These FAQs have been prepared to provide guidance to restaurant operators as the industry responds to developments in connection with the 2019 novel coronavirus/COVID-19 outbreak. Jackson Lewis attorneys are monitoring this developing situation, which will likely continue to evolve during the coming weeks. Restaurants should monitor the Centers for Disease Control and Prevention website for updates and consult with legal counsel as circumstances develop and new issues arise.

Answers to these FAQs may vary based on individual circumstances, an Employer’s policies, and/or any applicable state or local laws. Answers to these and other questions may change as we address this fast-evolving public health situation.

1. **What should Restaurant Operators do now?**
   A: Restaurant employees should be reminded of the importance of handwashing. The CDC website has information regarding hand washing that may be distributed to staff. Restaurant operators may remind employees that they should not report for work if they are not feeling well. This might be a good time to remind employees of any applicable paid or other sick leave options that may be available to them.

2. **If a Restaurant employer knows that an employee has or intends to travel may the employer ask employees about geographic areas where they have traveled or intend to travel?**
   A: Yes, absent a claim that an employee has a recognized privacy interest in their travel activities. Employers should take steps to reduce any reasonable expectation of privacy that employees might have in those activities.

3. **May a Restaurant employer bar asymptomatic employees from returning to the Restaurant if the employee has traveled to designated WHO (World Health Organization) or CDC affected regions?**
   A: Yes, as long as the Restaurant acts consistently based on travel activities. Employers nevertheless should be mindful of the risk of potential discrimination claims or stigmatizing or perceiving to stigmatize employees of particular races or national origins.

4. **May a Restaurant employer bar asymptomatic employees from working in the Restaurant if the employees’ household member has traveled to designated WHO or CDC affected regions?**
   A: Yes, given the close contact ordinarily experienced by household members, we believe employers usually would be justified in barring employees from entering the workplace in these circumstances.

5. **How long may a Restaurant require asymptomatic employees who have traveled to affected regions or had close contact with such individuals remain at home?**
   A: The Restaurant should require that the employee remain at home for the presumed 14 day incubation period.

6. **If the Restaurant requires an employee to stay home for the 14-day incubation period must the Restaurant pay that employee?**
   A: Absent a contractual commitment to pay, such as an applicable collective bargaining agreement or restaurant policy, no federal law requires employers to pay non-exempt employees for time they do not actually work. Federal or state wage hour laws may require exempt employees to be paid their regular salary if they are directed not to report to work. If the employee has accrued paid leave based on the Restaurant’s policies, the employee may be entitled to use such paid leave. If the employee is home because a family member has visited a WHO or CDC...
affected region, that employee may be eligible to receive NY Paid Family Leave. The employee may also be eligible for unemployment benefits.

7. **May restaurants require employees to provide notes from healthcare providers confirming they are capable of returning to work?**
   
   **A:** New York employers should be mindful of their obligations under the various sick leave laws, and should not request notes from asymptomatic employees. Generally, even if employers do not require disclosure of medical information, they likely can require notes confirming employees are capable of returning to work without violating the Americans with Disabilities Act because the request would not be disability-related. As a practical matter, however, public health authorities have warned that doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation.

8. **What about masks? Can a Restaurant require employees to wear masks while working? Can a restaurant restrict an employee from wearing a mask while working?**
   
   **A:** Wearing a mask has not been shown to be effective in preventing community transmission of COVID-19 infection. Based on current advisories from the CDC, there is a growing shortage of masks which can impact the need for masks where required for health care workers; as a result masks may not be available. Restaurants should consider adopting a general approach to this issue, communicate it to staff, and be prepared to address individually if an employee requests to wear a mask while at work, if necessary, to address an employee’s medical-related concerns.

9. **May employers send employees home if they develop symptoms of COVID-19 infection?**
   
   **A:** Yes. An employer never has to allow a sick employee to remain at work. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. The EEOC has stated that advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the EEOC has stated that such actions would be permitted under the ADA if the illness were serious enough to pose a direct threat. We are monitoring the NYC Commission on Human Rights and the New York State Division of Human Rights’ website for further guidance.

10. **May employers discipline employees who are unwilling to work due to concerns about acquiring COVID-19 infection?**
    
    **A:** The answer depends on whether an employee’s concern about workplace safety is reasonable. Restaurants should consult with legal counsel before issuing disciplinary action.

11. **Would it matter if multiple employees expressed unwillingness to work due to safety concerns?**
    
    **A:** It might. Such situations should be evaluated carefully to determine if the employees are engaged in protected concerted activity under the National Labor Relations Act (NLRA).
12. Can employers discipline employees if they fear commuting to work during a pandemic?
A: There may be situations where employees can reasonably object to commuting during a pandemic. Again, we recommend that Restaurants consult with legal counsel to individually assess whether there are any reasonable basis for legal protections.

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