

HERE WE GO AGAIN: CONSIDERATIONS FOR EMPLOYERS IN ADDRESSING MONKEYPOX IN THE WORKPLACE

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As the world continues to struggle with the ongoing COVID-19 pandemic, another infectious disease is raising alarm bells on the global stage. On 23 July 2022, the World Health Organization (WHO) [declared monkeypox a “public health emergency of international concern,”](#) echoing its pronouncement as to COVID-19 in January 2020.¹ With employers still managing the effects of COVID-19 in the workplace, the global spread of monkeypox, the rise of related health advisories, and the extensive media coverage about the virus undoubtedly are again leaving U.S. employers concerned about the health, safety, and welfare of their employees and assessing what steps they should be taking in response.

First, and most importantly, the current health risk of monkeypox to the general public — including employees in non-healthcare settings — remains relatively low in the United States. Nonetheless, employers should evaluate current policies and reinforce certain health and safety protocols adopted, and likely still in place, during the COVID-19 pandemic. New cases of monkeypox are being diagnosed in the United States every day, and certain regions of the country already have been significantly impacted by the virus. It is critical that all employers consider how best to decrease the spread of the virus and lower the impact of monkeypox in their workplace in the event of a widespread outbreak in the United States.

GLOBAL OVERVIEW OF MONKEYPOX

Discovered in 1958, monkeypox is a rare disease caused by infection with the monkeypox virus. The monkeypox virus is part of the same family of viruses as variola virus, the virus that causes smallpox. Monkeypox symptoms are typically similar to smallpox symptoms, but milder, and monkeypox is rarely fatal. Despite the similarities in name, monkeypox is not related to chickenpox.

While the scientific community is continuing to assess how it is transmitted, the current understanding of this outbreak is that monkeypox is transmitted and spreads from person-to-person through:

- Direct contact with the infectious rash, scabs, or body fluids;
- Respiratory secretions during prolonged, face-to-face contact, or during intimate physical contact;
- Touching items (such as clothing or linens) that previously touched the infectious rash or body fluids; and

- Pregnant people can spread the virus to their fetus through the placenta.

Monkeypox also may be passed to humans from infected animals, either by being scratched or bitten by the animal or by preparing or eating meat or using products from an infected animal.

Generally, monkeypox can spread from the time symptoms start until an infected individual's rash has fully healed and a fresh layer of skin has formed. Symptoms include fever ($\geq 100.4^{\circ}\text{F}$), headache, muscle aches, and swollen lymph nodes, followed by a rash. Lesions typically develop at the same time and can spread over the body. The illness typically lasts between two to four weeks, and scientists are researching whether individuals who are not experiencing monkeypox symptoms can spread the virus to others. Unlike the initial outbreak of COVID-19, there are available vaccines and therapeutics for monkeypox, though the vaccination supply remains low in the United States. Currently, public health officials are not recommending or encouraging widespread vaccination against monkeypox.

MONKEYPOX IN THE UNITED STATES

Since early May 2022, cases of monkeypox have been reported from countries where the disease is not endemic, as well in many endemic countries, primarily in Central and West Africa. The spread of cases to non-endemic countries in Europe and the United States differs from prior outbreaks of the disease. According to the WHO, this is the first time that a high number of monkeypox cases and clusters have been reported concurrently in non-endemic and endemic countries in widely disparate geographical areas.

As of 4 August 2022, there are 26,864 confirmed cases across 88 countries, with over 26,519 confirmed in countries that have not historically reported monkeypox, including the United States.² The United States currently has over 6,617 confirmed cases across 48 states, which is the highest of all countries reporting cases.³ For reference, at the time COVID-19 was declared a global health emergency in January 2020 there were over 7,700 confirmed cases of COVID-19 in over 19 countries, with only eight in the United States. Although the large majority of cases have been confined to Canada, Spain, United Kingdom, Germany, France, Brazil, and Italy, the expectation is that the virus will continue to spread throughout the world. Many of the confirmed cases do not report a known source of infection.

Currently, the Centers for Disease Control and Prevention (CDC) has issued a Level 2 Alert (Practice Enhanced Precautions) for travelers with regard to monkeypox,⁴ but has not issued country-specific notices. However, on 28 July 2022, the New York State Commissioner of Health declared monkeypox “an Imminent Threat to Public Health” in New York State.⁵ This declaration will allow for “local health departments engaged in response and prevention activities [] to access additional State reimbursement, after other Federal and State funding sources are maximized, to protect all New Yorkers and ultimately limit the spread of monkeypox.”⁶ On the same day, the City of San Francisco declared monkeypox a local health emergency, effective 1 August 2022.⁷ Similar to New York, this declaration “will mobilize City resources, accelerate emergency planning, streamline staffing, coordinate agencies across the city, allow for future reimbursement by the state and federal governments and raise awareness throughout San Francisco about how everyone can stop the spread of Monkeypox.”⁸ Following these declarations, on 29 July 2022, New York Governor Kathy Hochul issued an Executive Order declaring a State Disaster Emergency in response to the ongoing monkeypox outbreak.⁹ Governor's Hochul's Executive Order will permit a broader pool of professionals to administer monkeypox vaccines and implements a reporting system for

administration of vaccination.¹⁰ Subsequently, on 30, July 2022, New York City became the second major municipality after San Francisco to declare monkeypox a public health emergency.¹¹ In issuing this declaration, New York City Mayor Adams and New York City Department of Health and Mental Hygiene Commissioner Dr. Ashwin Vasan called the City the “epicenter of the outbreak” and estimated that 150,000 New Yorkers may be at risk for monkeypox exposure.¹² On 1 August 2022, Illinois declared monkeypox a public health emergency and identified the state as a disaster area,¹³ while California declared a state of emergency over the outbreak.¹⁴ Los Angeles County became the first county in the U.S. to issue a proclamation declaring a local emergency on 2 August 2022.¹⁵ Following these declarations, on 4 August 2022, the U.S. Secretary of Health and Human Services declared monkeypox a “Public Health Emergency.”¹⁶

EMPLOYER RESPONSE TO MONKEYPOX

As a reminder of best practices during the COVID-19 pandemic, employers can take the following steps to address potential or actual monkeypox occurrences in the workplace:

Monitor Virus Developments From Reputable Sources

As with the COVID-19 pandemic, employers should review information provided by the CDC, the WHO, the U.S. Department of Health and Human Services, and the U.S. Department of State on a regular basis for up-to-date and reliable information. Since public health agencies and local governments developed information infrastructure during COVID-19, up-to-date guidance should be more readily accessible. Guidance to employers from these sources can change rapidly as occurrences of the virus develop in the United States. Any employer response to monkeypox should be informed by accurate sources in light of the sensationalism surrounding the virus, especially as it relates to the stigma surrounding the populations it has impacted significantly. Employers should consider directing employees to these sources in order to manage fear, stigma, and uncertainty surrounding monkeypox.

Inform Employees how to Prevent the Spread of Monkeypox Alongside COVID-19

Although many are suffering from “COVID fatigue”, employers should inform and remind employees of everyday precautions that help prevent the spread of monkeypox as well as the spread of COVID-19. Precautions are similar to those adopted to avoid COVID-19, including:

- Washing your hands often with soap and water for at least 20 seconds or using an alcohol-based hand sanitizer;
- Routinely cleaning all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs with disinfectant cleaners;
- Avoiding close, skin-to-skin contact with people who have a rash that looks like monkeypox;
- Avoiding close contact with people who are sick; and
- Staying home when you are sick.

Employers should actively facilitate these precautions where appropriate. For monkeypox, employers should resurrect (or maintain) some of the original COVID-19 prevention strategies, including by providing disinfectant wipes for employees to clean workstations, and placing alcohol-based hand sanitizer in multiple locations around the workplace. As with COVID-19, the most important and effective step in preventing the spread of the virus is to

keep sick employees at home. While employers can require employees to use paid time off or sick leave, if an employee is ill and has exhausted his or her paid or sick leave, employers should be flexible and implement a discretionary leave policy.

EMPLOYMENT LAW CONSIDERATIONS

Title VII of the Civil Rights Act of 1964 and Related State Law Concerns

Given some of the statistics surrounding transmission of monkeypox and its higher incidence in populations of males who engage in sexual activity with other males, there is a stigma associated with the virus. Additionally, given that the virus is typically endemic in certain West and Central African nations, there is also a geographic stigma associated with monkeypox. Despite these stigmas, monkeypox has affected individuals outside those populations and will continue to do so as transmission increases. Similar to COVID-19, where initial reports focused on the impact to older individuals and its prevalence in Asian countries, monkeypox is not limited in the populations it can affect. The CDC has published guidance addressing the stigma associated with monkeypox, available [here](#), and employers should remind employees of applicable anti-discrimination and anti-harassment policies. Further, employers should not single out employees on the basis of known or suspected sexual orientation in addressing the virus in the workplace as such status is a legally protected characteristic. As with COVID-19, employers must ensure that any policies are applied in a nondiscriminatory manner.

Family and Medical Leave Act (FMLA) Considerations

As with COVID-19, an employee who tests positive for monkeypox would likely qualify as having a “serious health condition” for the purposes of the federal FMLA, which guarantees unpaid, job-protected leave for eligible workers at businesses with at least 50 employees who have a serious health condition. Employers should communicate to employees that anyone with a medically confirmed case of monkeypox, including anyone with complications from the disease or anyone requiring extended leave to recover, should contact the human resources department to obtain information about short-term disability leave, long-term disability, family medical leave, and/or other discretionary medical leave.

Americans with Disabilities Act (ADA) Considerations

Under the ADA, employers may not make disability-related inquiries or require medical examinations, unless: (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a direct threat to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation. The Equal Employment Opportunity Commission's current direct threat framework, refined for COVID-19, should be used as a guide for employers, in the absence of any monkeypox-specific guidance. Employers should also be aware that complications arising from monkeypox could qualify as a disability and trigger an employer's obligation to engage in the interactive process for a reasonable accommodation.

LOOKING AHEAD: CONTINUED MONITORING AND POLICY PREPARATION

Employers should prepare to implement strategies to protect their workforce from monkeypox. Well in advance of any crisis, employers should develop and test a response plan, and employers should use their now well-honed COVID-19 response plans as a foundation. Similarly, employers may consider amending current COVID-19

protocols to address monkeypox. Currently, monkeypox is not considered a pandemic. A pandemic declaration comes from the WHO.

CONCLUSION

While employers should be mindful that occurrences of monkeypox are increasing in the United States, employers are encouraged to respond to the threat as it exists now to prevent unnecessary fear, panic, or stigma. Currently, the risk to employees in non-healthcare settings remains low, but employers should take appropriate steps to respond to monkeypox. Employers should continue to be informed and monitor the situation, while applying the lessons that continue to be learned during COVID-19. Taking the steps outlined above can help prevent spread of the virus and help secure the safety and health of employees.

FOOTNOTES

¹ The WHO declared COVID-19 a global health emergency in January 2020.

² The Centers for Disease Control and Prevention, 2022 Monkeypox Outbreak Global Map, <https://www.cdc.gov/poxvirus/monkeypox/response/2022/world-map.html> (last visited July 31, 2022).

³ *Id.*

⁴ The Centers for Disease Control and Prevention, Monkeypox in Multiple Countries Travel Notice, <https://wwwnc.cdc.gov/travel/notices/alert/monkeypox> (last visited July 31, 2022).

⁵ See, New York State Department of Health, “Declaration of an Imminent Threat to Public Health for monkeypox virus” (July 28, 2022), https://www.health.ny.gov/press/releases/2022/docs/monkeypox_declaration_letter.pdf.

⁶ See, New York State Department of Health Press Release (July 28, 2022), https://health.ny.gov/press/releases/2022/2022-07-28_monkeypox_virus.

⁷ See, San Francisco Department of Health and Office of the Mayor Media Statement (July 28, 2022), <https://sf.gov/news/san-francisco-declare-local-public-health-emergency-monkeypox>.

⁸ *Id.*

⁹ See, Office of the Governor, Executive Order Declaring a Disaster in the State of New York (July 29, 2022), <https://www.governor.ny.gov/executive-order/no-20-declaring-disaster-state-new-york>.

¹⁰ *Id.*

¹¹ See, New York City Department of Health and Mental Hygiene, “Declaration of the Commissioner of Health and Mental Hygiene of the City of New York of Public Health Emergency Concerning the Monkeypox Virus” (July 30, 2022), <https://www1.nyc.gov/assets/doh/downloads/pdf/monkeypox/monkeypox-public-health-emergency.pdf>.

¹² See, Office of the New York City Mayor, “New York City Health Department Declares Monkeypox a Public Health Emergency” (July 30, 2022), <https://www1.nyc.gov/office-of-the-mayor/news/555-22/new-york-city-health-department-declares-monkeypox-public-health-emergency>.

¹³ See, Office of the Governor Press Release, Governor Pritzker Issues Monkeypox Virus Public Health Emergency Declaration to Coordinate Statewide Response (August 1, 2022), <https://www.illinois.gov/news/press->

[release.25247.html](#).

¹⁴ See Office of the Governor, Proclamation of a State of Emergency (August 1, 2022), <https://www.gov.ca.gov/wp-content/uploads/2022/08/8.1.22-Monkeypox-SOE-signed.pdf?emrc=2a3e09>.

¹⁵ See Los Angeles County, Proclamation of Existence of a Local Emergency for Monkeypox by the Chair of the Board of Supervisors (August 2, 2022), https://mitchell.lacounty.gov/hjm/wp-content/uploads/2022/08/Local-Emergency-Proclamation-for-Monkey-Pox-Chair-of-the-Board-004.pdf?utm_medium=email&utm_source=govdelivery.

¹⁶ See Secretary of Health and Human Services, “Biden-Harris Administration Bolsters Monkeypox Response; HHS Secretary Becerra Declares Public Health Emergency” (August 4, 2022), [https://www.hhs.gov/about/news/2022/08/04/biden-harris-administration-bolsters-monkeypox-response-hhs-secretary-becerra-declares-public-health-emergency.html#:~:text=U.S.%20Department%20of%20Health%20and,Public%20Health%20Emergency%20\(PHE\)](https://www.hhs.gov/about/news/2022/08/04/biden-harris-administration-bolsters-monkeypox-response-hhs-secretary-becerra-declares-public-health-emergency.html#:~:text=U.S.%20Department%20of%20Health%20and,Public%20Health%20Emergency%20(PHE)).

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