should follow the CDC's "Preventing Monkeypox Spread in Congregate Settings" recommendations (accessible at <https://www.cdc.gov/poxvirus/monkeypox/community/congregate.html>).

Employers Should Provide Leave to Employees

As of today, there are no MPV-specific leave requirements at the federal level; however, an employee may be entitled to leave under state or local sick/paid leave laws, the Family Medical Leave Act ("FMLA"), and/or the employer's leave policies. Employers that currently offer COVID-19 isolation or quarantine leave should consider expanding those policies to accommodate employees who have contracted MPV until the incubation period is exhausted.

Employers must also consider whether an employee who is caring for a family member (e.g., spouse, child or parent) diagnosed with MPV is entitled to leave under the FMLA, state or local law.

Employers Must Enforce Anti-Discrimination Policies in the Workplace

While anyone can contract MPV, current data suggests that people of color and the LGBTQ+ community are disproportionately impacted. As such, there is an increased potential exposure to claims of harassment, retaliation, discrimination and/or the existence of a

hostile work environment by employees in this protected group. Employers must be careful to avoid discrimination—including discriminating against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted MPV, or individuals belonging to certain protected classes in which the virus is prevalent. Employers may consider drafting policies relating to MPV to emphasize that anyone can contract the virus, regardless of their race, gender, or sexual orientation. Employers should also monitor workplace interactions to be prepared to promptly respond to any discrimination complaints and follow proper procedures.

Employers Must Comply with Federal and State Privacy Requirements

An employee's symptoms may be considered a "disability" under the Americans with Disabilities Act ("ADA") or a "serious health condition" under the FMLA. Accordingly, employers must be mindful of legal obligations that may occur when employees contract MPV. The ADA and FMLA require that medical records remain confidential. Additionally, the Health Insurance Portability and Accountability Act ("HIPAA") requires covered entities to keep employee medical records confidential and separate from employee personnel files.

Key Takeaways

As employers continue to navigate their way through public health emergencies, they must continue to be mindful of federal, state, and local guidelines on MPV. Although MPV is not considered a pandemic, employers must be mindful that MPV cases are increasing in the United States and must take appropriate steps to respond to the virus. Taking the steps outlined above can help prevent the spread of MPV and protect the health and safety of employees.

If you have any questions or if you need assistance drafting response plans or written policies, please do not hesitate to contact our office.

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