

## Publication

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### What Can an Employer Do If an Employee Ignores the Employer's Directive or Guidelines to Self-Quarantine or Adhere to Social Distancing?

Many employers, in an effort to prevent the spread of COVID-19 among their personnel, are "strongly suggesting" or outright directing their employees to self-quarantine or adhere to social distancing "best practices." What can an employer do, however, if its employees ignore such suggestions? Take, for example, a situation in which an employer instructs its employees to self-quarantine outside of normal working hours – or at a minimum, exercise common sense principles of social distancing. But one employee, who simply "needs to get out of the house," posts photos on social media of her socializing among the masses at a bar, party or other event in "violation" of her employer's guidelines. This employee works in a job that is not conducive to telecommuting; she must come to work every day and interact with her similarly-situated co-workers. Is the employer permitted to discipline or terminate the employee for insubordination?

The answer is not as straightforward as one may think, particularly in jurisdictions which have laws prohibiting employers from disciplining employees for engaging in lawful activities outside of work. In the hypothetical above, there is nothing legally prohibiting the employee from leaving the house (i.e., the state in which she lives

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had not issued a shelter-in-place order). Nor was there any “legal obligation” for her to practice social distancing principles. She can socialize with whomever she wants.

That said, courts and related administrative agencies are likely to accept a “greater good” argument and find that employers, in the interest of protecting the health of their workforces as a whole, are permitted to institute certain self-quarantining rules, even if they “compromise” employees’ rights relating to their activities outside of work. While employers are likely not permitted to bind its employees to strict “lock-down” orders, they are permitted to institute reasonable guidelines requiring their employees to, at a minimum, adhere to common sense social distancing principles.

If you have any questions regarding employee social distancing or other Labor and Employment issues, please do not hesitate to contact Chad Moeller or your Neal Gerber Eisenberg attorney.

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