

Legal Update

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ZIKA VIRUS AND LEGAL IMPLICATIONS FOR EMPLOYERS

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The World Health Organization (WHO) has recently declared a global public health emergency due to the spread of Zika virus. According to the U.S. Centers for Disease Control and Prevention ([CDC](#)), there are now [more than 20 countries](#) with active Zika virus transmission and [258 travel-related Zika virus cases](#) reported in the United States, including seven travel-related cases in Illinois.

Employers who require business travel to [affected regions](#) or who have employees planning vacations in such regions should consult with their legal counsel regarding the potential implications of the employment laws discussed below.

Can An Employer Refuse to Allow A Pregnant Employee to Travel to a Zika-Affected Region?

An employer should not attempt to keep female employees from traveling to affected regions—even if the employer merely wants to protect them from exposure to Zika—because this may trigger gender or pregnancy discrimination claims. The federal Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act, prohibits discrimination based on pregnancy, childbirth, or related medical conditions. State and local laws also prohibit pregnancy discrimination in the workplace. Accordingly, employers should be careful not to “single out” pregnant or female employees and should treat them in the same manner as other employees or applicants.

If, however, a pregnant employee requests not to travel to a Zika-affected region for work, the employer may need to engage in an interactive dialogue with the employee to determine whether the requested accommodation would be reasonable.

Can An Employer Simply Prohibit All Employees from Traveling to a Zika-Affected Region?

No, employers generally cannot prohibit otherwise lawful conduct when employees are off-duty.

May An Employee Refuse to Travel to a Zika-Affected Region for Work?

Employers who require business travel to affected regions may want to consider permitting employees to decline such travel without repercussion to their employment. Under the Occupational Safety and Health Act (OSHA), an employee may refuse to work only if there is an objectively reasonable belief that there is a risk of imminent death or serious injury.

Employers have a legal obligation under OSHA to provide a safe and healthful workplace. Section 5 of OSHA, known as the “General Duty Clause,” requires employers to provide their employees with a workplace free from recognized hazards likely to cause serious physical harm or death. An employer may be cited for violating the General Duty Clause if it fails to take reasonable steps to prevent or abate a recognized hazard. Although OSHA has not yet deemed Zika a “recognized hazard,” OSHA has announced that it is planning to release an interim guidance this spring on protecting workers from occupational exposure to Zika. Consequently, the best approach may be to educate employees about Zika, permit all employees—not just pregnant employees—to opt out of upcoming business travel to Zika-affected regions, and/or reconsider or postpone business travel to affected regions until OSHA provides further guidance.

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Can An Employer Require A Medical Exam for An Employee Who Returns From a Zika-Affected Region?

No, employers generally cannot require employees returning from a Zika-affected region to submit to a medical exam. Under the Americans with Disabilities Act (ADA), which restricts an employer's ability to subject employees to medical exams, an employer may require a medical exam only if it is job-related and consistent with business necessity.

Can An Employer Quarantine An Employee Who Returns From a Zika-Affected Region?

Public health agencies have so far declined to impose quarantines on people who return from Zika-affected regions. Employers should not discriminate against employees who return from Zika-affected regions by quarantining them. Employers should keep in mind that the ADA prohibits disability-related discrimination in the workplace.

Conclusion

As there is currently no cure for Zika, the best medicine to combat a future Zika threat and concerns about Zika in the workplace may be careful planning and education of employees about traveling to Zika-affected regions, Zika symptoms and modes of transmission, and the precautions that employees may take to avoid infection. Advance planning and education can promote safety and the effective allocation of an employer's resources. Moreover, establishing policies regarding public health emergencies can help protect an employer from possible liability in the event of a Zika virus disease case in the workplace or a future epidemic in the United States.

Employers should consult with counsel about developing an effective disaster plan that includes public health awareness training and the means and methods to inform employees about public health emergencies. This plan should be tailored to meet the specific needs and culture of each workplace, taking into consideration various factors such as international business travel requirements, applicable employment policies such as the company's anti-discrimination, sick leave, and pregnancy accommodation policies, and the coverage provided under the employer's workers' compensation and/or disability insurance policies for occupational diseases in the event of a Zika case in the workplace.

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