Coronavirus Employer Guide

Last updated: March 17, 2020

Lockton is providing this guide to help company leadership mobilize resources to protect their employees and business.

Note: The coronavirus outbreak is a fast-developing situation, and local health agencies should be consulted for the latest news and directives. This guide will be updated, as needed, so please save the link to ensure you are accessing the most recent version.

Many communities are impacted by confirmed cases of COVID-19, so employers need to stay informed and know how to prepare and respond. You can visualize and track active cases in the U.S. and worldwide with the Johns Hopkins Coronavirus Dashboard. It is important to assign someone to track state and local public health sites for updates. To identify your health department, refer to the public health gateway map.

Employees are worried and looking for guidance from their employer. They need to understand the facts to take appropriate precautions, but employers should avoid instilling fear. Employers also need to be careful to not provide medical opinions or misinformation and should rely on the Centers for Disease Control and Prevention's facts about the virus.

The U.S., along with most of the world, is taking unprecedented steps to prevent the spread of the coronavirus. Why now and never before? The primary reason is to slow the spread of the virus and flatten the infection rate curve. A surge in infection rate will overwhelm our healthcare system, potentially leading to an increase in indirect deaths (e.g., a person having a heart attack not receiving timely treatment).
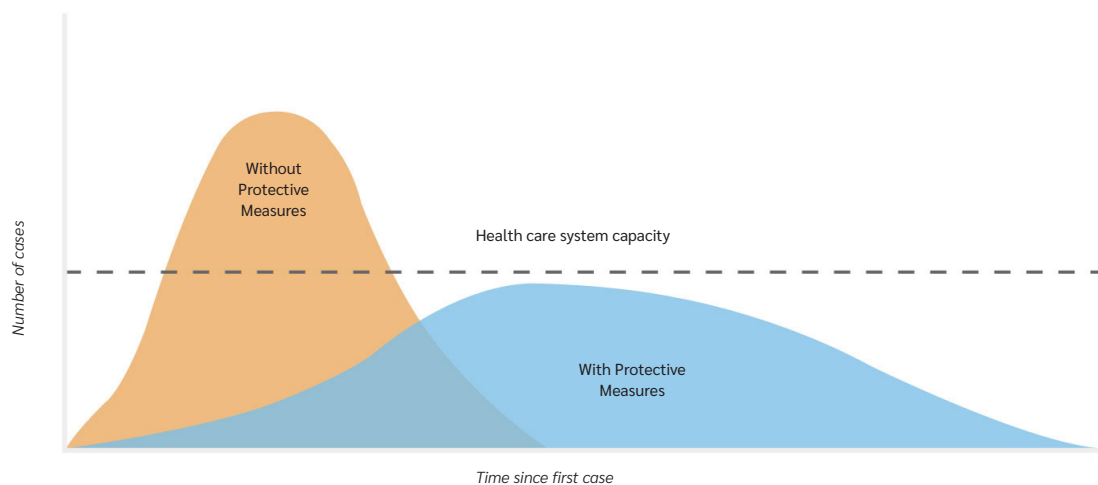
Source: CDC, Drew Harris
Credit: Connie Hanzhang Jin/NPR

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Response: For locations with confirmed cases of COVID-19

What to do if an employee has been exposed or is symptomatic

☐ Refer to the CDC's Risk Assessment to assess the risk.

☐ If an employee appears to have acute respiratory illness symptoms at work, they should be separated from other employees and be sent home immediately.

  – Instruct sick employees to use telemedicine services or call their healthcare provider for further assessment and instructions. Lockton has confirmed that the major telemedicine providers are specially trained, equipped and ready to remotely assess COVID-19, the flu and other minor health issues.

☐ COVID-19 testing can be performed for free through CDC-designated laboratories. Quest and LabCorp now have the ability to test.

  – Physicians can order the test for individuals who meet the CDC's criteria for testing.

  – The cost of the test has not been released.

  – In many instances, the cost share is waived, so the test is covered at 100% by the plan.

  – Check with your carrier or self-funded plan to understand how the test will be covered.

☐ Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work.

  – For employees with a serious respiratory illness who incur a prolonged absence beyond the CDC's 14-day recommended quarantine, a healthcare provider would need to be seen and requesting a provider note or FMLA form is reasonable.*

☐ Do not communicate any PHI to anyone.

☐ Adhere to the guidance and direction from public health officials with respect to communicating information to employees and customers.

☐ If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the ADA.

☐ Employees exposed to a coworker with confirmed COVID-19 should refer to CDC guidance for how to conduct a risk assessment of their potential exposure.

*The CDC guidance for businesses and employers recommends not to require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way. If needed, telemedicine providers can provide an electronic note.

☐ Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance for how to conduct a risk assessment of their potential exposure.

☐ Public health orders are law. Employees who are under a public health order for isolation or quarantine cannot come to work. However, employees can telework during this time, if feasible. Set up a process to record in the Occupational Safety and Health Administration (OSHA) 300 log all verified coronavirus infections found in employees.

    — The OSHA reporting requirements are intended only to record cases caused by conditions or exposures arising in the work environment. As a result, individual factors of the worker's job functions and location(s) need to be evaluated to determine if it was possible the exposure of the virus was directly linked to their work activities. Given the complicated nature of this type evaluation, it is recommended employers retain legal counsel familiar with the OSHA requirements and record-keeping rules.

Preparation: Steps to limit the impact on your people and your business

Preparing your workforce

Employee communication

Employees will look to their employers for guidance on safety in the workplace. Communication is critical to maintaining business operations and protecting employees.

☐ Communicate to employees regarding personal preventive measures.

 – CDC: Stop the spread of germs

☐ Educate employees about the symptoms of COVID-19 and provide facts about the virus.

 – CDC: Symptoms of Coronavirus Disease

 – CDC: What you need to know

☐ Encourage a no-handshake policy in the workplace.

☐ Promote telemedicine or on-site clinics, if applicable, to keep employees and their families who are on the health plan out of physician's office, urgent care and emergency rooms unless necessary.

☐ Communicate to employees about your sick leave policies and steps to take if they become ill.

 – CDC: What to do if you are sick

 – Employees should stay at home when sick.

 – Inform employees who they should contact at work if sick.

☐ Remind employees of anti-discrimination, anti-harassment, anti-bullying and anti-retaliation policies.

☐ See sample content: These documents should be customized for your business. We will update these sample documents as needed, so please save the link for access to the most recent version.

Healthcare benefits

Major insurance carriers are covering 100% of the cost of the coronavirus testing for their fully insured, Medicaid and Medicare plans. Legislation has passed the House and is expected to pass the Senate and be signed into law the week of March 16, 2020, requiring all plans (insured, self-funded, grandfathered and not) to cover the cost of the coronavirus testing. Lockton's actuaries estimate the cost of covering the test to be a 0.2% increase to plan cost.

A few carriers are extending the 100% benefit to the corresponding office visit or administration fee associated with the test or waiving the member's cost share for coronavirus treatment. The proposed legislation would require all plans to cover the office visit related to testing at no cost to the patient.

Some carriers are also waiving copays for telemedicine visits. Select carriers waiving cost sharing for all telemedicine visits, even if unrelated to coronavirus. While the IRS has confirmed waiving the member's cost share for coronavirus testing and treatment is HSA compatible (see Lockton's alert), the IRS has not sanctioned paying all telemedicine visits, regardless of the reason, below the high deductible."

Some carriers are also waiving early refill limits on maintenance medications.

Workplace safety

☐ Perform routine environmental cleaning (workstations, countertops, doorknobs).

☐ Provide hand sanitizer, tissues with no-touch receptacles for disposal, and disinfectant wipes for employees.

☐ Identify an isolation area in the event a person presents with symptoms at work.

☐ Employers might consider postponing upcoming on-site biometric screenings, but you will want to identify the fees associated with cancellations before making a decision. You may also want to extend time frames for completing a biometric screening, and communicate to employees that they should wait to seek biometric screenings or have their annual exam with their physician. These recommendations are based on current increased demands on healthcare providers.

☐ Alert employees to potential cyber or privacy threats.
  – Avoid clicking on links in unsolicited emails, and beware of email attachments.
    ▪ Using Caution with Email Attachments
    ▪ Avoiding Social Engineering and Phishing Attacks
  – Use trusted sources, such as legitimate, government websites, for up-to-date, fact-based information about the coronavirus.
  – Do not reveal personal or financial information in email, and do not respond to email solicitations for this information.
  – Verify a charity's authenticity before making donations. Review the Federal Trade Commission's page on Charity Scams for more information.
  – Review CISA Insights on Risk Management for COVID-19 for more information.

Infectious disease policy

It will be important to communicate infectious disease policies and procedures to employees.

☐ Right to exclude people from the workplace

- Employers can medically examine employees if there is reasonable belief the employee poses a direct threat to others due to their medical condition.

  ▪ COVID-19 has been designated as a pandemic. The Equal Employment Opportunity Commission has issued guidance allowing employers to measure an employee's body temperature during a pandemic. The guidance is written with a pandemic influenza in mind, but it is equally applicable here.

- Employers can quarantine or send employees home if they have a reasonable belief the person presents a risk to the workplace.

- The CDC warns, "To prevent stigma and discrimination in the workplace, use only the Risk Assessment and Public Health Management Decision Making to determine risk of COVID-19. Do not make determinations of risk based on race or country of origin and be sure to maintain confidentiality of people with confirmed COVID-19."

☐ Employee responsibilities & requirements

- If presenting symptoms, do not come to work.

- Inform HR if you have been to a high-risk destination or have potentially been exposed to the coronavirus.

- Refer to information available online for people who have had close contact with a person confirmed to have COVID-19.

☐ Notification of possible exposure

- Inform employees if they may have been exposed to the virus at work (without revealing the source).

☐ Reporting process

- Document a process for reporting absences and exposures.

☐ Supervisor responsibilities

- Inform supervisors of their responsibilities to report potential exposures.

- Educate supervisors about quarantine procedures.

- Remind supervisors of leave policies and obligations.

- Reiterate anti-discrimination, anti-harassment, anti-bullying and anti-retaliation policies.

☐ Travel or in-person meeting restrictions

- See "Travel recommendations and policies" section below.

☐ Leave policies

- See the "Leave policy" section below.

□ Return-to-work documentation

– Consider guidance or adjustments to documentation required to return to work. It may be difficult for employees to get in to see a doctor. Consider ways telemedicine can assist.

□ Remote work

– Evaluate guidelines for telecommuting.

SHRM has shared a sample Infectious Disease Control Policy.

Pandemic preparedness from the Equal Employment Opportunity Commission can be obtained on their website.

Leave policy

The House of Representatives recently passed legislation requiring up to 12 weeks of paid sick and family leave to employees of private employers. This will apply to employers with fewer than 500 employees, and to employees of all government employers with refundable tax credits available to help employers offset some of the cost.

If passed by the Senate as anticipated, this legislation will be signed into law the week of March 16, 2020. At that time, Lockton will provide updated information.

Clarity around leave policies can provide guidance to employees.

□ Ensure your sick leave policies are flexible and consistent with public health guidance, abiding by federal, state or local paid sick leave laws.

□ Review parental leave policies for federal and state compliance, as warranted.

□ Ensure Family and Medical Leave Act (FMLA) obligations (including state law requirements) are being followed, as COVID-19 may qualify as a "serious health condition." Note: Fear of the coronavirus does not typically qualify for FMLA leave.

□ Consider amending supplemental corporate leave policies to include governmental or employer "shut-down" definitions and possible expansion of these policies.

□ Where possible, identify where a compressed work week may be plausible (extend duration of days and reduce workweek to four days).

□ Review "sick leave bank" policies to see if exhaustion and access may be extended and for liberalization of number of days allowable prior to clinical support documentation receipt.

□ Consider access to "extended illness bank" balances for care of family members due to governmental or employer shut down events directed by the CDC.

□ Consider allowing off-cycle access to posted vacation schedules to continue pay for workers, if plausible.

□ Review sick bank donation access for employees that have negative balances to solve for economic short fall if material balances exist within the enterprise.

☐ Employers cannot refuse to accommodate employees who reasonably request leave or to work remotely due to illness or disability.*

☐ Employers cannot terminate employees who contract the coronavirus.

Travel recommendations and policies

It's important for employers to implement a travel and company meeting policy.

☐ Default to virtual meetings, if possible.

☐ Refer to CDC travel site to assess current risk by location.

☐ Recommend employees refer to CDC travel site regarding their personal travel and quarantine procedures when returning from a Level 3 country.

☐ For employees traveling, educate them about travel precautions (disinfect hotel, airplane, rental car surfaces; don't touch face without washing hands or using hand sanitizer, wash frequently).

Note: An employer cannot require nonessential travel to affected areas. See CDC's restrictions on entry to the U.S. from other countries.

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*What is a reasonable request? Essentially, any request that doesn't create an undue hardship. Per the EEOC, "undue hardship" means significant difficulty or expense, and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship. It is, of course, a subjective determination, one potentially susceptible to differing conclusions by others.

Preparing for potential business interruption

Form a COVID-19 response team with key internal stakeholders from human resources, risk management, operations, information technology, communications, etc.

☐ Create or update your pandemic response plan. Use the CDC Interim Guidance for Businesses and Employers as a template to adapt to your business.

   – Lockton and FDI Consulting have partnered to create a Business Continuity Planning document as a source of initial information.

☐ Regularly monitor information posted by the CDC and OSHA for updates on the spread in your communities.

   – CDC state & territorial health department websites

☐ Coordinate with state and local health officials.

☐ Empower the COVID-19 response team to make decisions quickly and communicate regularly.

☐ Update employee contact information.

☐ Establish a central source of truth for your company (intranet page, email, etc.).

☐ Direct employees to inform HR if they have been to a high-risk destination or have potentially been exposed to the coronavirus.

   – Note: Avoid targeting races or nationalities for heightened scrutiny or screening.

☐ Let employees know who to contact if they develop symptoms.

☐ Set up a process to record in the OSHA 300 log all verified coronavirus infections found in employees.

TO PREPARE FOR BUSINESS OPERATION CONTINUITY, TAKE THE BELOW STEPS:

☐ Identify essential personnel and systems.

☐ Cross train employees where possible.

☐ Evaluate remote work capabilities and test.

☐ Evaluate critical elements within your supply chain process.

Business risk and insurance protection

Individual policies will need to be reviewed for specific grants of coverage and potential exclusions.

General liability: The primary liability exposure (bodily injury) for employers will be alleged negligence. For example, employers may face assertions that they failed to protect a customer or other third party from being exposed to the virus.

Directors and officers liability: Suits may arise against companies and their directors and officers based on various aspects of the companies' response to the crisis. Shareholders may allege directors and officers failed to perform the necessary contingency planning or failed to disclose the risks a COVID-19 outbreak could have on the company's business and financial results.

Business partners, consumers or others may assert that failures by management caused loss or damage. For more information on directors & officers, employment practices and fiduciary liability, click here.

Workers' compensation and employers' liability: In considering compensability for workers' compensation claims, insurance companies determine whether the injury occurred within the affected individual's scope of work. Each situation will be evaluated on its own individual merits, and many factors will be considered to determine whether COVID-19 claims are work related, including the following:

- The timing of when the loss occurred.
- The location(s) where the injured worker was present leading up the injury or exposure.
- The activities the injured worker was engaged in leading up to when the loss or exposure took place.
- The specific nature of the loss.

Employers' liability, also referred to as part two of the workers' compensation policy, provides protection for the insured employer's liability of an employee's work-related bodily injury or disease, other than liability imposed by a state's workers' compensation law.

WITH CORONAVIRUS EXPOSURES, NEGLIGENCE OUTSIDE THE LIABILITY OF A JURISDICTION'S WORKERS' COMPENSATION LAW MAY INCLUDE:

- The employer had a legal duty to protect the employee from any undue harm or injury. As an example, did the healthcare employer provide personal protective equipment to their workers?
- The employer's actions or omissions violated that duty, such as failing to provide personal protective equipment required by OSHA.
- An employee was injured as a direct result of his employer's violation of this duty. For example, the worker was exposed to the coronavirus as a direct result of not being provided personal protective equipment.
- The exposed worker suffered damages due to their illness from the coronavirus.

CLAIMS UNDER THE EMPLOYER LIABILITY COVERAGE GENERALLY CENTER AROUND FOUR TYPES:

1. Third party over actions: A worker exposed to the coronavirus files a claim against the building owner, who in turn makes a third-party claim against the worker's employer, based on a direct tort claim or contractual obligation.

2. Dual capacity claims: Using our previous examples, an injured worker contends their personal protective equipment, which is also manufactured by their employer, is defective, resulting in an unneeded exposure to the coronavirus. The employee can seek a claim against their employer contending the employer is liable as both the employer and the manufacturer.

3. Loss of consortium: A claim made by the spouse of an injured work for loss of the services.

4. Consequential bodily injury: Allegations by a family member that they were also exposed to the coronavirus from the employee's illness and work-related exposure.

Property or business interruption: If organizations are forced to temporarily close their operations due to pandemic or disease, they may try to seek business interruption coverage under their insurance coverage. However, most policies trigger coverage for business interruption only after the policyholder has experienced a direct physical loss to the premises in question, caused by a covered peril.

ENVIRONMENTAL OR POLLUTION POLICIES:

Under coverage for a pollution policy, it will first need to be determined whether the coronavirus meets the definition of a "pollutant." Certain policy forms include definitions that may align with the characteristics of the coronavirus. Exclusionary language will then need to be examined within the policy to determine if it includes limitations for viruses or human contact spread exposures.

Potentially meeting these policy requirements may then trigger coverage for "discharge, dispersal, release or escape of" the covered "pollutant." It is expected the typical loss will center around pollution cleanup or, specific to COVID-19, the disinfection and decontamination of a covered location.

Further policy language may require or limit these costs by requiring the cleanup be completed by order of a local, state or federal agency or notice of discovery be provided to these entities within a stated time frame.

Cyber liability policies: These can include first and third-party policy provisions.

ITEMS TO REVIEW INCLUDE:

- ☐ Reliance on virtual private networks (VPNs) or other remote applications may not support the business and not provide the security needed. Testing should be performed.
- ☐ Careless sharing of information regarding affected employees puts the company at risk.
- ☐ Be careful regarding the information you request from customers, vendors and employees.
- ☐ Be on alert for heightened phishing emails.
- ☐ Unintentional or unplanned system outage coverage is likely to be disputed.

Benefits and coverage

Major medical plans will cover treatment for the coronavirus, as excluding coverage risks litigation under the Americans with Disabilities Act and perhaps HIPAA as well.

If you offer telemedicine, inquire about your vendor's preparations to handle the influx of people seeking treatment. If you have an on-site clinic, ensure it is properly preparing.

State insurance departments might require waiver of cost-sharing requirements related to testing for the virus for fully-insured plans (New York has done so). Many carriers have announced they will pay for COVID-19 tests at 100%. Check with your carrier to understand your plan. Self-funded plans immune from state regulation might consider doing the same, to encourage prompt testing. High-deductible health plans face the issue of whether covering testing below the high deductible disqualifies the plan. Federal authorities have not issued guidance on this issue as of the date of this publication, but it seems extremely unlikely the IRS would take issue with this, as a matter of public policy.

Employers should understand limitations around protected health information (PHI) as it relates to the spread of disease. If an employer acquired health information about an employee's or dependent's coronavirus infection through the health plan (a HIPAA covered entity), that PHI can be disclosed without authorization for treatment, healthcare operations and public health purposes, such as to prevent or mitigate the spread of disease. Therefore, the employer can alert public health authorities of a potential case of the coronavirus.

The employer can also share PHI with other individuals at risk of contracting or spreading a disease or condition if other law, such as state law, authorizes the covered entity to notify such persons to prevent or control the spread of the disease.

Employers that are self-insured for short-term disability should consider whether to view medically verified quarantine as a qualifying disability. This should not be confused with presumptive disability clauses currently embedded. Review and modify language, as appropriate, related to exposure to contagious illnesses.

Travel accident and medical policies are often secured to facilitate the movement and payment for an injured or sick employee. While there is no exclusion for medical evacuation if someone were to be diagnosed with COVID-19, the voluntary evacuation of employees is typically not covered. Any covered evacuations are subject to the approval of health authorities in both the originating and receiving country. For example, if the U.S. government were to decide not to allow the medical evacuation of a patient known or suspected to have COVID-19, the insurer could be stopped from performing the services. Another consideration is the availability of flights and possible cancellations of evacuation flights due to security concerns. This may result in evacuation carriers willing to repatriate an employee but unable to proceed due to logistics and restrictions.

Retirement plans and participant behavior

Global infectious outbreaks often drive U.S. market declines, and many people will consider retirement plan investment changes to minimize impact. It is usually in investors' best interest to resist these urges, as the market historically rebounds from these events and changes will lock in losses.

Plan sponsors may want to use this time to evaluate how plan options hold up when stock prices fall. Now may also be a good time to review target date or other professionally managed default options' performance in these market conditions. Market declines provide an opportunity to test whether defensive investment strategies perform as expected.

Employers may see an increase in participant questions as a result of market turmoil. To help participants avoid rash decisions, focus on the long-term nature of retirement plans. Ask if they have an investment strategy aligned with their risk profile. Remind participants that the qualified default investment alternative (QDIA) provides diversification for those unsure how to invest.

Past market events spurred by health outbreaks have been relatively shallow and short-lived. While it is too early to predict the future path of the COVID-19 outbreak, there has yet to be any information that should induce market panic levels greater than those of past outbreaks. In times of stress, it is best to go back to strategies put in place before the downturn. Plan sponsors should review their investment policy statement to help provide guidelines and instruction for any decisions they are contemplating.

COVID-19 facts [1]

What is the coronavirus?

COVID-19 is the abbreviation for the specific strain of the novel (new) coronavirus disease 2019 (previously referred to as 2019 N-Cov), which is causing a spread of respiratory illness. It originated in Wuhan, China. To date, the virus has spread person-to-person in several countries, including China, South Korea, Iran, Italy and the United States. The CDC officials expect the virus to continue spreading in U.S. communities.

The CDC National Institute of Occupational Safety and Health as well as the World Health Organization (WHO) should be your primary source for emergency preparedness and response to the coronavirus.

How does the coronavirus spread?

The virus spreads person-to-person in close contact (6 feet) through coughs or sneezes from an infected person. A person may be contagious before symptoms develop, but an infected person is believed to be most contagious when they have symptoms.

Infected surfaces can spread the illness if a person touches a surface containing the virus, then touches their own nose, mouth or eyes. Many cases have been documented as "community spread," where the origination of the virus is not known. At this time, there is no evidence to support transmission of COVID-19 associated with imported goods.

Is a vaccine available?

Currently, there is no vaccine. The best way to avoid illness it to avoid exposure and use precautions (see below). As it becomes available, the most up-to-date information about the virus will be provided on the CDC's Coronavirus Disease 2019 (COVID-19) website.

What are the symptoms?

Symptoms of the coronavirus can range from mild to severe and include fever, cough and shortness of breath. Typically, symptoms appear two to 14 days after exposure.

Which individuals have the highest risk?

Those at highest risk include:

- The elderly (over 60)
- People with underlying health conditions, such as cardiovascular disease, diabetes, chronic respiratory disease, etc.
- People with weakened immune systems
- Pregnant women

Which locations are affected?

This is rapidly evolving, so please refer to the CDC website for the most current information.

What precautions can a person take to protect themselves?

COVID-19 is a respiratory disease. The below precautions can help limit the spread of the disease.

- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Wash your hands (with soap and water for 20 seconds or hand sanitizer with at least 60% alcohol).
- Avoid touching your eyes, nose and mouth.
- Cover your cough or sneeze with a tissue and throw it away immediately.
- Clean and disinfect frequently touched surfaces.
- CDC does not recommend healthy people wear a facemask. Facemasks are for those showing symptoms.
- Promote telemedicine or nurse lines to encourage employees and their families to avoid the physician's office, urgent care or emergency room, if possible.
- Avoid shaking hands.

Sources

[1]   https://www.cdc.gov/coronavirus/2019-ncov/index.html

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