

CLIENT ALERT

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

by Caleb L. Green and Michael N. Feder

This is an important update to Dickinson Wright's April 8, 2020 Client Alert entitled [To Disclose or Not to Disclose: Why Businesses Should Not Stay Silent Amid COVID-19](#), which discusses the obligations of employers to warn and notify employees concerning the risk of exposure to the coronavirus in the workplace.

In our previous [Client Alert](#), we discussed that companies should vigilantly ensure reasonable disclosure and communicate risks related to the exposure or transmission of COVID-19 to employees and third parties. As an employer, companies have obligations under state and federal law to ensure the safety and health of all their employees by following best practices recommended by the Center for Disease Control ("CDC"), the Occupational Safety and Health Act ("OSHA"), among others.

NEW GOVERNMENT AGENCY AND HEALTH DISTRICT DISCLOSURE REQUIREMENTS

As policymakers continue to grapple with the ongoing spread of COVID-19, some local government agencies and health districts have adopted new requirements directly relating to employer disclosures for confirmed cases of COVID-19 in the workplace. Accordingly, employers should also keep state and local disclosure requirements in mind as they may differ from the CDC's recommendations and guidance.

Notably, while the CDC recommends informing every employee of confirmed COVID-19 cases in the workplace, some jurisdictions do not require employers to make COVID-19 exposure disclosures to all employees. For example, as of publication, in Southern Nevada, the Southern Nevada Health District ("SNHD") does not require employers to disclose confirmed COVID-19 cases in the workplace because SNHD's contact tracing protocols include a notification process. Namely, when an employee tests positive for COVID-19, SNHD initiates contact tracing protocols to identify any other employees who may have come into close contact with the infected employee. Once identified, SNHD notifies the at-risk employees of the confirmed case and potential exposure to the virus.

Although some jurisdictions do not require employers to disclose confirmed cases of COVID-19 in the workplace, the current CDC guidance recommends that employers notify employees of potential exposure in the workplace. Per the CDC's Interim Guidelines, following a confirmed COVID-19 case, employers should notify all employees who work in the location or area where the employee works of the situation. The communication should be shared without identifying the employee or revealing any employee confidential information and should comply with federal laws, including the Americans with Disabilities Act ("ADA"), the Health Insurance Portability and Accountability Act ("HIPAA"), and other privacy laws. In the

same fashion, businesses should communicate with customers, clients, and vendors to let them know about a confirmed case.

CONCLUSION & RECOMMENDATION

As discussed in our previous [Client Alert](#), employers have a duty to communicate when they have reason to know that other employees may be exposed to an infectious disease or virus. As a result, employers should understand and implement the disclosure requirements established by their governing health districts and local governments. However, in jurisdictions where local government and health districts have not set forth any guidance or disclosure requirements, employers should adopt and practice CDC guidelines. Finally, employers should consult with an attorney to determine the legal risks and potential liability underlying the decision to disclose or not to disclose to employees.

Dickinson Wright's attorneys are uniquely positioned throughout our eighteen law offices and 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.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of significant developments in the field of cross border law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered here.

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