

Sick of Being Sick

By Reg P. Wydeven
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Last week I wrote about our increased Diet Mountain Dew budget due to school being back in session. Trying to get back into a routine leaves our whole family tired, which dampens our immune system. Accordingly, we also have to start saving for the bump in our Purell spending. My wife and kids are now exposed to countless germs from unwashed hands and uncovered sneezes and coughs. All this while we're headed full-steam into cold and flu season.

Several years ago, we had an employee at our office that was dedicated to the job. This person never took a day off. As an owner of the firm, I thought this was great – until the employee came to work sick.

The employee was a walking Nyquil ad: all we heard coming from this person's workspace was sniffing, sneezing, coughing, and complaints about aching, stuffy head, fever and getting no rest. I kept a can of Lysol in my office for when the employee came in to drop off a file while hacking, wheezing and dripping. I would disinfect the folder and rifle through the papers with a tweezers.

There's a fine line between dedication and overzealousness. Other employees, fearing contamination, would ask if we could send the employee home to prevent them from getting sick. This problem may get worse due to our firm's new policy on time off.

At the beginning of the year, our office switched from having sick days, personal days and vacation to "paid time off" days, which are used for any time away from work. Presumably this might result in more employees coming to work sick so they won't have to burn paid time off days they could otherwise spend on vacation.

Employers are generally not required to provide employees with any paid time off (even though we would attract very few candidates if we didn't). Therefore, companies can establish their own policies when it comes to time away from work. However, if an employee has a disability covered by the Americans with Disabilities Act or has protections under the Family and Medical Leave Act, these laws would trump any policy implemented by an employer.

For the average employee, though, an employer could elect to send him or her home for being sick and putting coworkers at risk for getting infected. Even if the employee wants to work, the employer can send him or her home to protect the rest of the workforce. When sending a sick worker home, the employer can also charge the employee with a sick day or paid time off. If the employee has no paid time remaining, the employer cannot deduct the employee's pay if the employer decides the employee should go home.

When our walking Petri dish used to come to work sick, other employees used to claim that we had to send the ill employee home because of the federal Occupational Safety and Health Administration. OSHA rules require employers to provide a safe working environment for their employees. Even though I hate getting sick, it would be a stretch to say that working next to someone with the sniffles would violate OSHA. Likewise, if I did catch my coworker's cold, I could not qualify for workers' compensation benefits for any time I missed.

So, even though employers can elect to send sick employees home, they are not required to. Bosses have the liberty of making decisions on a case-by-case basis. When I was a janitor in college, I could strip and wax the gym floor with a severe cold but not risk infecting anyone else, as I was in the room alone. If I was a brain surgeon, I'm pretty sure my patients wouldn't want me to crack open their coconut unless I was feeling 100%.

So if you're on your death bed, don't come to work. After all, getting your coworkers sick is snoot cool.

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