



Q: Can employees refuse to come to work because they're afraid of being infected with the Coronavirus?

A: What a difference a few days makes in answering this question. Before the COVID-19 outbreak in the U.S., the answer would be no under most circumstances. However, employers should carefully consider the short- and long-term consequences of forcing employees to report to work.

From a regulatory perspective, the Occupational Safety and Health Act (OSH Act) allows employees to refuse to report to work if they believe doing so will expose them to imminent danger. On the flip-side, the Act's general duty clause requires employers to provide a workplace "free from recognized hazards that are causing, or are likely to cause, death or serious physical harm..." Fortunately, most workplace conditions in the U.S. do not meet the elements required for an employee to refuse to work.

Another applicable regulation is Section 7 of the National Labor Relations Act (NLRA). Applicable to all workplaces, unionized nonunionized, the NLRA protects employees' ability to engage in "protected concerted activity for mutual aid or protection." Examples of protected activities include, "talking with one or more [other] employees about working conditions," "participating in a concerted refusal to work in unsafe conditions," and "joining with co-workers to talk to the media about problems in [the] workplace." Employees are generally protected against discipline or termination of employment for exercising their Section 7 rights.

Finally, attempting to force employees^{3/4}many of whom are fearful and concerned about the COVID-19 outbreak^{3/4}to report to work will likely result in long-term employee relations issues as well as significantly negative social media exposure.

Everything about the COVID-19 pandemic is unprecedented, as are many of the employment issues you'll encounter over the next several weeks. Before taking any actions that employees may feel are unfair or put them at risk for exposure to COVID-19, explore all available options, such as allowing the employee to work flexible schedules, work from home, or take time off. If left with no other options, consider paying nonexempt employees their regular wages as a temporary emergency measure and gesture of goodwill.

Above all, make sure you communicate openly and often with all employees on the company's actions, and the precautions they can take to reduce the potential spread of COVID-19 and other viruses.