

Employers Can Use COVID Models To Address Monkeypox

By **April Boyer and Erinn Rigney** (August 2, 2022)

As the world continues to struggle with the ongoing COVID-19 pandemic, another infectious disease is raising alarm bells on the global stage. On July 23, the World Health Organization declared monkeypox a "public health emergency of international concern,"[1] echoing its pronouncement concerning COVID-19 in January 2020.[2]

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 are likely raising concerns about employee health, safety and welfare. Many U.S. employers are presumably 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 outside of health care settings — remains relatively low in the U.S. 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 U.S. every day, and certain regions of the country already have been significantly affected by the virus. It is critical that all employers consider how best to decrease the spread and lower the impact of monkeypox in their workplace in the event of a widespread outbreak in the U.S.



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Global Overview of Monkeypox

According to the Centers for Disease Control and Prevention:

Monkeypox 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.

While the scientific community is continuing to assess how monkeypox is transmitted, the current understanding of this outbreak is that it 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; and
- Touching of items, such as clothing or linens, that previously touched the infectious rash or body fluids.

Additionally, the CDC notes that humans may contract monkeypox 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, 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 two to four weeks, and unlike COVID-19, individuals who are not experiencing monkeypox symptoms cannot 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 U.S. Currently, public health officials are not recommending or encouraging widespread vaccination against monkeypox.

Monkeypox in the U.S.

According to the CDC, there are currently 23,620 confirmed cases across 80 countries, with over 23,276 cases in countries that have not historically reported monkeypox, including the U.S.[3] The U.S. currently has 5,810 confirmed cases across 48 states, which is the highest of all countries reporting cases.[4]

For reference, at the time COVID-19 was declared a global health emergency in January 2020, according to WHO, there were around 7,800 confirmed cases of COVID-19 in 19 countries, with only seven or eight in the U.S.

Although the large majority of monkeypox cases have been confined to Canada, Spain, the U.K., 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 CDC has issued a Level 2 alert for travelers with regard to monkeypox,[5] but has not issued country-specific notices. However, on July 28, the New York state commissioner of health declared monkeypox "an imminent threat to public health" in New York.[6] On the same day, the city of San Francisco declared monkeypox a local health emergency, effective Aug. 1.[7]

Following these declarations, on July 29, New York Gov. Kathy Hochul issued an executive order declaring a state disaster emergency in response to the ongoing monkeypox outbreak.[8] Hochul's executive order will permit a broader pool of professionals to administer monkeypox vaccines and implements a reporting system for administration of vaccination.[9]

Subsequently, on July 30, New York City became the second major municipality after San Francisco to declare monkeypox a public health emergency.[10] In issuing this declaration, New York City Mayor Eric Adams and Ashwin Vasan, commissioner for the New York City Department of Health and Mental Hygiene, called the city the "epicenter of the outbreak" and estimated that 150,000 New Yorkers may be at risk for monkeypox exposure.[11]

On Aug .1, Illinois declared monkeypox a public health emergency and identified the state as a disaster area,[12] while California declared a state of emergency over the outbreak.[13]

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, 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 U.S. 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 affected 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 workers may be fatigued by COVID-19 protocol reminders, 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 using disinfectant cleaners on all frequently touched surfaces in the workplace, such as workstations, countertops and doorknobs;
- 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 their paid or sick leave, employers should be flexible and implement a discretionary leave policy.

Employment Law Considerations

Title VII and Related State Laws

Given some of the statistics surrounding transmission of monkeypox and its higher incidence in populations of men who engage in sexual activity with other men, there is a risk the virus could be stigmatized. There is also a risk for geographic stigmatization, given that the virus is typically endemic in certain West and Central African nations.

However, 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 on minimizing stigma in monkeypox communication,^[14] 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.

FMLA

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 Family and Medical Leave Act, which guarantees unpaid, job-protected leave for eligible workers who have a serious health condition. This applies to businesses with at least 50 employees.

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, long-term disability, family medical, and/or other discretionary medical leave.

ADA

Under the Americans with Disabilities Act, 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 U.S. 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 guidance specific to monkeypox. 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.

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 WHO.

Conclusion

While employers should be mindful that occurrences of monkeypox are increasing in the U.S., 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 settings outside of health care 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 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.

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[1] <https://www.who.int/news-room/speeches/item/who-director-general-s-statement-on-the-press-conference-following-IHR-emergency-committee-regarding-the-multi-country-outbreak-of-monkeypox--23-july-2022>.

[2] The WHO declared COVID-19 a global health emergency in January 2020.

[3] 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).

[4] Id.

[5] 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).

[6] 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.

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." 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>.

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] 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>.

[9] Id.

[10] 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/office-of-the-mayor/news/555-22/new-york-city-health-department-declares-monkeypox-public-health-emergency>.

[11] 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>.

[12] 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>.

[13] 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>.

[14] <https://www.cdc.gov/poxvirus/monkeypox/reducing-stigma.html>.