

Expert Q&A: What Employers Need to Know About Monkeypox

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An Expert Q&A with Elizabeth Houghton LaGreca and Richard H. Hughes IV of Epstein Becker & Green, P.C. on what employers need to know about the 2022 monkeypox outbreak. The Q&A includes a discussion of workplace infection prevention and control measures, leave and flexible work policies during recommended isolation periods for infected or exposed employees, discrimination issues, and more.

Although the Centers for Disease Prevention and Control (CDC) describes monkeypox as a rare disease, it is top of mind for many employers as we continue to hear news of outbreaks and increased case counts. In July 2022, the World Health Organization (WHO) declared the escalating monkeypox outbreak a “Public Health Emergency of International Concern.” The US [federal government](#) followed suit and declared monkeypox a public health emergency. Certain states, like [California](#), [Illinois](#), and [New York](#), have also announced a state of emergency due to monkeypox.

Employers have already been handling countless workplace issues associated with the COVID-19 pandemic. Now they must prepare for potentially new and unique considerations brought about by the 2022 monkeypox outbreak. Although there are many unknowns, employers should be prepared to manage certain issues and answer employee questions on monkeypox. These include workplace health and safety protocols, paid sick leave or other leave, considerations for employee testing, vaccination, isolation, recovery, remote work and other flexible work policies, confidentiality of employee medical information under the Americans with Disabilities Act (ADA), and potential discrimination concerns.

Practical Law reached out to Elizabeth (Liz) Houghton LaGreca and Richard H. Hughes IV of Epstein Becker & Green, P.C. for their thoughts on monkeypox issues in the workplace and issues of particular concern for health care employers.

Liz Houghton LaGreca is a Member of the Firm in its New York office. She is an experienced litigator and trusted advisor who partners with employers to find solutions to their most challenging employment law matters. Liz

counsels employers on all facets of employment law, with an eye towards minimizing risk and achieving optimal workplace outcomes. Liz has been advising clients on workplace issues regarding the COVID-19 pandemic and is an active participant in the firm’s COVID-19 working group.

Richard Hughes is a Member of the Firm in its Washington, D.C. office. As a vaccine thought leader, Richard has led many efforts to expand access to vaccines and preventive services that improve public health outcomes. Richard counsels pharmaceutical and device companies, plans, health care providers, and national governments and provides strategic counsel to industry entities on legislative and regulatory trends and policy developments impacting the health sector.

Liz and Richard would like to thank Jessica Hajdukiewicz for her research assistance in preparing this Expert Q&A.

What do employers need to know about monkeypox?

According to the CDC, “[m]onkeypox is a rare disease caused by infection with the monkeypox virus. Monkeypox virus is part of the same family of viruses as variola virus, the virus that causes smallpox. Monkeypox symptoms are similar to smallpox symptoms, but milder, and monkeypox is rarely fatal. Monkeypox is not related to chickenpox.” ([CDC: About Monkeypox.](#))

Monkeypox symptoms may last two to four weeks, and the lengthy course of this illness is of particular concern for employers. Current guidance suggests symptoms usually start within three weeks of exposure and may include:



- Rash or blisters on the skin, which may:
 - be the only symptom;
 - appear before other symptoms; or
 - appear after other symptoms.
- Fever.
- Chills.
- Swollen lymph nodes.
- Exhaustion.
- Headaches.
- Muscle aches and backaches.
- Respiratory symptoms (such as a sore throat, nasal congestion, or a cough).

(CDC: [Monkeypox: Signs and Symptoms](#) (updated August 5, 2022).)

Based on current CDC guidance, monkeypox can spread “through direct contact with the infectious rash, scabs, or bodily fluids” or by respiratory secretions following “prolonged, face-to-face contact, or during intimate physical contact” (CDC: [Monkeypox: How It Spreads](#) (updated July 29, 2022)). Scientists are researching whether the virus can be spread by asymptomatic individuals, how often monkeypox is spread through respiratory secretion, and whether it can be spread through certain bodily fluids. Guidance from the California Department of Public Health suggests monkeypox is **not** spread through brief conversations or by walking by an individual currently symptomatic with monkeypox (Cal. DPH: [Monkeypox](#)). There are currently two vaccines available, which are both licensed to prevent smallpox and can provide protection against monkeypox.

As of this writing, there is limited guidance for employers on how to handle monkeypox in the workplace. Neither the Occupational Safety and Health Administration (OSHA) nor the Equal Employment Opportunity Commission (EEOC) has released workplace guidance. While the CDC and WHO have guidance and resources regarding prevention and treatment, neither agency has issued general workplace guidance for employers. The CDC has, however, provided guidance specifically for:

- Health care settings (CDC: [Information for Healthcare Professionals](#)).
- Congregate settings, such as correctional facilities or homeless shelters (CDC: [Considerations for Reducing Monkeypox Transmission in Congregate Living Settings](#)).

Public health guidance for employers is likely to emerge and evolve, so employers should stay current and follow guidance as it becomes available.

Is monkeypox the next COVID-19?

The pronouncements by world and national health officials may seem reminiscent to employers of the COVID-19 declarations made over the past two years. However, unlike COVID-19, monkeypox is **not a new virus** and has been endemic in several countries for years. Vaccines for monkeypox are already available, and the government is working to increase distribution.

A key difference between the two viruses is that monkeypox is much less contagious than COVID-19 because it is spread differently. COVID-19 is predominantly spread through exhaled respiratory droplets that are then breathed in or come into contact with a person’s eyes, nose, or mouth (CDC: [How COVID-19 Spreads](#)). Monkeypox is primarily spread through close, personal, often skin-to-skin contact (CDC: [Monkey: How It Spreads](#)). As a result, COVID-19 was and is a greater risk to the general population, while monkeypox is harder to acquire through casual or brief contact.

As with COVID-19, we have already seen that emergency declarations in multiple jurisdictions help facilitate response coordination, including the availability of tests, vaccines, and treatments. The response to monkeypox, however, may be more proportionate and targeted to the threat and affected populations. This means that monkeypox may be less disruptive to daily lives, but that resources must be directed where they are needed most.

The scientific and health care communities have more of a head start with monkeypox given that this is not a novel virus and existing smallpox vaccines are effective in preventing monkeypox. Although vaccines for monkeypox have been deployed more rapidly than during the COVID-19 pandemic, early supply constraints may impede access for some who wish to be vaccinated against monkeypox.

Health care and public health workers are particular populations that are uniquely affected by both public health threats. While the differences in mode of transmission may mitigate the spread of monkeypox relative to COVID-19, close contact with patients infected with monkeypox will pose a special risk to health care workers requiring appropriate precautions. Ongoing research to understand whether monkeypox can be spread through contact with bodily fluids will further the understanding of this risk.

Finally, because monkeypox mutates more slowly than COVID-19, new variants of the monkeypox virus are less likely to emerge than the multiple COVID-19 variants. This means that vaccine protection is likely to be more stable as the monkeypox outbreak evolves, ultimately lowering the transmission rate.

What does it mean for the federal, state, or local government to declare a “state of emergency,” and how does that impact employers?

Because monkeypox poses a serious public health threat – if left uncontrolled – it is important to use legal mechanisms to facilitate mitigating that threat. An emergency declaration is a legal tool giving public health officials the ability to signal the seriousness of and carry out activities in response to an emergent health threat. For COVID-19, this included implementing quarantine orders, requiring social distancing, mandating masking, and restricting in-person gatherings. An emergency declaration can also be used, as is the case with monkeypox, to release emergency funding, encourage cross-jurisdictional coordination, bolster surveillance, and coordinate scarce resources, such as antivirals, vaccines, and tests.

In some jurisdictions, public health emergencies may also trigger a host of requirements impacting employers, including requirements to adopt social distancing protocols, to implement masking in the workplace, to provide notice of potential exposure to employees, and protections for employees who raise concerns about health and safety violations. As of this writing, several states, including in California, New York, and Illinois, and cities, such as New York City and San Francisco, have proclaimed a “state of emergency” to support the state’s (or a city’s) response to the monkeypox outbreak. At this time, these pronouncements do not appear to trigger any specific requirements for employers (though the declaration of a public health emergency may trigger paid sick leave obligations).

For example, the New York HERO Act, enacted during the COVID-19 pandemic, requires employers to implement a workforce safety plan when the Commissioner of Health designates an airborne infectious disease as a “highly contagious communicable disease that presents a serious risk of harm to the public health” (N.Y. Lab. Law § 218-b(1) (e)). Although COVID-19 triggered this designation until March 17, 2022, as of this writing, monkeypox has **not** been designated as an airborne infectious disease under

the NY HERO Act, despite the declaration of a state of emergency in New York due to monkeypox. (For more on the HERO Act, see [NYS DOL: NYS HERO Act.](#))

What should employers do if they learn that an employee in the workplace has tested positive for monkeypox? What about if employees had potential exposure to monkeypox?

Employers that learn of a positive case of monkeypox in their workforce should instruct the infected employee to isolate away from the workplace for the duration of symptoms (which may last from two to four weeks), seek medical treatment, and obtain a return-to-work certification from a health care provider before returning to the workplace. For employees who may have been exposed to monkeypox, the CDC states that these individuals need not isolate, but should self-monitor for signs and symptoms consistent with monkeypox for 21 days following their last exposure. For the latest CDC guidance, see [CDC: Monkeypox: Monitoring and Risk Assessment for Persons Exposed in the Community](#) (periodically updated).

While employers may be familiar with and use COVID-19 protocols as a basis for managing monkeypox cases and exposure notifications in the workplace, it is important to note the differences in how the diseases are spread. Monkeypox is unlikely to spread through brief conversation and more likely to spread through prolonged face-to-face or skin-to-skin contact. For purposes of understanding monkeypox transmissibility, “close [or direct] physical contact,” is **not** the same as the “close contact” definitions used for evaluating potential exposure to COVID-19 (that is, within six feet of an infected person for 15 minutes or more over a 24-hour period). Therefore, the process of identifying “close contacts” for purposes of monkeypox transmission is different from COVID-19 contact tracing. ([CDC: Monkeypox: Notifying Close Contacts.](#))

As of this writing, there are no federally mandated monkeypox reporting requirements or contact tracing protocols for employers. The CDC has set forth guidance for infected individuals recommending that they notify potential “close contacts,” which include anyone who they:

- Had sex with.
- Hugged, cuddled, or kissed.

- Shared cups, utensils, towels, clothing, bedding, blankets, or other objects and materials with.
- Touched or who came in contact with the rash on their body.

Employers should provide notification of any potential exposure to others in the workplace consistent with CDC guidelines and any legal requirements in the applicable jurisdiction. This may include reporting the case to public health authorities and cooperating with these authorities' contact tracing efforts or notifying others potentially exposed if consistent with an employer's health and safety policies. Employers must maintain the confidentiality of an employee's medical information and records consistent with their obligations under the Americans with Disabilities Act (ADA) and applicable state or local law (see [Medical Examinations and Inquiries in Employment Checklist: Confidentiality](#)).

Employers should also be mindful of potential fear of stigmatization that may accompany a monkeypox infection. Employers should avoid making assumptions regarding whether an employee may have contracted the monkeypox virus, unless the employee self-reports, or regarding how an employee contracted the virus, unless the employee volunteers an explanation or the infection was potentially acquired while performing job-related duties (such as close physical contact with patients or colleagues, or handling potentially contaminated materials).

OSHA has not issued guidance for employers on monkeypox health and safety or cleaning protocols. Certain workplaces, such as health care or congregate settings, pose heightened risk of exposure and would benefit from adhering to regular cleaning protocols. In any workplace where an employee has tested positive for monkeypox, employers should implement enhanced cleaning protocols with particular attention to cleaning surfaces, objects, and fabrics that the infected or exposed employee may have used or touched.

Can employees use sick time for monkeypox recovery or isolation? What about paid leave under state-specific emergency COVID-19 sick leave laws?

To the extent available, employees may use accrued and unused paid sick time to recover from a monkeypox diagnosis. Employers should be flexible in providing additional unpaid sick time to recover as needed, given

that monkeypox symptoms may present over the course of two to four weeks. As learned from the COVID-19 crisis, it is imperative for employers to remind employees that they should stay home if they are sick to prevent the spread of illness in the workplace.

Some states and cities continue to offer supplemental paid sick time for reasons relating to COVID-19 or relating to public health emergencies. For example, New York and California offer paid leave for specified reasons related to COVID-19, which is more highly contagious and more easily transmissible than monkeypox appears to be. Because these leave entitlements are expressly tied to COVID-19, employees are unlikely to be able to use this leave time to recover from or isolate during monkeypox.

Other states, such as Arizona and Colorado, have enacted paid leave laws with broader qualifying uses, such as sick time needed for reasons relating to a state-declared public health emergency. If the leave is for a state-declared public health emergency, its use depends on whether the Governor of that state or the requisite agency, as defined by each statute, has declared the illness an emergency. For example, [Colorado](#) recently issued guidance clarifying that its supplemental paid sick leave is only for use when the public health emergency is declared for a "highly fatal infectious agent" and that monkeypox does not currently meet that criterion. [San Francisco](#) also has passed an ordinance that will take effect on October 1, 2022, requiring private employers with 100 or more employees worldwide to provide paid public health emergency leave.

Employers should continue to check for guidance and updates on these leave laws in their respective state and city locations, and continue to monitor leave developments regarding monkeypox specifically.

For a summary of paid sick leave laws (including COVID-19 and public health emergency leave), see [Paid Sick Leave State and Local Laws Chart: Overview](#).

How should employers handle time off requests for employees to test or receive a vaccination for monkeypox?

As of this writing, there are no specific laws requiring employers to provide paid time off for monkeypox testing or vaccination (as opposed to certain state laws, like in New York, requiring paid leave to obtain each applicable dose of the COVID-19 vaccine). Many state and local paid

sick leave laws require that employers provide leave for preventive care, which may include vaccination generally. Of course, employers may enact their own policies to handle these requests and voluntarily provide paid or unpaid leave absent any legal mandate. Employers should apply their policies consistently to ensure they do not discriminate or retaliate against any employee requesting time off to be tested or vaccinated for monkeypox. Employers also should keep these requests confidential.

Other than in health care settings, there is no current guidance suggesting that private employers require or even recommend that employees get the monkeypox vaccine. Some states, such as New York and New Jersey, have set eligibility criteria for individuals to get tested or vaccinated due to limited availability. The eligibility criteria includes recent exposure to a confirmed case or those at high risk of recent exposure, including gay men and members of the bisexual, transgender, and gender non-conforming community who have sex with men.

The CDC also recommends vaccination for “people who have been exposed to monkeypox and people who may be more likely to get monkeypox,” including employees whose jobs expose them to orthopoxviruses, such as laboratory workers and some designated health care or public health workers (CDC: [Monkeypox: Vaccines](#)).

Are employees entitled to FMLA leave if they have contracted or are caring for someone with monkeypox?

An employee who tests positive for monkeypox or is caring for a family member with monkeypox would likely qualify for FMLA leave based on monkeypox constituting a “serious health condition.” The FMLA defines this as “an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, . . . or continuing treatment by a health care provider.” (29 U.S.C. § 2611(1).) Given the duration of symptoms, which may last up to four weeks, FMLA leave may be a good option for eligible employees working for covered employers as it provides unpaid, job-protected leave for up to 12 weeks. Whether an employee is eligible for FMLA leave should be considered on a case-by-case basis and documented appropriately, while maintaining the confidentiality of an employee’s medical information and records.

For more on FMLA leave entitlement generally, see [Practice Note, Family and Medical Leave Act \(FMLA\) Basics](#).

Are employees entitled to FMLA leave if they have been exposed to monkeypox?

If an employee with exposure to monkeypox develops symptoms rising to level of a “serious health condition” under the FMLA, then the employee may be entitled to FMLA leave. However, an employee who has been exposed to monkeypox but remains asymptomatic is unlikely to qualify for FMLA leave.

According to current CDC guidance, “contacts who remain asymptomatic can be permitted to continue routine daily activities” such as attending work or school. Any individual with potential exposure to monkeypox should monitor symptoms for 21 days following exposure. (CDC: [Monkeypox: Monitoring and Risk Assessment for Persons Exposed in the Community](#).)

Despite this guidance, employers may prefer to implement their own policies to lower the risk and spread of monkeypox in the workplace. For example, if an employer learns of an employee’s exposure to monkeypox, which is unlikely to qualify for FMLA leave, the employer may instead authorize remote work (if feasible for the position) while the employee monitors for symptoms.

Is monkeypox a disability under the ADA that employers must accommodate?

Under the ADA, monkeypox may qualify as a disability, defined as a “physical or mental impairment that substantially limits one or more major life activities” (42 U.S.C. § 12102(1)). State or local laws may have a more expansive definition of a “disability” and may impose broader accommodation requirements on employers and offer employees additional protections against disability discrimination. In the event that monkeypox qualifies as a disability under the ADA, this will trigger an employer’s obligation to engage in the interactive process, which occurs when the employer learns an employee may need an accommodation (an employee need not explicitly request an accommodation). Employers may look to EEOC guidance regarding reasonable accommodations as well as the EEOC FAQs relating to COVID-19 and the ADA as a framework for assessing reasonable accommodations for monkeypox (see [EEOC: Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#) and [EEOC: What You Should Know About](#)

[COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (EEOC COVID-19 Guidance)).

Accommodation options are similar to those employers provided during the COVID-19 pandemic, including but not limited to:

- Remote work, if feasible for the position.
- FMLA leave, if the employer is covered and the employee is eligible.
- Unpaid sick time, if consistent with the employer's policy.
- Other arrangements allowing infected employees or employees with exposure to stay home if sick.

Are there any special considerations for health care workers, workers in long-term care facilities, or other workers, such as those in congregate settings?

Yes, the CDC has issued special guidance pertaining to monkeypox infection control in health care and congregate living settings (see [CDC: Information for Healthcare Professionals](#)) and [CDC: Considerations for Reducing Monkeypox Transmission in Congregate Living Settings](#)).

Health care workers should immediately notify infection prevention and control personnel when a patient presents seeking care for monkeypox. Employers should ensure that employees wear personal protective equipment (PPE), including gown, gloves, eye protection, and appropriate face masks when entering patient rooms. Employers also should implement special patient boarding, transport, hazardous waste management, and environmental infection control practices and ensure they are followed. Exposed health care workers should be monitored and receive post-exposure monitoring as outlined in CDC guidelines. (see [CDC: Monitoring and Risk Assessment for Persons Exposed in the Community](#)). The guidelines delineate degrees of exposure (high, intermediate, and low/uncertain) for health care workers. An exposed individual may continue with daily activities as long as the individual remains asymptomatic.

To protect workers and residents in long-term care facilities and other congregate living settings, the CDC recommends communicating clear information regarding how monkeypox is spread, testing and medical evaluation of potentially exposed individuals, patient, worker and volunteer isolation, flexible leave policies, and following hazardous waste management protocols where appropriate. In assessing

exposure risks, the CDC suggests using the same criteria used for health care workers.

Do employers risk discrimination claims when addressing absences or workplace policies regarding monkeypox?

Yes. As employers saw with COVID-19, discrimination and harassment may rise following an outbreak of a disease. Employers must ensure that they consistently apply all policies and practices they implement, and should remind employees of government and company-specific anti-discrimination, anti-harassment, and retaliation protections and policies. Employers should also anticipate the potential for workplace bullying related to monkeypox and prepare to respond to resulting employee relations issues.

The CDC has released general guidance on "Stigma Reduction Communication Strategies." Adopted for employment purposes, the guidance suggests that employers:

- Remind employees that monkeypox is "a legitimate public health issue that is relevant to all people" and that anyone can contract monkeypox regardless of sexual orientation.
- Educate employees about monkeypox and ensure all information disseminated is factually grounded.
- Use inclusive language when discussing monkeypox.
- Emphasize prevention strategies and symptom recognition, using non-sensationalistic language.

([CDC: Reducing Stigma in Monkeypox Communication and Community Engagement](#).)

Should employers implement or revise any workplace policies in response to the monkeypox outbreak?

Many of the same health and safety measures used to prevent COVID-19 can be effective in preventing the spread of monkeypox, including washing hands, masking appropriately, and practicing good general hygiene. Additional PPE, such as gowns and gloves, may be warranted for health care workers. Masking protocols for monkeypox differ from COVID-19. Unless interacting with someone who has tested positive for monkeypox, masking to prevent monkeypox is not recommended as,

unlike COVID-19, it is not currently believed to linger in the air for short periods. Avoiding close physical contact with symptomatic individuals and communicating with sexual partners about risk factors are also important (and distinct measures to prevent the spread of monkeypox as compared to COVID-19). Individuals experiencing monkeypox symptoms should seek testing. Those who believe they may have been in close contact with someone infected with monkeypox should self-monitor for symptoms for 21 days.

Are there lessons from the COVID-19 pandemic that may help employers when addressing monkeypox?

The COVID-19 pandemic has prepared employers to continue operations amid a public health crisis. As we have learned from COVID-19, the laws, regulations,

and public health guidance may change frequently and without much notice. By now, employers are likely accustomed to staying abreast of evolving guidelines and know to consult with counsel to ensure compliance with changing sick leave laws, health and safety protocols, and accommodation requests. Employers are also now well-accustomed to allowing leave flexibility and remote work (when possible) for infected employees and ensuring that sick employees stay home. Much of what we learned from COVID-19 can help employers in addressing monkeypox, and employers must continue to be mindful to mitigate risks of discrimination, bullying and stigmatization when navigating monkeypox in the workplace.

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