



CORONAVIRUS (COVID-19)

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

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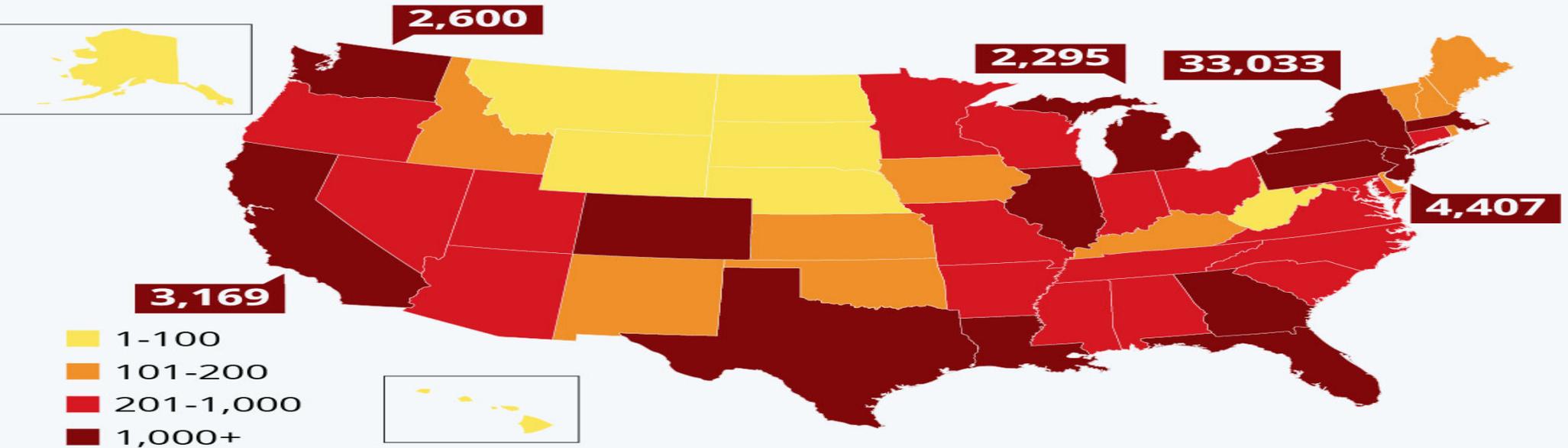
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Of course . . . A disclaimer

- 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



statista

Country, Other	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Serious, Critical	Tot Cases/ 1M pop	Tot Deaths/ 1M pop
USA	85,755	+320	1,304	+9	1,868	82,583	2,122	259	4
China	81,340	+55	3,292	+5	74,588	3,460	1,034	57	2
Italy	80,589		8,215		10,361	62,013	3,612	1,333	136
Spain	64,059	+6,273	4,858	+493	9,357	49,844	4,165	1,370	104
Germany	47,373	+3,435	285	+18	5,673	41,415	23	565	3
Iran	32,332	+2,926	2,378	+144	11,133	18,821	2,893	385	28
France	29,155		1,696		4,948	22,511	3,375	447	26
Switzerland	12,311	+500	207	+15	897	11,207	203	1,422	24
UK	11,658		578		135	10,945	163	172	9
S. Korea	9,332	+91	139	+8	4,528	4,665	59	182	3
Netherlands	7,431		434		3	6,994	761	434	25
Austria	7,317	+408	58	+9	225	7,034	128	812	6
Belgium	7,284	+1,049	289	+69	858	6,137	690	628	25
Portugal	4,268	+724	76	+16	43	4,149	71	419	7
Canada	4,043		39		228	3,776	120	107	1

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.nfid.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 their regular rate of pay, or the applicable state or Federal minimum wage, paid at

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 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 $\frac{2}{3}$ 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 fully or partially paid sick leave for COVID-19 related reasons (see below). Employees 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:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. 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; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ 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, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WHI 42 REV 03/20

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

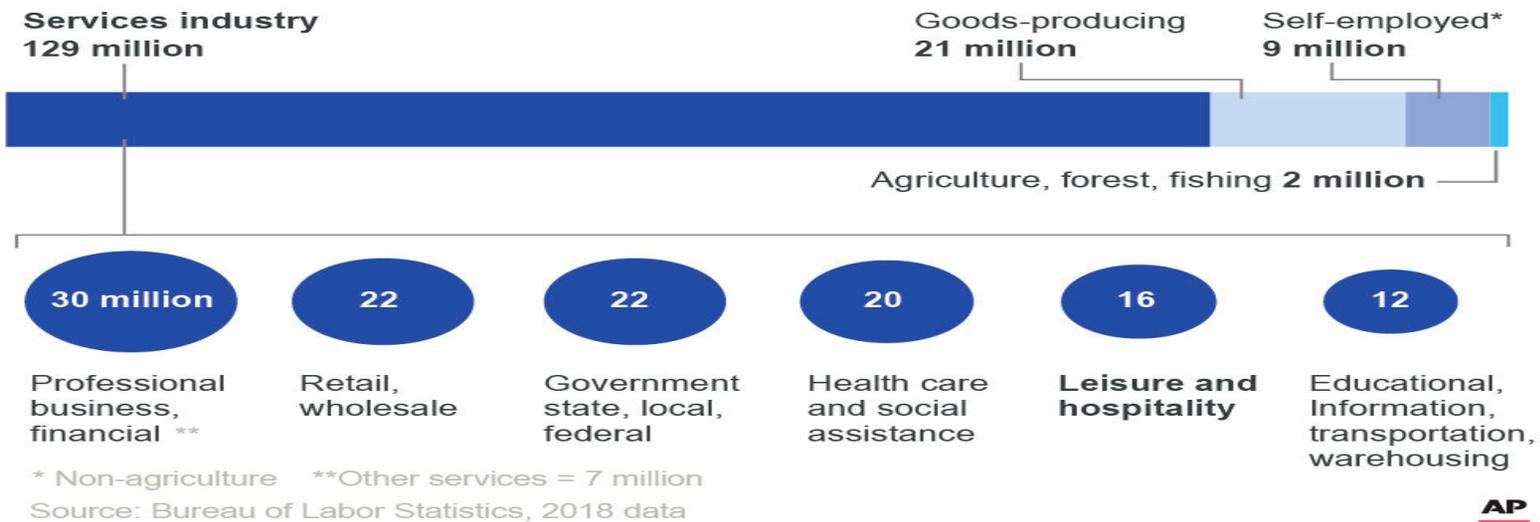


- **Not yet law!**
- The credit is applied against an employer's payroll tax liability on a quarterly basis.
 - An employer may claim the credit in advance by not depositing payroll taxes in anticipation of the credit.
 - If the amount of the expected tax credit exceeds an employer's payroll tax liability 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.



AP

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



Form I-9 Compliance

- 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

