

# What Employers Should Know About Monkeypox

Aug. 22, 2022

*The federal government recently declared monkeypox a public health emergency. Morgan Lewis employment law attorneys share guidance on how employers should communicate basic information about the disease and resources for protecting employees while avoiding stigmatizing groups and at-risk individuals.*

The federal government declared monkeypox a public health emergency on Aug. 4. Many businesses may be wondering whether they need to impose new health and safety measures as they did in response to the Covid-19 pandemic.

According to the CDC, [monkeypox](#) is part of the same family of viruses as smallpox. Unlike Covid-19, which is highly transmissible through respiratory droplets, monkeypox is [spreading](#) mostly through close, personal, often skin-to-skin contact—e.g., during sex, hugging/kissing, and by touching contaminated towels, clothing, and bedding.

There are approximately 11,000 known cases of monkeypox in the US and no known fatalities.

## What Employers Can Do Proactively

At this time, no state or local orders require businesses to implement safety protocols specific to monkeypox.

Nevertheless, to help protect employees and alleviate concern among their workforce, employers should consider communicating basic information and resources about monkeypox, including available [CDC guidance](#) on steps individuals can take to protect themselves and others.

These communications can also be used to remind employees of the importance of practicing good hygiene, available benefits if they become infected, and the need to respect the privacy of others.

## If an Employee Reports Having Monkeypox

Unlike Covid-19, there is no guidance from the CDC, the Equal Employment Opportunity Commission, or any other government agency that allows an employer to require employees report when they have monkeypox.

Under the Americans with Disabilities Act, employers are prohibited from making medical inquiries unless they are job-related and consistent with business necessity.

Additionally, given the high rate of transmission among gay men and the perceived stigma regarding sexual orientation, employees may be hesitant to report a monkeypox infection. Still, employers can and should reiterate a more general requirement that individuals who are ill not report to work.

Some employees, particularly those who cannot work remotely and need time off, may report a monkeypox infection to their employer voluntarily. After receiving a report, an employer can tell the employee to temporarily stay home and seek medical assistance.

The CDC generally advises individuals who have monkeypox to stay at home until symptoms have resolved and the monkeypox rash has healed. If an employee is not able to stay at home—e.g., an employee cannot telework and does not have paid sick leave.

There are detailed CDC [precautions](#) that an employee can take. These include working in a separate space, covering lesions, and wearing a well-fitting mask. However, the safest course of action is to have the employee stay home.

Employers concerned about letting a previously infected employee return to work in person can request that the employee submit documentation from a health-care provider confirming they are fit to return.

Employers should also provide information to the infected employee about available leave benefits and the leave approval process, and communicate with the employee's manager about the employee's approved time off. Employers should also remind managers about the company's requirement to respect employee privacy.

## **If an Employee Reports Exposure**

CDC [guidance](#) explains that those who have been exposed to monkeypox should monitor their health for 21 days after their last exposure, but that they “can continue

their routine daily activities—e.g., go to work or school—as long as they do not have signs or symptoms consistent with monkeypox.”

Employers should advise employees who have disclosed that they have been exposed to monkeypox to review the CDC guidance regarding symptoms to monitor, and to consult with their health-care provider about potentially receiving post-exposure prophylactic treatment—i.e., the smallpox vaccine.

## **Additional Issues to Consider**

Although employers may be tempted to implement the same workplace restrictions that they have for Covid-19, such as keeping exposed/infected individuals out of work, employers should be aware of the following issues and limitations regarding responding to the monkeypox outbreak:

Be cautious to avoid disability discrimination, including against individuals who are perceived as disabled because they have monkeypox symptoms or may have been exposed to someone with monkeypox.

Taking actions in line with CDC or other applicable government agency guidance will mitigate the risk of claims when treating someone with or exposed to monkeypox differently from other employees.

Be mindful of the risk that employees will view monkeypox as a “gay” disease. The data shows that the [virus is primarily spreading](#) among men who have sex with other men. To avoid possible sexual orientation discrimination claims or “regarded as a person with a disability” claims, employers may consider communicating with managers about avoiding this stereotype or treating gay men differently than other employees.

Comply with federal and state privacy requirements (including HIPAA for covered entities and the Americans with Disabilities Act). These laws require employers to keep medical records relating to disabilities or other protected health information confidential and separate from employee personnel files.

Review benefits and leave plans to determine what benefits may be available for employees who test positive for monkeypox and whether any revisions to these materials are necessary.

Designate an individual or team to routinely check for updated guidance from CDC or other public health authorities. The Covid-19 pandemic has taught us that there can be rapid changes in guidance on appropriate steps employers should, or must, take in response to an illness outbreak.

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