



In-Depth Discussion | March 8, 2018

DEAR LITTLER: We Have Bedbugs! Help! What do we do?

By: Steve Biddle

Dear Littler: One of our employees noticed bedbugs in our office. Word is getting around, and people are freaking out. Based on where we found them, we believe we can identify the employee who introduced them to the workplace. What do we do now?

- *Disgusted in Denver*

Dear Disgusted in Denver,

First and foremost: try not to panic. Bedbugs may be an unnerving nuisance, but they are quite common and generally harmless to humans. In fact, I get this question frequently, so I can assure you that you are not alone in facing this unpleasant predicament. The best approach is to learn a bit more about bedbugs and then formulate your response based on the circumstances. As discussed below, employers have a lot of discretion in handling a bedbug outbreak.

Know Your Enemy!

While I realize you'd probably rather not read up on bedbugs, it is helpful to understand the challenge before you. There are many misconceptions—and a lot of unwarranted stigma—surrounding bedbug infestations. Knowing what these pests do, and what they don't do, can eliminate some of the fear and make it easier to remedy the situation.

Bedbugs, for example, do not jump or fly. They crawl quickly and are good at hiding. They hitch rides on humans, in clothing, shoes, purses, backpacks, and other personal belongings, which is how they ended up at your workplace. They are primarily nocturnal.

And yes, they are tiny vampires—bedbugs feed on human and animal blood.¹ Most people bitten by bedbugs will develop itchy welts, like spider or other insect bites. Importantly, bedbugs are **not** known to transmit diseases. Moreover, an infestation is not related to uncleanliness. In other words, someone does not end up with bedbugs at their home because they are untidy in any way. It just means they were exposed to bedbugs somewhere (e.g., a hotel, a theater, a school, public transportation, etc.) and unknowingly brought back houseguests. In many ways, bedbugs are similar to head lice: fairly creepy, but still manageable.

On the plus side, bedbugs are visible. Generally speaking, they are reddish-brown and roughly the size of an apple seed when mature.² A flashlight and magnifying glass may be helpful in hunting down the little critters. In searching for evidence of an infestation, employers should keep in mind where bedbugs are likely to hide: the folds and seams of chairs, between cushions, lockers, cubicle walls, corners, baseboards, outlets, under wall hangings, in stacks of paper, and in similar nooks and crannies. If a live bug is found, employers are encouraged to trap it in a container or plastic bag, rather than crush it, so that it can be properly identified by a pest control professional.

Understand Your Legal Duties—Or Lack Thereof

After that delightful background, let's turn to the legal and practical questions. Currently, there are no federal or state employment laws regulating an employer's response to a bedbug infestation. Approximately half of the states have some statute addressing the responsibilities of hotel operators and/or landlords if bedbugs are detected, but no such laws have been adopted concerning an employer's duties.³

In addition, this scenario does not fall squarely under civil rights or health and safety statutes that might already apply to employers. Employer obligations under the Americans with Disabilities Act would not be triggered by an infestation, for example, because having bedbugs is not a disability. Similarly, employees needing time off to manage extermination in their home or apartment would not be protected by the Family and Medical Leave Act because bedbugs do not constitute a serious health condition. The Occupational Safety and Health Act does not expressly cover hazards related to bedbugs, although it generally requires employers to provide a workplace that is maintained reasonably free from insects and other vermin. Even if bedbugs themselves do not rise to the level of such a hazard, employers should proceed carefully if pesticides or other chemicals are applied.

Prepare and Orchestrate Your Response

Given the lack of a legal framework, the real task for employers is to expediently eradicate the bedbug infestation in a manner that is consistent and fair to those affected. Employers should promptly contact a certified pest management professional to confirm the presence of bedbugs and plan an appropriate extermination process.

1 Mature bedbugs can survive for months—even up to a year—without feeding on blood again. I put this fun fact in a footnote because it really is pretty disgusting. You're welcome.

2 The Environmental Protection Agency has general information about bedbugs, including pictures, available [here](#). I will spare you the pictures.

3 Illinois has considered such a bill ([HB 369](#)), which would require an employer to notify employees if a certified professional has confirmed the presence of bedbugs at a place of employment. Under the bill, an employee must also inform his or her immediate supervisor if a bedbug is spotted at work. The bill is working its way through both chambers of the legislature in some form and amendments are under review.

For many employers, the people issues are as vexing as the parasite issues. At the outset, employers should put real thought into how best to communicate the situation to staff. If an employee comes forward to management and discloses an infestation discovered at home, for example, the employer likely can handle the situation more discreetly, especially if the workplace is not yet compromised.

But an employer in your situation, *Disgusted in Denver*, will need to address the situation more publicly. A communication to all employees—or perhaps to all employees located near the source, or on the same floor, etc., depending on your office layout—may be appropriate, to inform them of the presence of bedbugs and explain the employer’s extermination plan. This communication presents a good opportunity for an employer to share facts about bedbugs, to counteract the stigma associated with infestation, and to encourage employees to share any further bedbug sightings or related concerns. If “people are freaking out,” as you indicated, it may also be helpful to remind employees that negative or accusatory comments about coworkers are neither welcome, nor productive. If your employer does not already have a policy concerning pest infestations, it might be a good time to develop and formalize a practice.

Don’t Lose Sight of the Bigger Picture

In crafting a response and/or adopting a policy, employers often wonder how far they should go in assisting employees who are dealing with infestations at home. Can an employer require an employee to stay away from the office until he or she has conquered the outbreak? Can an employer require a “doctor’s note” from the employee’s exterminator attesting that the household infestation has been remedied? How should an employer treat time off taken by employees to address bedbugs at home? Should an employer pay for an employee’s household or vehicle extermination? These questions often boil down to balancing the cost of assistance against the benefits to the employer. When weighing these options, employers should bear in mind that they will be setting a precedent.

Because employers have significant discretion in this situation, they may require an employee to take a leave of absence until the infestation is resolved. They may further require an employee to present proof of the abatement from a reputable pest management professional before being allowed to return to the workplace.

Relatedly, an employer could opt to pay the regular wages of nonexempt employees who are sent home or choose to stay home, even though these workers would not otherwise be entitled to compensation for hours not worked. (Exempt employees are subject to different rules and generally should not be docked pay for absences shorter than a full workweek.) Alternatively, employers could permit employees to use accrued vacation or other paid time off to clear up an infestation at home. If the employer chooses the latter option, it may need to relax certain requirements under its attendance and leave policies, such as a requirement that employees provide certain advance notice before taking time off.

In deciding how to proceed, employers should consider how their messaging may be received by personnel. If an employer sends an employee home until an infestation is eliminated and that leave is entirely unpaid, employees exposed in the future may be less likely to notify the employer of a household infestation. While this approach may be less expensive to employers, it may also make it more difficult to combat ongoing or future outbreaks.

Employers must undertake a similar analysis when determining whether to subsidize the cost of household pest control for affected employees. Some employers volunteer to pay (in whole or in

part) for treatment in an employee's home, to help ensure the incident is contained. After all, if the employee's home infestation is not properly resolved, the employer risks repeated re-infestation at the workplace. Re-infestation means the employer must start again at square one, expending additional time and expense on extermination in the office as well as any preventative measures.

Once an employer has decided how it wants to tackle bedbug or similar infestations, it should train management to follow protocols consistently and fairly for any future incidents. If one employee is granted leave with pay, and/or subsidized household extermination, coworkers may expect similar treatment if they contract a bedbug problem. Failure to treat employees similarly may result in complaints of favoritism or even unlawful discrimination.

Employers facing bedbugs are always itching for a simple solution. In sum, however, there are different ways to approach the situation, and employers can choose the response that makes the most sense in their circumstances. Best of luck, *Disgusted in Denver!*