



Addressing Coronavirus Practically and Legally:

What US Employers Need to Know

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Presenters



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Agenda

What is COVID-19?

Best Practices

- Family and Medical Leave Act
- Paid Sick Leave and Paid Time Off
- Americans with Disabilities Act
- Occupational Safety and Health Act
- Travel Restrictions
- Title VII / Discrimination
- Fair Labor Standards Act
- Workers' Compensation
- Unemployment Compensation
- Teleworking Implications
- WARN Act / Mini-WARN Act Notices
- National Labor Relations Act

Questions & Answers



What is COVID-19?

- A respiratory illness that can spread from person to person by transmission of the 2019 novel coronavirus (2019-nCoV).

How does COVID-19 spread?

- Mainly between people who are in close contact with one another (within 3-6 feet) through respiratory droplets produced when an infected person coughs or sneezes.
- Current guidance suggests it is possible for a person to contract COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.

What are the symptoms of COVID-19?

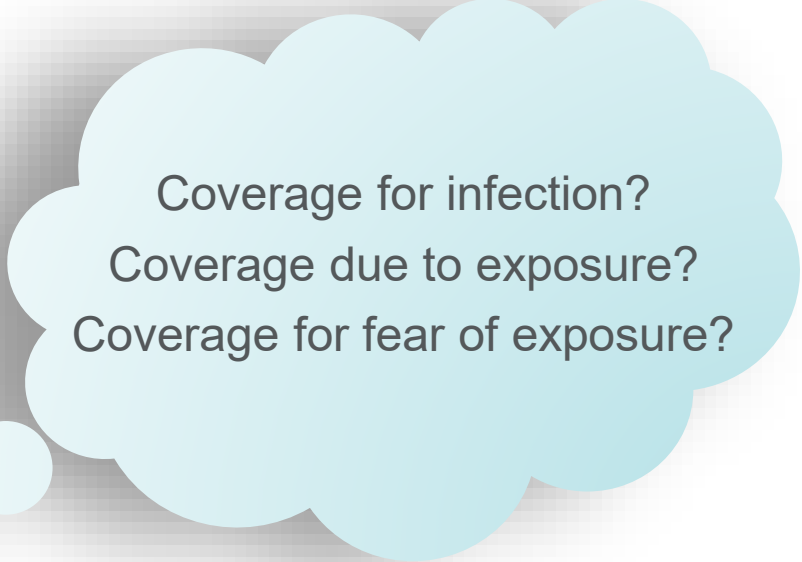
- Fever
- Cough
- Sore throat/runny nose
- Shortness of Breath

A close-up photograph of a hand being washed under a running faucet in a white sink. The hand is covered in thick, white foam from an orange-colored soap. The faucet is chrome and has a single drop of water falling into the sink. A teal-colored rectangular box is overlaid on the right side of the image, containing the text "Best Practices" in white.

Best Practices

Family and Medical Leave Act (FMLA)

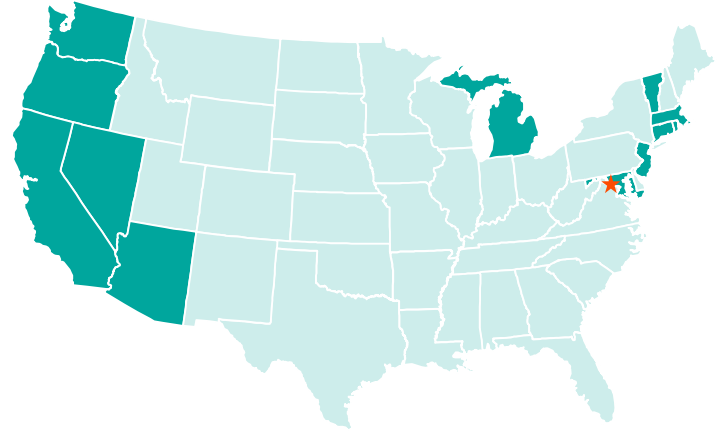
- Covered employers
- Eligible employees
- Up to 12 weeks of job-protected, unpaid leave and other benefits
- “Serious health condition” of self, spouse, parent, child



Coverage for infection?
Coverage due to exposure?
Coverage for fear of exposure?

Paid Sick Leave and Paid Time Off

- State and local paid sick leave laws
 - Arizona, California, Connecticut, D.C., Maryland, Massachusetts, Michigan, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Washington State
- Paid time off/vacation time
- Employers should refer to applicable state and local laws for additional COVID-19 absence coverage, including statutory paid sick leave and paid family leave.



Families First Coronavirus Response Act

- Emergency FML Expansion Act (pending)
 - Temporary amendment through 12-31-2020
 - FMLA AMENDMENTS FOR PUBLIC HEALTH EMERGENCY LEAVE
 - Eligible employees: employed 30 days, except certain health care providers, emergency responders, and indispensable employees of businesses with fewer than 50 employees
 - Covered employers: 1-499 employees
 - To comply with self-isolation instruction due to exposure to or symptoms of coronavirus where employee is unable to perform functions of job and simultaneously comply with the order
 - To care for parent, spouse, son/daughter under 18, adult son or daughter if pregnant, a senior citizen, disabled, or “has access or functional needs,” or grandparent or grandchild who is isolated due to or showing symptoms of coronavirus
 - To care for son or daughter under 18 whose school or child care provider has become unavailable due to coronavirus

Families First Coronavirus Response Act

- Emergency FML Expansion Act (pending)
 - FMLA AMENDMENTS FOR PUBLIC HEALTH EMERGENCY LEAVE:
 - First 14 days unpaid (but see Paid Sick Leave Act), then balance paid at 2/3 regular rate of pay for scheduled hours
 - Job restoration required unless (i) employer employs fewer than 25 employees and (ii) position no longer exists due to coronavirus-induced economic or operating changes

Families First Coronavirus Response Act

- EMERGENCY PAID SICK LEAVE ACT (pending)
 - FIRST TWO WEEKS PAID LEAVE PROVISIONS:
 - Employers with 1-499 employees, effective immediately upon hire
 - Up to 80 hours of paid sick leave for coronavirus, in addition to (not in lieu of) other paid leave
 - Self-isolation due to diagnosis
 - Medical diagnosis or care for symptoms of COVID-19
 - Comply with recommendations to isolate due to exposure or symptoms without confirmed diagnosis
 - Care for family member who is self-isolating, diagnosed, or seeking diagnosis or treatment (2/3 pay)
 - Child care due to school/care provider closure (2/3 pay)
 - No exhaustion of other paid sick leave (but EE can elect to supplement)
 - Antidiscrimination/Anti-retaliation provisions

Families First Coronavirus Response Act

- Emergency Paid Leave Act of 2020 (pending)
 - FIRST TWO WEEKS PAID LEAVE PROVISIONS and SUBSEQUENT DAYS:
 - Payroll Tax Credit to Employers
 - Limits Apply

Americans with Disabilities Act (ADA)

- Medical examinations and inquiries are generally prohibited by the ADA; however, certain rules are relaxed during pandemics.
 - ❑ Asking about recent travel?
 - ❑ Asking about exposure to the virus?
 - ❑ Asking about infection status?
 - ❑ Asking about underlying medical conditions and vulnerabilities?
 - ❑ Checking for fevers?
- Confidentiality and medical privacy

Occupational Safety and Health Act (OSHA)

- Employers must take reasonable steps to provide a workplace free from recognized hazards.
 - General Duty rule
- Infection Control Measures
 - Sanitizing/disinfecting
 - Personal Protective Equipment (PPE)
 - Travel restrictions
- Reportable incident



Travel Restrictions

- Employers can mandate that employees report on their recent travels to assess exposure risks.
- Employers can encourage employees not to travel during this time and cancel business travel to high-risk destinations.
- CDC has not restricted domestic travel at this time.
- International travel ban currently includes Mainland China, Iran, and the Europe Schengen area.



Title VII / Discrimination

- Title VII prohibits discrimination based on race, color, national origin and other protected classifications.
- Do not exclude any person from work or work-related activities based purely on race or national origin.
- Temporary workplace bans must be implemented based on objective evidence of illness or reasonable risk of exposure to the virus.
- Ensure that any communicable disease or travel policies do not implicate anti-discrimination laws, not only based on race, color, age, pregnancy, or national origin, but also on disability or other prohibited bases.

Fair Labor Standards Act (FLSA)

- Non-exempt employees
 - Only required to be paid for any hours worked.
 - Address recordkeeping/timekeeping and limits on working overtime remotely.
 - CAREFUL OF STATE WAGE LAWS
- Exempt employees
 - Must be paid their guaranteed salary for any week in which they perform any work or risk losing the exemption.
 - No pay required for any week in which no work is performed.




Teleworking Implications

- Employers may encourage or require employees to telework as an infection-control or prevention strategy. Telework may also be used as a reasonable accommodation.
- Reimbursement of business expenses.
 - State laws vary.
- Non-exempt employees must comply with all company policies and federal and state laws related to timekeeping, overtime approval, and meal and rest breaks, if applicable.



Workers' Compensation

- Workers' compensation policies generally extend insurance benefits to employees for injuries “arising out of or in the course of employment.”
- Key questions:



Contracted at
work?

Contraction
“peculiar” to
employment?

Unemployment Compensation

Unemployment insurance may be available if an employee is furloughed due to their employer's business temporarily or permanently closing due to COVID-19, including:

- Reduced hours due to quarantine
- Separated from employer during quarantine
- Subject to a quarantine required by medical professional or state or local health officer



WARN Act / Mini-WARN Act Notices

- The Federal WARN Act imposes a notice obligation if there is a “plant closing” or “mass layoff” in certain situations, including an unforeseeable circumstance like COVID-19.
 - Applies generally to employers with 100 or more employees
 - Generally must provide 60 days’ advance notice to covered employees
 - Exceptions for “faltering business,” “unforeseeable business circumstances,” and “natural disasters”
- 16 US states have adopted mini-WARN Acts with different employer coverage thresholds and notice-triggering requirements.

National Labor Relations Act

- Unionized employers who plan to close facilities due to illness should review collective bargaining agreements in place to ensure all contractual prerequisites are satisfied.
- Unionized employers also must review the terms of their collective bargaining agreements to ensure they follow all steps required prior to layoff / termination, including, if applicable, conferring or bargaining with the units' representative, following CBA requirements for selecting affected employees, and adhering to recall requirements following a temporary layoff.
- Avoid actions aimed at chilling protected concerted activity.

Miscellaneous



- Military Leave/USERRA protections
 - Call for National Guard service
 - Federal versus state call to duty affects USERRA rights



- Immigration
 - H2B visas

Workforce Planning

- Identify indispensable workers
- Back-up access
- Cross-train on essential skills
- Identify key equipment, files, and data
- Develop communications plan:
 - Emergency numbers
 - Employee contact information
 - Core communication team

A photograph of a modern office interior. Four people are seated in a circle on beige leather armchairs, engaged in a meeting. A woman on the left is wearing a light grey blazer and trousers, holding a notebook. A man next to her is wearing a dark suit and holding a laptop. On the right, a man in a dark suit is seen from the back, and a woman in a light grey blazer is facing him. They are surrounded by glass partitions and office furniture. A large purple semi-transparent rectangle is overlaid on the right side of the image, containing the text "Questions & Answers".

Questions & Answers

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