



# COVID-19: What You Need to Know Today

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# Today's Participants



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# Identify Your Issues

- Getting employees to come to work.
- Protecting Employees and limiting opportunities for spread.
  - Office setting? Employees going to commercial or home sites? Travel?
- Excluding people who may have been exposed.
- How to keep sick employees from coming to work?
- PTO/Sick Pay?
  - How funded?
  - What happens when PTO is exhausted?
- Attendance rules.
- Wage Hour compliance.
- Avoiding setting precedents.



# Practical Steps to Protect Employees and Limit Spread

- Educate and communicate with employees.
- Increase availability of hand sanitizer, screen and keyboard wipes, and Kleenex.
- Evaluate jobs for improving social separation.
- Evaluate remote work opportunities.
- Improve workplace housekeeping.
- Encourage seasonal flu shots.
- Emphasize wellness programs and efforts/EAP efforts to maintain general health.

**Financial webinars**

**Mental health**

- Provide PPE as appropriate and document training.

# Communication to Employees

- Confirm you are on top of it - as best as possible. Fast-moving developments and company will do what is necessary to protect employees.
- Provide resources to CDC and other useful guidance.
  - Stay home if they are sick; regardless of whether they have symptoms matching the coronavirus or not. We are still in a robust flu season and many of the symptoms are the same - so stay home.

# Communication to Employees, cont'd

- Managers need to back up this message and in a kind way send employees home if they report being sick.
  - Practice good coughing and sneezing hygiene – always cover your mouth and nose when sneezing.
  - Wash your hands regularly – always before eating – count to 20 seconds and wash hands all over (20- seconds is much longer than one thinks).
  - Carry hand cleaner in your purse or pockets – and use it.
  - Keep your hands away from your mouth, nose and eyes – that's how most people get the virus – not by breathing it.
  - When in public, practice common sense separation and distancing – keep a reasonable distance from others in the public – 4'– 6', but until the spread worsens – we DO NOT need to get weird and start refusing to be near people or to treat customers rudely.
  - Freely bring concerns to designated management.

# The Alphabet Soup...

- ADA
- ADEA
- PTO
- HIPAA/GINA
- WC
- OSHA
- FMLA

# Protecting Employees

- Travel and meeting restrictions
- Asking health related questions and taking temperatures
  - Who? How?
- Sending people home?
  - What about age?
  - What about people who are just “anxious” or scared and don’t fit the criteria for quarantining?



# Families First Coronavirus Response Act

- The Act is an emergency spending bill passed by Congress, effective April 2, that provides:
  - Emergency paid sick leave for employees affected by COVID-19
  - Amends the Family & Medical Leave Act to provide coverage for absences related to COVID-19
  - Clarifies and relaxes Medicare and Medicaid funding relating to COVID-19 testing

The Act applies to all public employers regardless of size and to private employers with fewer than 500 employees.

# Emergency Paid Sick Leave

- All public employers; private with fewer than 500
  - **Regardless of the length of employment**
- F/T = 80 hours
- P/T = proportional based on average hours worked in a two-week period
- Cannot require employee to use other paid leave first. This is in addition to any paid leave an employer already provides.
- Requires that an employee be unable to work or telework due to one of 6 qualifying needs for leave:

# What kind of paid leave is available for absences related to COVID-19?

- A) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- B) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- C) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- D) The employee is caring for an individual who is subject to an order as described in subparagraph (A) or has been advised as described in paragraph (A);
- E) The employee is caring for his or her son or daughter if the school or place of care has been closed or the child care provider is unavailable due to COVID-19 precautions; or
- F) The employee is experiencing “any other substantially similar condition specified by the secretary of Health and Human Services in consultation with the secretary of the treasury and the secretary of labor.”

# How Much?

- For the first three reasons (A) – (C): maximum amount of pay during the leave will not exceed \$511 per day (\$5,110 aggregate)
- For (D) – (F): maximum amount of pay during the leave will not exceed \$200 per day (\$2,000 in the aggregate)
- The amendments prohibit the employer from requiring the employee to search for/find a replacement during the time the employee is using emergency paid sick leave.

# Benefits for Employers

- Employers will receive a refundable tax credit against the employer share of Social Security taxes equal to 100% of qualified paid sick leave wages paid for each calendar quarter to be paid under either emergency paid sick leave or the expanded FMLA category.
- For employers with fewer than 50 employees, the Secretary of Labor can exempt the business from these requirements.

# FMLA Amendments

- New category of coverage – “qualifying need related to a public health emergency.”
  - Means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter of such employee if the school or place of care has been closed or the child care provider of such son or daughter is unavailable due to a public health emergency.”
  - “Public health emergency” has been defined as “an emergency with respect to COVID-19 declared by a federal, state or local authority.”



# FMLA Amendments

- For absences related to COVID-19, employees must only be employed for 30 calendar days, and there are no hours worked requirement.
- The first 10 days are unpaid; however, employees would be able to utilize the paid sick leave discussed previously. Cannot require.
- After the first 10 days, employees are eligible for paid leave at 2/3 their regular pay rate of pay. (Capped at \$200/day, \$10,000 in the aggregate/employee)
- Employers with fewer than 25 employees do not have to restore employees to their previous positions under certain circumstances.
- The right to expanded FMLA leave related to COVID-19 begins April 2 and expires December 31.

# Dealing with Children/School Issues

- No school/day care
  - FMLA leave
  - Flexible hours/shifts
  - Extra time off
  - Working from home
  - Set up own day care? Kid zones? NO.

# ADA

- Mental Health
- Direct Threat
- Accommodations

# Workers' Comp

- Maybe/Maybe Not
  - Illness resulting from something no more prevalent at work than the general population generally is not compensable.
  - Exception may be health care workers

# Right to Refuse to Come to Work?

- NOT generally.
- All of the following must be true:
  - Where possible, employee has asked the employer to eliminate the danger, and the employer failed to do so; and
  - Employee must genuinely believe that an imminent danger exists; and
  - A reasonable person would agree that there is a real danger of death or serious injury; and
  - There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

# Paying Employees

- Remote Work
  - Essential requirements
  - *“We realize that you may not be able to perform all the essential functions of your job while working remotely but ask that you do the best you are able. All essential functions will resume and remain a part of your job when you are working in the office and this temporary work-from-home requirement has been lifted.”*
- Exempt v. non-exempt
- Sick Leave/PTO Issues



# OSHA

- Duty to provide a safe work environment
- OSHA has taken the position that COVID-19 contracted in the workplace or while on the job is a recordable illness on OSHA 300 log. Three requirements:
  - case is a confirmed case of COVID-19
  - case is work-related per 29 CFR 1904.5; i.e., the employee did not contract it by virtue of personal travel in a Level 3 advisory country, for example
  - case involves one or more of the general recording criteria of the OSHA regs – i.e., medical treatment beyond first aid, days away from work, etc.
- Exposure to different cleaning chemicals
- PPE. Asking people to do different jobs. Safe?
  - Masks. Respirators. Gloves.
- Section 11(c) whistleblower

# Laying Off/Furloughing Employees

- What about the WARN Act? Probably not applicable
  - Mass lay off – more than 6 months
  - Unforeseen business consequence and/or natural disaster

# Unemployment – IWD

- Employer charges waived and tax rates unaffected for COVID-19 claims
- Quarantined employees can apply and receive benefits
- Fact findings waived
- Requirements to look for work are waived
- Faster checks – 7-10 days

# PTO

- **Termination.** Look at company policy to determine if payout is required. If payout is required, unemployment eligibility delayed. If not required, immediately eligible for unemployment.
- **Temporary Layoff/Shutdown.** Unless policy dictates answer, up to employer to decide if paying it out. If mandate or allow employees to take PTO for a shutdown that usage will delay unemployment eligibility.
- **Donation** – if company doesn't already have a written donation plan that complies with tax requirements, not recommended.

# Resources

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

<https://www.iowaworkforcedevelopment.gov/updates-and-resources-about-covid-19>

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

<https://www.osha.gov/SLTC/covid-19/>

<https://www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx>

[http://www.safeguardiowa.org/2020\\_COVID19\\_Situational\\_Awareness](http://www.safeguardiowa.org/2020_COVID19_Situational_Awareness)



# Questions





# Thank You