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SARS Sickens Employment Relationships

SARS (Severe Acute Respiratory Syndrome) has created a health crisis in certain geographic areas, with potential impact on a wide range of employment-related issues. Employers whose employees may be exposed to this illness must consider how to prepare for and respond to such crises.

SARS

SARS is a respiratory illness that has been reported in Asia, North America and Europe. The illness usually begins with a fever reaching temperatures greater than 100.4° F, commonly associated with chills, headache, a general feeling of discomfort and body aches. The fatality rate of SARS, an illness which affects people in all age ranges, was initially estimated at 5.9 per hundred infected individuals. Unfortunately, it now appears that the fatality rate may actually be as high as 10 percent.

The incubation period is typically 2 to 7 days from date of exposure, although it has been known to extend as long as 10 days. SARS patients tend to develop a dry, nonproductive cough that can progress to a point where the lungs cannot provide sufficient oxygen to the blood. Fact is, in 10 percent to 20 percent of known cases, sufferers may require *mechanical assistance* to breathe.

Medical researchers believe that the illness spreads when someone who is sick with SARS coughs or sneezes droplets into the air — and someone else breathes them in. Transmission may also occur more broadly through the air or from doorknobs and other solid household objects that become contaminated. At present, doctors treat the illness with the same procedures they use for a serious community-acquired atypical pneumonia of unknown cause. They have tried several antibiotics, but there's not enough evidence to prove that they have any beneficial effect. Basically, the condition will be fatal until a specific treatment is determined.

Meanwhile, SARS patients' only hope of recovery seems to be based upon each individual's own immune system.

Employment Law Issues

Obviously, SARS raises a number of significant issues in the workplace involving a wide range of employment laws.

Worker's Compensation. Under this law, an employee who sustains an injury or illness arising out of — or in the course of — employment is entitled to worker's compensation benefits. If an employee whose work originates in the Continental United States must travel to areas identified by the World Health Organization (WHO) — currently mainland Asia, Hong Kong, Vietnam and Singapore — as areas where SARS has stricken so many, such employees would likely receive worker's compensation benefits, including reasonable and necessary medical care and disability.

Occupational Safety and Health Act. No OSHA regulations relate to SARS. The law does contain a "General Duty Clause," which requires employers to protect their employees against "recognized" safety and health hazards. But, employers as yet have no means to *control* SARS transmission. So OSHA would likely view employers' current obligation as limited to providing SARS information to their employees, so that they are aware of its dangers — and the need to seek prompt medical care if they develop any symptoms.

Another issue which could have an impact are the anti-retaliation provisions (Section 11(c)), which prohibit retaliation against an employee who exercises rights under the Act. One such right is to refuse to work when there is "imminent danger." A potential scenario could involve an employee's refusal to travel to an area identified by WHO, because of a fear of infection, and such refusal might be considered to be activity protected from adverse employment action.

Americans With Disabilities Act. Under the ADA, employees are entitled to protection if they have a qualifying “disability” and are able to perform the essential functions of the job, with or without an accommodation. If an employee develops a chronic respiratory impairment as a result of SARS, such employee may qualify for protection for a disability, since it could involve the major life activity of breathing.

In addition, the ADA provides for confidentiality of employee medical records, which would include records of treatment resulting from SARS. In the event that an employee were to contract SARS (or suspect that he or she contracted the disease), the employer would be required to maintain the confidentiality of this information. And, at the same time, would have to consider taking appropriate action to safeguard co-employees who might be exposed to such an employee. Employees who contract the disease could be considered to pose a “direct threat” to their own health and that of co-employees under the Act.

Family and Medical Leave Act. An employee who contracts SARS will have a “serious health condition” within the meaning of the FMLA. If the employer is subject to the FMLA and the employee qualifies for a leave, the employee will be eligible for an unpaid leave for up to 12 weeks.

Employee Rights to Privacy. Under both the common law and statutes of many states, employees have privacy rights relating to their medical conditions. An employer who receives information about an employee who has contracted, or is suspected of contracting SARS, must maintain the confidentiality of such information to the extent reasonably possible. However, this duty may be affected by a further obligation to notify local public-health organizations that an employee has contracted the disease and to cooperate within the workplace to identify other employees who may have been exposed.

Recommendations

Since this disease is being intensely studied by the medical profession and much is still unknown, we recommend that employers share basic information with their employees about SARS whenever possible, based upon the nature of the employer’s business operations, that an employee might or could become exposed.

Conclusion

Our firm has received numerous inquiries from clients who are dealing with the immediate impact of SARS on their employees, as well as on their Asian and Canadian business operations. All of the employment laws discussed above have played their part. We continue to monitor this growing health issue and to communicate with the Centers for Disease Control (<http://www.cdc.gov/ncidod/sars>) so as to help our clients develop appropriate responses to this disturbing phenomenon.

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ATLANTA

One Peachtree Pointe
1545 Peachtree Street, N.E., Suite 700
Atlanta, Georgia 30309-2401
404-885-1500
404-892-7056 fax

BOSTON

Two Seaport Lane, Suite 300
Boston, Massachusetts 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO

55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
312-346-8000
312-269-8869 fax

HOUSTON

700 Louisiana Street, Suite 3850
Houston, Texas 77002-2731
713-225-2300
713-225-2340 fax

LOS ANGELES

One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK

1270 Avenue of the Americas, Suite 2500
New York, New York 10020-1801
212-218-5500
212-218-5526 fax

SACRAMENTO

400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO

101 California Street, Suite 2900
San Francisco, California 94111-5858
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS

Boulevard du Souverain 280
1160 Brussels, Belgium
(32) (2) 647.60.25
(32) (2) 640.70.71 fax