

AUGUST 22, 2022 | OSHA RULEMAKINGS & STANDARDS

# What Employers Need To Know About the Latest Public Health Crisis – The Monkeypox Virus

By [Eric J. Conn](#) and [Ashley D. Mitchell](#)

After the last couple of years living with COVID-19, we were desperately hoping that we would not have to be talking, thinking or writing about the Monkeypox Virus (“MPV”) as a workplace safety and health issue. And while Monkeypox does NOT appear to be a COVID-19 redux, we have been getting enough questions from our clients that it now seems unavoidable that we have to dig into this. Alas, here is our first take on Monkeypox – what is it, what are the symptoms and modes of transmission, how is it similar to and different from COVID-19, and what should employers be thinking about and doing in connection with this latest plague.

## **The Monkeypox Virus (MPV):**

Monkeypox is a zoonotic diseases, which means it is caused by a virus that is passed between animals & people. MPV was first detected in 1958 in a colony of research monkeys in Central and West Africa, and the first human case of Monkeypox was recorded in 1970. The virus that causes Monkeypox is in the same family as the virus that causes smallpox, and they involve similar, but less severe symptoms in the case of MPV.

The current Monkeypox outbreak is unique in that prior to 2022, Monkeypox cases were extremely rare in the U.S., and cases in individuals outside of Africa, where the virus commonly occurs, were almost always linked to international travel. In mid-May of this year, the first cases associated with the current outbreak were identified in the U.S., and it is clearly spreading now among non-travelers. On July 23<sup>rd</sup>, the World Health Organization (WHO) declared Monkeypox a Public Health Emergency of International Concern (PHEIC). By late July, the U.S. surpassed 10,000 total cases.



Around that same time, New York, Illinois, and California declared Monkeypox a public health emergency. On August 4<sup>th</sup>, the Biden Administration declared Monkeypox a national public health emergency.


## **Modes of Transmission & Common Symptoms:**

Scientists continue to study the transmission of Monkeypox, but to date, about 98% of cases come from direct contact with an infectious rash, scabs, or bodily fluids. Other means of transmission include:

- Touching items (e.g., clothing/linens) that touched an infectious rash or bodily fluids;
- Respiratory droplets during prolonged face-to-face contact (i.e., within six feet for three plus hours without PPE); and
- Respiratory droplets during intimate physical contact (e.g., kissing, cuddling, or sex).

According to the WHO and CDC, cases predominate among men who have sex with men, but it is important to understand that Monkeypox is not an STD, and anyone who has direct or intimate contact with an infected individual can contract the virus, either by skin-to-skin contact with the skin rash or sharing respiratory droplets. Also, although it can transmit through respiratory droplets, Monkeypox is also not considered an airborne transmissible disease, unlike COVID-19. Also unlike COVID-19, with its notorious pre-symptomatic spread, the current scientific thinking regarding MPV suggests that infected persons are contagious only when symptomatic.

The common symptoms include:

-  Rash and scabs
- Fever
- Chills
- Headache
- Exhaustion
- Swollen lymph nodes
- Muscle and back aches
- Respiratory symptoms  
(e.g., sore throat, nasal congestions, or cough)

Symptoms generally appear within three weeks of exposure, and individuals are infectious until their skin is completely healed, which can take up to four additional weeks.

Because the Monkeypox virus derives from the same family of virus as smallpox, smallpox vaccines and treatments are effective for preventing and treating Monkeypox. But, of course, there are limited supplies, so CDC currently recommends vaccination for people exposed to Monkeypox and for people who are at higher risk of being exposed (e.g., people with multiple sexual partners).

### **Key Take Aways for Employers:**

The Monkeypox virus is less transmissible than COVID-19 and rarely fatal in its current form, but there are still workplace safety and health considerations for employers. That said, as of this communication, OSHA does not mention the Monkeypox virus on its website at all. Our contacts at issue shared that OSHA is working on MPV workplace guidance, and assured us that it is “coming soon,” but we’ve been assured that updated COVID-19 guidance has been coming soon since February. We actually do expect to see the Monkeypox guidance a little after Labor Day.

In the meantime, even in the absence of specific guidance from OSHA, the OSH Act’s General Duty Clause still requires employers to provide a workplace free from recognized serious health hazards, so employers may consider reinstating or maintaining some of the controls we had in place to deal with the COVID-19 pandemic, such as flexible telework policies, promoting and facilitating good personal hygiene and regular cleaning in the

workplace, requiring employees who believe they are symptomatic to isolate, and encouraging social distancing. At this point, however, it would be entirely reasonable to implement such controls only when a known positive Monkeypox case has been identified in the workplace.

I hate to even say it, but in addition to the General Duty Clause risk for not taking reasonable steps to prevent workplace spread (i.e., following CDC recommendations), employers will need to think about Monkeypox as a potential recordable illness. Because of the modes of transmission, it should be far less likely that we see very many cases that are even potentially work-related, but there is nothing inherent about Monkeypox that would exclude it from OSHA injury and illness recordkeeping.

Here are some other considerations we have been discussing with our clients.

***Leave Policies:***

It may take up to four weeks to recover from the Monkeypox virus, and because individuals are considered contagious until their skin is completely healed, employees who have Monkeypox should be excluded from the workplace for that duration. Now is a good time to think about your return-to-work policies for Monkeypox related leave. Although we learned pretty quickly that because of the volume of COVID-19 cases, and the extreme strain that placed on our healthcare system, requiring a doctor's note to return to work from a COVID-19 infection was infeasible, that seems much more reasonable for MPV cases.

Under the Family and Medical Leave Act ("FMLA") employers with 50 or more employees are required to provide eligible employees up to 12-weeks of FMLA leave. Now would be a good time for employers to review applicable state and local leave laws as well and amend leave policies, as necessary. Employers should also ensure that employees who are charged with processing leave requests understand the various types of leave an employee may be entitled to and any recordkeeping requirements.

***EEOC and ADA Considerations:***

Because of the reporting about cases among the LGBTQ community and/or because of the virus' origins in Central and Western Africa, there is a real risk of increased stigmatization, harassment, and discrimination based on race, national origin, and sexuality, just as we saw during the COVID-19 pandemic. To prevent or address that risk, employers should consider re-emphasizing their anti-discrimination and anti-harassment policies.

Employers should ensure that any medical or disability related inquiries are based on a business necessity as required by the Americans with Disabilities Act ("ADA"), and also remember their confidentiality obligations under the ADA. Specifically, any information received from employees regarding Monkeypox exposures, symptoms, and/or diagnoses must be treated as confidential, and keep in a secure file separate from the employees' personnel files.

***Employee Communications:***

On the COVID-19 front, the General Duty Clause enforcement we saw almost always stemmed from employers' responses to outbreaks in the workplace. That is, perceived failures to communicate effectively with employees after infections were discovered in the workplace, and failures to identify and quarantine close contacts.

Accordingly, when we learn about a confirmed Monkeypox case, employers should consider protocols for identifying exposed co-workers and making some form of notification to those co-workers about their potential exposures. But be cautious, as we discussed above, to maintain confidentiality of the infected individual, except for communications with managers who have a business need to know the specific identity of an infected employee.

Beyond case-specific notifications, we encourage employers to consider issuing a general, informational communication to employees about MPV. As with any public health emergency, employees are surely confused and fearful about MPV, especially coming on the heels of COVID-19. Providing employees with some basic information about MPV, and how different it is from COVID-19, may ease some tension, and show them that you are on top of this, hopefully to avoid the onslaught of employee complaint to OSHA like we saw with COVID-19.

Here are some ideas for what to include in a general MPV communication to your workforce:

- Background about monkeypox virus
- How is it transmitted and common symptoms
- How to avoid infection:
  - Avoid close, skin-to-skin contact with people who have a rash
  - Avoid contact with materials used by an infected individual (e.g., utensils, cups, clothing and towels)
  - Wash your hands often with soap and water or using an alcohol-based hand sanitizer
- What to do if you are exposed or experience symptoms (i.e., stay home from work and talk to your doctor):
  - Encourage vaccination for those who have been or are more likely to be exposed to Monkeypox
  - Avoid stigmatization, by reminding employees that Monkeypox can spread to anyone
  - Reminder about sick leave policies

We will continue to monitor guidance from CDC, OSHA, EEOC, and other relevant agencies and provide updates, as necessary, like we have done throughout the COVID-19 pandemic. [Let us know](#) if you have any questions, or if there is anything we can do to help your organization with MPV, COVID-19, or any other workplace safety and health issues.

In the meantime, join us on Tuesday, September 6, 2022 at 1 p.m. EST for a webinar regarding [What Employers Need to Know About the Monkeypox Virus](#).

Participants in this webinar will learn:



- Background about the Monkeypox Virus, including common symptoms and modes of transmission
- Strategies for employers to prevent workplace exposures while complying with Federal and State level labor employment laws
- Employee communication strategies about this latest public health crisis
- Potential OSHA recordkeeping and reporting obligations