

COVID-19 and Workplace Illness: Responding to Media Inquiries

As COVID-19 continues to spread in communities around the world, employers of all types and sizes should prepare to occupy the local or national media spotlight in the event that an employee tests positive for the disease.

It is unlikely that an employer could avoid media attention in the event that an employee tests positive for COVID-19, is quarantined, or is otherwise associated with the evolving pandemic. Most people spend a significant majority of their lives at their workplace, where they come in close, daily contact with other members of their community. Reporters will want to contextualize any new case of COVID-19 and explain what it might mean for the rest of the community—and the individual’s employer will provide that context. The headlines will read “Company X Employee Tests Positive for Coronavirus.” Already Google, Amazon, Citibank, MGM Resorts, and countless regional and local employers have found themselves occupying the difficult position of “Company X.”

This doesn’t have to be damaging, though. While any case of employee illness is a grave concern, it can actually offer an employer an opportunity to convey calm and control, communicate key messages about its response measures, and bolster its credibility in a critical time.

To control the narrative and achieve these strategic outcomes, employers confronted with media inquiries regarding the COVID-19 epidemic should keep the following axioms in mind.

1. Ensure that your COVID-19 Response Team includes a senior communications professional.

By now, all companies and organizations ought to have created an internal team dedicated to monitoring the latest news about COVID-19, making critical operational decisions to ensure workplace safety as well as business continuity, and communicate updates throughout the enterprise. This team should include a senior communications professional. In the event of a media inquiry or the need to make a public statement, this responsibility should fall to a person with issues management and strategic messaging experience—and as timeliness will be critical, this person should not be playing catch-up regarding the organization’s COVID-19 response and decision-making.

2. Be transparent and straightforward about what you know, what you don’t know, and what you’re doing to control the situation.

During a national or international health crisis, the general public will manifest a seemingly insatiable appetite for information, and will expect that information from whatever entity finds itself in the media spotlight at any given moment. In responding to a media inquiry, dispense with the windup. Whether releasing a written statement or communicating verbally with reporters, you do not need to share generic information about COVID-19. Similarly, while there will be a place to discuss your organization’s response measures, this does not belong in the front-end of a statement. Instead, plainly and directly confirm the case of infection, explain how and when this knowledge reached your organization’s leadership, and lay out any safety measures (such as quarantining or office closure) that the organization took specifically in response to this case. If there are significant gaps in your knowledge (such as how and when the employee contracted the virus), that’s OK—just outline this missing information and explain what you’re doing to find out more.

3. Anticipate and prepare answers for questions that reporters will be likely to ask.

While it is understandable and acceptable for an organization to respond “We don’t know” to certain questions from the media, this should be due to legitimately missing or unverified information—*not* due to a spokesperson’s poor preparation. If a spokesperson claims that the organization doesn’t know something, and later reporting reveals that the organization *did* have knowledge about the subject, media attention will shift from the facts of the case to a perceived “cover-up”—even if a cover-up was never the organization’s intention.

Reporters will want to know in what office location the infected employee works, whether the employee's job involves frequent contact with non-employees or the general public, whether the employee recently traveled, when the employee was tested and/or quarantined, and whether the organization has taken specific safety measures in response to this case. Prepare responses to these and other relevant questions based on the facts of any case. In addition, especially against the backdrop of the 2020 U.S. presidential election and the issues related to health care and labor that this has foregrounded, prepare for potentially "loaded" questions about your company's health benefits, policies related to paid sick leave, and similar concerns.

4. Follow the latest federal guidance regarding the release of private information.

The U.S. Office for Civil Rights (OCR) and Department of Health and Human Services (HHS) have released guidance regarding the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and COVID-19. The HIPAA Privacy Rule allows for covered entities to disclose private health information under certain circumstances, including **to persons at risk** and **as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public**. Given the many ways in which the COVID-19 pandemic has disrupted normal business operations and even cultural traditions, it is our opinion that the exceptions to HIPAA have swallowed the rule: virtually any confirmed case will be seen as presenting a serious and imminent threat to public health and safety.

That said, it is unlikely that there will be a demand to release the name or other personally identifiable information about an infected individual. Employers may publicly identify the office where an employee works, share information about recent travel or a confirmed transmission scenario, and explain quarantining or other safety measures. It is our opinion that the media and public do not have a compelling need for an individual's name, nor will withholding a name substantially damage an employer's credibility.

See: www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf

5. Use the opportunity to communicate your organization's COVID-19 response measures.

Once you have answered the most pressing questions regarding the affected employee, active risks, and case-specific response measures, use your time in the media spotlight to communicate key messages about your organization's overall COVID-19 response measures. You do not want coverage about a confirmed workplace illness to portray your organization as unprepared or worse, knocked on its heels. Instead, frame the case of infection as a statistically probable eventuality that your organization's leadership identified early and prepared to mitigate. Explain any workplace safety and business continuity measures you have taken. This messaging may be nearly identical to communications you have already released internally and to clients, patrons, or other stakeholders.

A media inquiry regarding a case of COVID-19 within your organization does not call for panic—and neither does it call for “no comment.” Adequate preparation can ensure that you satisfy the public's need for information during this crisis, protect your employees and stakeholders, avoid legal risks, and promote your credibility and organizational values. Please consult with your legal counsel and, if necessary, a trained crisis communicator to discuss your organization's COVID-19 media and public relations plan as well as your response to any case of employee infection.

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