

## Advocate. Educate. Connect.

### Ebola Resources for OPRA Members

#### I. Ebola Generally

**Ebola** is a zoonotic disease of humans and other mammals caused by an Ebolavirus. Signs and symptoms typically start between two days and three weeks after contracting the virus, with a fever, sore throat, muscle pain and headaches. Then, vomiting, diarrhea and rash usually follow, along with decreased function of the liver and kidneys. Around this time, infected people may begin to bleed both within the body and externally. Death, if it occurs, is typically 6 to 16 days from the start of symptoms and is often due to low blood pressure from fluid loss.

#### II. Ebola Transmission

Ebola virus can be transmitted by direct contact with blood, body fluids, or skin of Ebola patients or persons who have died of Ebola.<sup>1</sup> Since the initial outbreak in 1974, there have been no documented cases of Ebola being transmitted to humans via airborne contact.<sup>2</sup>

#### III. Practical Considerations and Information

As the past week demonstrates, details regarding the outbreak can change from day to day. For the latest information regarding the Ebola outbreak, and recommendations regarding screening, spread of the disease, and how to deal with patients, employees, or visitors who may have been exposed, please go to the CDC's [Ebola website](#).

#### Contacts

[Robin L. Canowitz](#)  
614.464.4953  
[rlcanowitz@vorys.com](mailto:rlcanowitz@vorys.com)

[Nelson D. Cary](#)  
614.464.6396  
[ndcary@vorys.com](mailto:ndcary@vorys.com)

[Jackie Ford](#)  
614.464.8230  
[jjford@vorys.com](mailto:jjford@vorys.com)

[Jonathan Ishee](#)  
614.464.6400  
[jishee@vorys.com](mailto:jishee@vorys.com)

[Suzanne J. Scrutton](#)  
614.464.8313  
[sjscrutton@vorys.com](mailto:sjscrutton@vorys.com)

**VORYS**

<sup>1</sup> 3.Dowell SF, Mukunu R, Ksiazek TG, Khan AS, Rollin PE, Peters CJ. Transmission of Ebola hemorrhagic fever: a study of risk factors in family members, Kikwit, Democratic Republic of the Congo, 1995. Commission de Lutte contre les Epidemies a Kikwit. The Journal of Infectious Diseases. Feb 1999;179 Suppl 1:S87-91.

<sup>2</sup> U.S. Centers for Disease Control and Prevention. Ebola Hemorrhagic Fever Information Packet. 2009; Ebola Factsheet Accessed October 17, 2014.

In order to educate those who work in or visit your facility, providers may wish to post the CDC's [Fact Sheet](#) regarding Ebola.

Providers may wish to take reasonable steps to screen employees, visitors or patients based upon guidance provided on the CDC website [here](#) and [here](#).

Please also see OSHA's [guidance](#) for health care providers.

Depending on the care environment, the services being provided, and the likelihood of harm, providers may want to question employees about possible exposure or ask people not to come to work. In addition, providers may wish to ask people not to visit. The following risk based questionnaire could be used in connection with the labor and employment law guidance provided on the following pages.

### ***A. Travel/ Contact History***

Have you resided in or traveled to a country with widespread Ebola transmission (Guinea, Liberia, Sierra Leone or other countries where transmission has been reported by the World Health Organization (WHO) ) within the last 21 days?

To the best of your knowledge have you had close exposure to, or contact with a person:

- 1) Who has been diagnosed with Ebola, or
- 2) Who has traveled to a country with widespread Ebola transmission (Guinea, Liberia, Sierra Leone or other countries where transmission has been reported by the WHO) within the last 21 days?

**If Yes, then Proceed to Section B**

### ***B. Presence of Symptoms***

Do you have any of the following symptoms?

- 1) fever over 100.4 F
- 2) headaches,
- 3) muscle pain or weakness,
- 4) vomiting or diarrhea,
- 5) abdominal pain or
- 6) hemorrhage?

**If Yes, then Proceed to Section C**

### ***C. Have you Been Seen by a Physician?***

Have you been seen by a physician for these symptoms, **AND** informed them of your recent travel history or close contact with a person who has traveled to a country with widespread Ebola transmission (Guinea, Liberia, Sierra Leone or other countries where transmission has been reported by the WHO) within the last 21 days?

**If No:** Then the individual's risk is elevated and a provider should direct the individual to be seen at the nearest hospital emergency room. The provider should instruct the individual to communicate the individual's symptoms and recent travel history to the hospital's staff.

**If Yes:** The provider should seek guidance from legal counsel regarding what provider should do next given each unique circumstance.

### **IV. Issues Providers Should Consider from an Employment Standpoint**

Neither the U.S. Equal Employment Opportunity Commission (EEOC) nor the Centers for Disease Control (CDC) have issued any guidance for employers generally. The CDC has issued various protocols relating to response to Ebola and related considerations, which are discussed above. In the meantime, for those employers getting an early start, here are five issues to consider.

#### ***Occupational Safety and Health Act***

There is currently no specific Occupational Safety and Health Act (OSHA) standard or directive for what it refers to as viral hemorrhagic fevers, of which Ebola is one. An article on OSHA's [website](#) does discuss OSHA's guidance for employers in various industries. The guidance focuses on health care workers, airline and travel industry personnel, mortuary and "death care" workers (OSHA's term, not ours), laboratory workers and emergency responders, among others. The article primarily reminds employers of existing OSHA directives regarding personal protective equipment (PPE), bloodborne pathogens, hygiene and disposal of contaminated clothing. A more generic final section of the article titled "Workers in Critical Sectors" suggests steps that can be taken in high risk occupations.

## ***Disability Discrimination***

The Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) should play a role in employer planning for the response to the Ebola virus. The ADA prohibits “disability related inquiries” as well as “medical examinations” of employees and applicants under certain conditions. The ADA also permits employer action when an employee presents a “direct threat” to him or herself, or to co-workers, even if that threat arises from the employee’s disability.

Questioning an employee about travel plans or limiting business-related travel would not contravene either of these restrictions. Indeed, knowing about an employee’s travel plans would provide an employer with information that could be used to assess additional steps. Employers must be cautious in implementing this approach, however, so as not to run afoul of ADA restrictions against discrimination based on a perceived disability.

Other steps, like employer screening of employees for fevers, are potentially more problematic. The EEOC has previously concluded that fever screening is a medical examination. Thus, the ADA would require that it be “job related and consistent with business necessity” or justified by information suggesting that the employee poses a direct threat. What additional steps an employer could take to address possible Ebola exposure among its employees, therefore, will depend on the unique circumstances the employer faces in its industry and for the job responsibilities of the employee at issue.

To date, the EEOC has not issued any guidance to employers on these difficult questions. About five years ago, however, when the world confronted the H1N1 influenza pandemic, the EEOC issued a guidance titled “[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#).” While the H1N1 virus and Ebola are clearly different, the guidance provides at least some insight into the EEOC’s view of various potential responses to the spread of a viral disease in the U.S.

## ***Title VII of the Civil Rights Act***

Employers may not discriminate on the basis of race and national origin. In whatever response employers might undertake, it would be clearly inappropriate for employers to impose additional restrictions or burdens on employees simply because of their race or their national origin. This is true notwithstanding the fact that the primary area of the outbreak is found in Western Africa and particularly the countries of Liberia, Sierra Leone, Guinea. Moreover, employers should consider not just the actions

management may take in response to the Ebola virus, but also comments, conduct, or similar types of behavior from co-workers that could be considered racial or national origin harassment of employees of Western African descent.

### ***Family Medical Leave Act***

FMLA leave is available to certain employees for serious health conditions. Certainly, an employee with Ebola would have a serious health condition and be entitled to leave under the FMLA. Likewise, an employee requesting leave to care for a child, spouse, or parent with Ebola would also qualify for leave.

The more difficult question, however, is whether employers may require employees who are suspected of Ebola exposure, either through travel or contact with a person who has Ebola, to “quarantine” themselves away from the work place (*i.e.*, take forced time off). Such a response is not advisable in all cases, but may be permissible in others. Certainly, for an employee with no symptoms, the employer could not count forced leave against the employee’s FMLA entitlement. Instead, the employer would need to consider a leave under some other employment policy. Employers who provide paid leave in such a case will lessen (but not eliminate) the likelihood of any employment-related liabilities arising from the forced leave.

### ***National Labor Relations Act***

Employee concerns regarding the spread of Ebola could lead to those employees taking action to demand safety measures from their employers. Federal labor law protects collective action by a group of employees, like [aircraft cleaners](#) or [nurses](#), for such a purpose. Moreover, employees who learn of co-workers who may have recently traveled or are suspected of having been in contact with those who may be infected, might refuse to come to work out of fear for their safety. Employers should be prepared to respond to developments of this type in a lawful manner. In fact, educating the workforce in advance, encouraging sick employees to stay home, providing or encouraging flu vaccinations, and taking some of the safety-related steps suggested by OSHA, may help the proactive employer head off unnecessary employee anxiety about Ebola.

## **V. Additional Information**

As the Ebola crisis continues, OPRA and Vorys will monitor the various state and federal regulatory agencies and pass along any relevant guidance that may be issued. In the meantime, providers with particular concerns regarding the Ebola virus should take steps to ensure that their proactive efforts to prepare are consistent

with applicable CDC guidelines and employment restrictions. Should you have any questions, please contact OPRA, or OPRA members may also utilize their 2 free hours of legal consultation with the Vorys law firm by contacting Suzanne Scrutton 614.464.8313 or Robin Canowitz at 614.464.4953.

*This alert is for general information purposes and should not be regarded as legal advice. As always, please let us know if you want more information or have questions about how these developments apply to your situation.*