

What if Your Employees are not Wearing Masks or Socially Distancing Off Duty?

As many of us have seen from recent social media and news accounts, employees are anxious to get outside and end their quarantines. What can or should you do if you receive reports that your employees are returning to work after a weekend or a vacation of not observing the social distance guidelines? Anything?

As an employer, your obligations mainly involve instruction and notifications to your employees. Make sure that you are telling employees not to come to work if they are experiencing any symptoms of COVID-19. Ask workers to monitor themselves and report any symptoms immediately. This might include having employees take their temperatures before coming to work. Continue to educate employees about the impact their behavior has on others and encourage employees to act responsibly with respect to wearing a mask and washing their hands.

Obviously, if you become aware that the employee is experiencing symptoms of COVID-19, has tested positive or has been in close contact with someone who has tested positive or is symptomatic and awaiting test results, you can and should require that the employee quarantine away from work for at least fourteen (14) days. The answer is not so obvious if the employee is not symptomatic, has not tested positive and has not been in close contact with anyone that has tested positive. Unlike some states, Nebraska statutes do not prohibit taking action against employees who have been engaged in a lawful off-duty activity. While it is difficult to monitor social distancing outside the workplace, you should consider the following actions:

First, communicate expectations to employees that they should protect themselves and others by following social distance guidelines, washing hands and following public health guidance even if off duty. Consider informing employees of the potential consequences for failing to follow social distancing and public health guidance while off duty, including possible exclusion from the workplace for a two-week quarantine period.

Second, don't act on speculation or hearsay. If you hear that an employee has visited a popular beach or park and may not have been maintaining social distancing, you should ask the employee what they did while they were off work. If they were not adhering to social distancing guidelines, you can send them home for two (2) weeks. Whether and to what extent the employee must be paid during the two (2) weeks may depend on a number of factors, including the extent to which the employee is working while at home, whether the employee is exempt or non-exempt, and whether the employee is eligible for paid leave under the Families First Coronavirus Response Act (such as, for example, where they are subject to a quarantine or isolation order due to the nature of their travel).

Third, make sure that workers and visitors are conforming to your policies while on your premises, which may include frequent hand-washing, following social distancing practices and wearing a mask.

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