

CLIENT ALERT

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TO DISCLOSE OR NOT TO DISCLOSE: WHY BUSINESSES SHOULD NOT STAY SILENT AMID COVID-19

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As of publication, the coronavirus disease 2019 (COVID-19 or the "coronavirus") has evolved into a global pandemic, affecting more than 180 countries and exceeding 1.2 million confirmed cases worldwide. Businesses are not immune to the novel effects of the coronavirus and must take reasonable steps to communicate and ensure the safety of its employees, patrons, and third parties. While companies are making employment and corporate decisions amid the COVID-19 emergency, they should also be mindful of complying with federal and state laws by adopting measures that provide timely and reasonable disclosures related to the coronavirus.

THE DUTY TO COMMUNICATE

Companies should be vigilant in ensuring reasonable disclosures and communications are disseminated to employees and third parties regarding risks related to the exposure or transmission of COVID-19. As an employer, companies have obligations under state and federal law to ensure the safety and health of all their employees. For example, under the Occupational Safety and Health Act ("OSHA"), employers are obligated to provide employees with a safe workplace "free from recognized hazards" that could cause serious physical harm or death.

Businesses also have an obligation to inform third parties and patrons of any hazards on the premises. Some courts have emphasized that we have an overriding policy of preventing the spread of viruses and diseases, and therefore have imposed a duty of care on those who have reason to know that others may be exposed to an infectious disease or virus. *John B. v. Superior Court*, 38 Cal. 4th 1177 (2006). In a recent lawsuit filed against Princess Cruise Lines, passengers aboard the Grand Princess cruise ship in February 2020 accused Princess Cruise Lines of breaching its duty to communicate by knowingly permitting individuals infected with the coronavirus to board the cruise ship and failing to adequately warn other passengers about the infected passengers or the risk of being exposed to COVID-19. *Weissberger v. Princess Cruise Lines*, 2:20-cv-02267-RGK-SK, (C.D. March 3, 2020).

In short, businesses can expose themselves to liability by failing to provide reasonable warnings and notice concerning the risk of exposure to coronavirus. To reduce these risks during this pandemic, a business should take reasonable steps to disclose and provide adequate warnings of COVID-19 related risks and hazards on its premises and within the workplace.

WHAT SHOULD COMPANIES DISCLOSE?

When determining the degree and scope of disclosures related to COVID-19, a company should consider the guidelines and directives issued by federal and state governments, as well as local health officials. For example, the Center for Disease Prevention and Control ("CDC"), the leading authority amid the coronavirus pandemic, has published an Interim Guidance for Businesses and Employers ("Interim Guidance")

which cautions companies to use stated guidance to determine the risk of the coronavirus. The Interim Guidance document further provides that if an employee is confirmed to have the coronavirus, "employers should inform fellow employees of the possible exposure to COVID-19." The communication should inform them, without identifying the person by name, that an employee has been exhibiting symptoms of the coronavirus and that a positive diagnosis is possible. If the individual later tests positive for the coronavirus, companies should again inform its employees, and otherwise follow the disclosure requirements outlined by the CDC and other federal and state laws, including OSHA. In the same fashion, businesses should communicate with customers, clients, and vendors to let them know about a suspected or confirmed case. In addition, businesses should consider easing any concerns by assuring everyone of their compliance with recommended safety measures, sanitization methods, and social distancing practices.

CONCLUSION

Throughout the COVID-19 emergency, companies have to communicate and provide reasonable warnings concerning coronavirus related hazards within the workplace or on the premises. Given the unprecedented nature of the COVID-19 outbreak, the scope and extent of these disclosures are evolving and changing. To ensure compliance, businesses should consult with legal counsel to design compliant disclosures and communications to their employees, patrons, and third parties.

Dickinson Wright's attorneys have considerable experience in assisting companies in complying with the various requirements of state, federal, and local laws. The firm remains committed to helping our clients navigate this unprecedented time and remains fully available to provide any assistance that may be required.

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¹ Businesses should not disclose the identity of a quarantined or infected employee because of confidentiality requirements under federal law, such as the Americans with Disabilities Act ("ADA"), the Health Insurance Portability and Accountability Act ("HIPAA"), and other privacy laws.