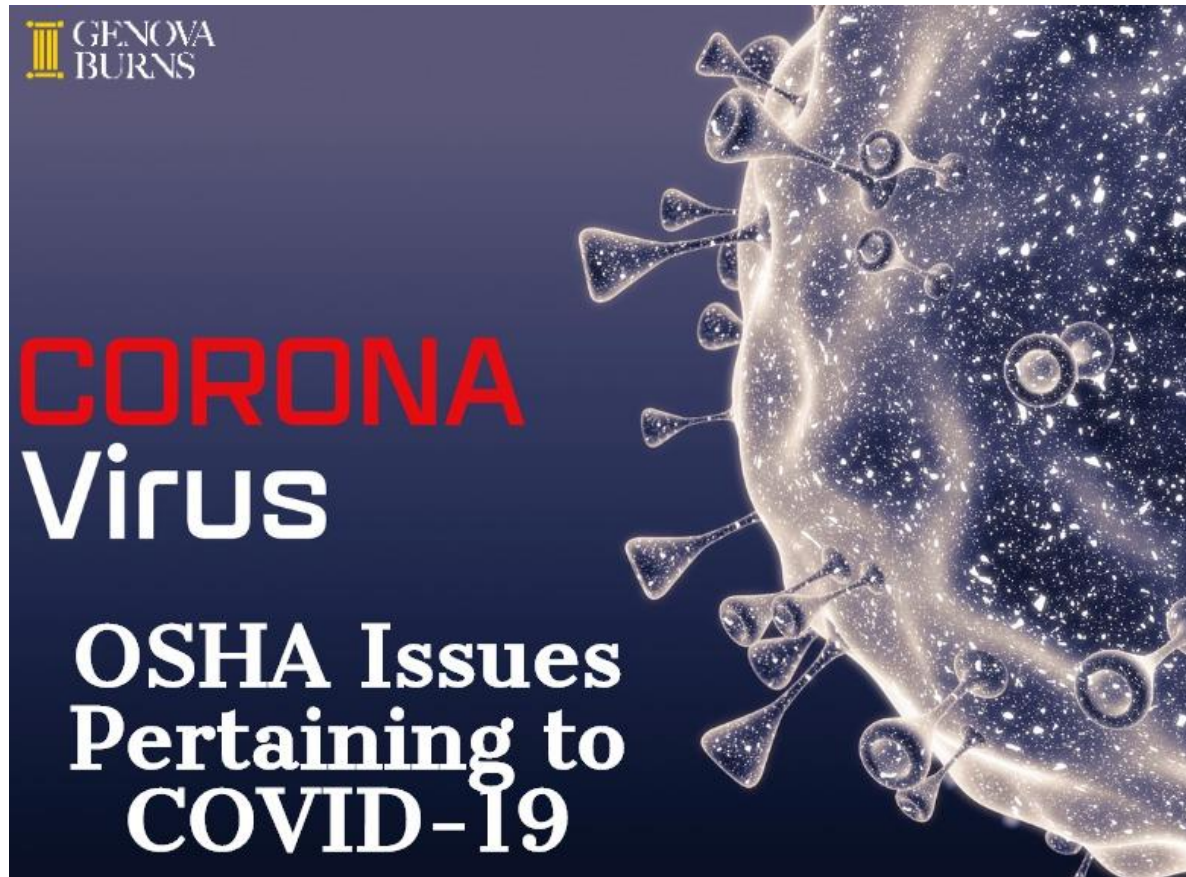


OSHA Issues Pertaining to Coronavirus (COVID-19)

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The current Coronavirus Pandemic (“COVID-19”) presents many complex situations for employers and their respective workforces. While management is trying to navigate the maze of wage and hour issues, FMLA and ADA leave, remote workspaces, and childcare, they must also keep in mind their legal obligation to keep employees safe pursuant to the [Occupational Safety and Health Act \(“OSHA”\)](#). Partner, Douglas E. Solomon, Esq. comments on several important OSHA questions:

1. Can an Employer enforce the terms of a Company’s Attendance Policy or discipline employees for refusing to come to work due to fear of COVID-19 infection?

- Depending upon the circumstances, enforcement of the Attendance Policy or discipline for the employee’s refusal to work, might constitute unlawful retaliation under OSHA’s anti-retaliation provisions. The circumstances where an employee is protected requires: (1) the employee brought the dangerous

situation to the employer's attention and the employer failed to correct it, (2) the employee's refusal to work was based on a good faith belief that the situation was dangerous, (3) a reasonable person, under the circumstances, would conclude that there is danger of death or serious injury, and (4) there is insufficient time, due to the urgency of the situation, to eliminate the danger through the regular enforcement channels. Thus, employers that discipline employees for refusal to work due to fear of COVID-19 infection need to consider the risks of an OSHA Citation for retaliation if that employee had a reasonable belief that that by working they would subject themselves to a COVID-19 infection.

2. What does OSHA require if an employee is diagnosed with COVID-19?

- OSHA's General Duty Clause mandates that employers maintain a workplace free of recognized hazards likely to cause death or serious physical harm. Clearly, if an employer becomes aware that an employee has been diagnosed with COVID-19, the Employer has an obligation to keep the infected employee out of the workplace. In addition to subjecting its other employees to COVID-19, the employer may receive a Citation from OSHA for permitting an employee with COVID-19 to come to work.

3. What are the OSHA requirements if an employee only shows symptoms of COVID-19, but has not yet been diagnosed?

- Even if an employee is only suspected of having COVID-19, but has not yet been diagnosed, the employer may be in violation of the General Duty Clause if it permits an employee that shows symptoms of COVID-19 to come to work. The [CDC](#) has indicated that if an employee has acute respiratory illness and a fever over 100.4, they should stay home. If an Employer learns that an employee has these symptoms when the employee is already at work, OSHA's guidance indicates that employers should immediately keep this employee separate from other employees, provide the employee with a face mask, if feasible and available, and ask the employee to wear it, and then contact local health authorities or the CDC for further instruction. While this may seem extreme when the employee does not have a COVID-19 diagnosis, failure to comply with these steps could subject other employees to COVID-19 and could subject the employer to an OSHA Citation.

4. Has OSHA provided any guidance on Steps that Employers should take to reduce the risks of its employees being exposed to COVID-19?

- On March 11, 2020, OSHA put out Guidance on Preparing Workplaces for COVID-19. The guidance makes several recommendations as to steps that should be immediately taken by employers, including: (1) developing an Infectious Disease Preparedness and Response Plan, (2) prepare to implement basic infection prevention measures, (3) develop policies and procedures for

prompt identification and isolation of sick people, if appropriate, and (4) develop, implement and communicate about workplace flexibilities and protections. While the Guidance does not have the impact of an OSHA regulation, employers that fail to comply with OSHA's guidance are at higher risk of receiving a Citation from OSHA for failing to maintain a safe and healthy workplace.

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