COVID-19/Coronavirus – What do employers do now?

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Of course . . . A disclaimer

- These slides (and our discussion) are not intended to constitute legal advice. They are presented for instructional purposes only.

- Also, please note that this information is current as of 3/27/20, based on the available data. However, because COVID-19’s status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.
Confirmed COVID-19 Cases in the U.S.

Number of confirmed COVID-19 cases, by U.S. state*

* as of March 26, 2020 6 a.m. EST
Sources: Johns Hopkins University, CDC
<table>
<thead>
<tr>
<th>Country, Other</th>
<th>Total Cases</th>
<th>New Cases</th>
<th>Total Deaths</th>
<th>New Deaths</th>
<th>Total Recovered</th>
<th>Active Cases</th>
<th>Serious, Critical</th>
<th>Tot Cases/1M pop</th>
<th>Tot Deaths/1M pop</th>
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</table>
**Employer Duties:**

- Maintain a safe workplace (but what does that mean now?)
- Provide leave as required (more on this later)
- Maintain your business (or not – layoff vs. furlough)
What is a safe workplace?

• OSHA Rule:
• (a) Each employer—
  (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
  (2) shall comply with occupational safety and health standards promulgated under this chapter.
What is a safe workplace?

- Employee instructions
- Temperature taking?
- Visitors
- Cleaning requirements
- Remote work

**CORONAVIRUS SAFETY**

Follow these easy steps to help prevent the spread of COVID-19.

- Disinfect surfaces around your home and work.
- Wash your hands for at least 20 seconds.
- Sneeze or cough? Cover your mouth.
Disclosure requirements

• Do you require disclosure?
• OSHA disclosure
• Employee Privacy vs. Disclosure
  – What do you have to say?
  – What can't you say?
  – Do you question employees with symptoms?

Symptoms of COVID-19*

• Fever
• Cough
• Shortness of breath

*Symptoms may appear 2-14 days after exposure

If you think you have been exposed and develop a fever and/or other symptoms, call a healthcare professional immediately

www.nfido.org/coronaviruses
What if an employee tests positive?

• CDC/Local Dept. of Health
  – At a minimum, staff should immediately notify their supervisor and the local health department if they develop symptoms of COVID-19.

• Other employees:
  – Maintain privacy
  – Who had:
    • "contact" within 6 feet and
    • for 10 minutes or longer (continuous)

• Cleaning
  – Close area where employee worked
  – Clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by ill persons, focusing especially on frequently touched surfaces
  – Open doors/windows
  – Wait 24 hours, if possible
Additional Employer Requirements:

• Work with local and state health departments to ensure appropriate local protocols and guidelines are followed, including for identification of new potential cases of COVID-19.

• Educate staff and workers performing cleaning, laundry, and trash pick-up activities to recognize the symptoms of COVID-19 and provide instructions on what to do if they develop symptoms within 14 days after their last possible exposure.
Additional Employer Requirements:

- Develop policies for worker protection and provide training to all cleaning staff on site prior to providing cleaning tasks.
- Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.
- Ensure workers are trained on the hazards of the cleaning chemicals used in the workplace in accordance with OSHA’s Hazard Communication standard.
- Comply with OSHA’s standards on Bloodborne Pathogens, including proper disposal of regulated waste, and PPE.
Families First Act/Other Leave

- Fewer than 500 employees
  - How do you count?
- April 1: New Leave Requirements
  - Expansion of FMLA
  - Emergency Paid Leave
EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

- **PAID LEAVE ENTITLEMENTS**
  Generally, employers covered under the Act must provide employees:
  - Up to two weeks (80 hours) or a part-time employee's two-week equivalent of paid sick leave based on the higher of:
    - 100% for qualifying reason #1-3 below, up to $511 daily and $5,110 total;
    - 2/3 for qualifying reason #4 and 5 below, up to $200 daily and $2,000 total, and
    - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below, for up to $200 daily and $12,000 total.
  A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

- **ELIGIBLE EMPLOYEES**
  In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of paid sick leave for COVID-19 related reasons. See below.
  Employers who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

- **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
  An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

<table>
<thead>
<tr>
<th>Reason</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.</td>
</tr>
<tr>
<td>2.</td>
<td>Has been advised by a health care provider to self-quarantine related to COVID-19.</td>
</tr>
<tr>
<td>3.</td>
<td>Has symptoms of COVID-19 and is seeking a medical diagnosis.</td>
</tr>
<tr>
<td>4.</td>
<td>Is caring for an individual subject to an order described in (1) or self-quarantine as described in (3).</td>
</tr>
<tr>
<td>5.</td>
<td>Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.</td>
</tr>
<tr>
<td>6.</td>
<td>Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.</td>
</tr>
</tbody>
</table>

- **ENFORCEMENT**
  The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA. For a complaint, or institutes a proceeding under or related to this Act, employees in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:
- **1-866-487-9243**
- **TTY: 1-877-889-5627**
- [dot.gov/agencies/whd](http://dot.gov/agencies/whd)
Common Leave-Related Questions:

- What benefits do I need to pay if an employee gets COVID now, and it lasts past April 1?
- What benefits do I need to pay if an employee takes off now because a family member has COVID and he stays home past April 1?
- What happens when the employee comes back on April 6 with note from doctor saying she is OK? Do the benefits stop then?
Payroll Tax Credit/CARES Act

- Not yet law!
- The credit is applied against an employer’s payroll tax liability on a quarterly basis.
  - An employer may claim the credit in advance by not depositing payroll taxes in anticipation of the credit.
  - If the amount of the expected tax credit exceeds an employer’s payroll tax liability for a quarter, employer will receive a credit for the excess in that quarter.
  - This means that an employer that incurs its 6.2% share of Social Security tax in 2020 may defer payment of that tax (as noted above) but also receive an immediate credit against the payroll taxes via the sum of the emergency medical leave credit, sick leave credit, and new employee retention credit.
What if there is no work?

Millions will lose pay because of closings
Some 60% of all paid workers in the U.S. are in service industry. These jobs will be hard hit by the loss of business brought about by the viral outbreak. Many in the leisure and hospitality industries will lose paychecks. These include hotels and restaurants.

- Services industry: 129 million
- Goods-producing: 21 million
- Self-employed*: 9 million
- Agriculture, forest, fishing: 2 million
- Professional business, financial**: 30 million
- Retail, wholesale: 22
- Government state, local, federal: 22
- Health care and social assistance: 20
- Leisure and hospitality: 16
- Educational, information, transportation, warehousing: 12

* Non-agriculture  ** Other services = 7 million
Source: Bureau of Labor Statistics, 2018 data
Furlough or Layoff?

• Issues to consider:
  – No specific definitions; my understanding:
    • Layoff = termination
    • Furlough = unpaid leave of absence

• WARN implications
  – More than 6 months?
  – Other exemption
    • Unforeseen business circumstance
    • Natural Disaster
    • Faltering Company
I-9 Considerations

- DHS exhibiting flexibility
- Can designate any third party as authorized representative to complete and sign section 2
- Can remotely inspect documents (fax, email, video)
  - Enter “COVID-19; documents physically examined on _____. 2020” in Additional Information field
CARES Act Loan

- 500 or fewer employees
- Can convert prior SBA disaster loan to CARES loan
- Maximum amount = 2.5 times average monthly payments for payroll, mortgage, rent, and other debt obligations incurred in the one-year period before the loan is made
- Mutually exclusive of SBA disaster loan premised on COVID-19
- Few requirements for loan
  - Certify that loan will continue operations during COVID-19 crisis and will be used to retain employees/pay direct expenses
- Portions of loan forgivable if certain conditions met
QUESTIONS