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WEBINAR AND GUIDANCE FOR MANAGING THE CORONAVIRUS

The World Health Organization has now declared the 2019 Novel Coronavirus disease (COVID-19) a global pandemic; colleges have closed campuses for the semester, sporting seasons have been canceled and some local governments have banned large public gatherings. The virus is thought to spread from person to person through close contact (within 6 feet) and through respiratory droplets when an infected person coughs or sneezes. Because the virus is so easily transmitted, the workplace is considered a major concern for transmission. On Friday night, the House of Representatives and the President reached an agreement on emergency measures applicable to employers. What should employers do to minimize the risk to their workforces?

What safety precautions should an employer implement?

On Tuesday, the Occupational Safety and Health Administration (OSHA) issued its guidance to assist employers in preparing for COVID-19. <https://www.osha.gov/SLTC/covid-19/>. Although the guidance does not create any new legal requirements, OSHA recommends that employers develop an Infectious Disease Preparedness and Response Plan, implement basic infection control measures, and develop policies for the identification and possible isolation of infected employees.

Along these same lines, the Centers for Disease Control is recommending standard precautions to avoid the spread of respiratory viruses, such as washing hands with soap and water for at least 20 seconds, or, if soap is not available, using hand sanitizer; avoiding close contact with people who are sick; staying at home when you are sick; and disinfecting frequently touched objects and surfaces. https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html

OSHA suggests similar practices:

- Providing tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs.

- Posting handwashing signs in restrooms.

Other recommendations from both OSHA and the CDC are to consider cancelling non-essential travel to areas experiencing outbreaks; allowing employees to work remotely where possible and encouraging employees to stay home if feeling sick.

What can you do if an employee has recently traveled to an area experiencing an outbreak or exhibits symptoms of COVID-19?

Although the Americans with Disabilities Act places limits on some medical inquiries, the EEOC's Pandemic Preparedness Guidance provides that you can inquire about an employee's travel to areas affected by the outbreak and about the employee's potential exposure to infectious diseases. You can also require that employees who have travelled to affected areas or exhibit symptoms of COVID-19 to stay home from work for the recommended 14-day quarantine period. You should nevertheless maintain the confidentiality of any medical information gathered.

A word of caution. To the extent you inquire about an employee's potential exposure, you should do so for all similarly situated employees and should not target employees for inquiry based on an employee's race or national origin. You should base your inquiry on the employee's display of symptoms, exposure to a known infected person or travel to an area of outbreak.

Do you have to pay an employee who is required to stay home because of possible exposure?

Obviously, if you provide sick leave or some other form of paid time off, employees will be entitled to use such time under the terms of your policies.

Beyond the available PTO, for exempt employees, under current law you do not have to pay for absences of an entire workweek (a week in which the employees do not work at all). If, however, the absences are for a partial workweek, it depends on whether the absence was because the employer required the employee to stay home or instead because the employee's medical condition necessitated their absence. If the absence was at the employer's direction, then you would have to pay for the time off. If it was because of the employee's sickness, then you would not have to pay for days on which the employee did not work.

For non-exempt employees, under current law, you generally do not have to pay for time off whether initiated by the employer as a precaution or at the employee's election because of illness.

In both cases, however, you should consider the practical implications. Do you want potentially infected employees coming to work to maintain their paychecks? Given the implications for remainder of your workforce, you may want to consider some form of sick pay to encourage employees to make the safe choice.

But all this about to change. What emergency measures has Congress adopted?

On Friday evening, the House of Representatives passed the Families First Coronavirus Response Act. The bill is set to be considered by the Senate this evening and the White House has already indicated its approval. The Act provides for paid leave for employees out of work because the Coronavirus. There are two components to the legislation: (1) the Emergency Family and Medical Expansion Leave Act and (2) the Emergency Paid Sick Leave Act.

Which employers are covered? All employers with less than 500 employees.

Which employees are eligible for benefits? All employees (both full and part time) who have been employed at least 30 days (which is dramatically less than the current Family and Medical Leave Act's one year and 1250-hour requirement).

What reasons trigger leave under the Emergency FMLA? An employee is entitled to take leave for the following reasons:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus.
- To care for a family member whose presence in the community would jeopardize the health of other individuals because of the exposure of such family member to coronavirus or exhibition of symptoms of coronavirus by such family member
- To care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable, due to a coronavirus

Is the Emergency FMLA leave paid? This is where the Act gets a little convoluted. Under the Emergency FMLA, the first 14 days is unpaid, but an employee may (but is not required to) use available paid time off (such as vacation or sick leave). After 14 days, the employee must be paid 2/3 of their regular compensation for number of hours they would have been normally been scheduled.

The catch is that the first 14 days is likely covered by the paid sick leave act discussed next. In addition to the Emergency FMLA, the Emergency Sick Pay Act requires covered employers (with fewer than 500 employees) to provide employees with two weeks of paid sick leave, paid at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus.

Is an employee entitled to reinstatement? The Act has similar reinstatement provisions to the FMLA but includes an exception for small employers (25 employees or less) where the job is eliminated because of an economic downturn.

When is an employee eligible for paid sick leave? Under the Emergency Paid Sick Leave Act, a full-time employee is entitled to 80 hours of sick leave paid at their regular rate (2/3 if caring for family member) for the following reasons:

- Self-isolate because the employee is diagnosed with COVID-19;
- Obtain a medical diagnosis or care if the employee is experiencing the symptoms of COVID-19;
- Comply with a public official or a health care provider order or recommendation that the physical presence of the employee on the job would jeopardize the health of others due to COVID-19 exposure;
- Care for the employee's family member who is self-isolating because the family member has been diagnosed with or is experiencing symptoms of COVID-19 and/or needs to obtain medical diagnosis or care;
- Care for a family member if a public official or a health care provider determines that the presence of the family member in the community would jeopardize the health of others due to COVID-19 exposure;
- Care for the child of such employee if the school or childcare has been closed due to COVID-19.

Part-time employees are entitled to be paid the number of hours they work on average in a two-week period.

Who pays for this? The employer is required to pay the employees sick leave, but the employer may claim a tax credit for 100% of the sick and FMLA leave paid under the Act. The tax credit is claimed against the employer's Social Security tax contributions.

When does it go into effect? No later than 15 days after being signed. It expires on December 31, 2020. And the paid leave does not carry over to next year.

Key recommendations:

- Communicate and reinforce safe workplace practices (e.g., hand washing, disinfection)
- Encourage employees who experience symptoms to stay home
- Communicate how absences will be handled (under both absenteeism policies and for purposes of compensation)
- Allow work from home where feasible

We will be updating our guidance as events develop over the next week in a one-hour webinar at 12:00 Central on March 19th. Registration is \$30 per screen. HRCI and SHRM certification pending. [Register here.](#)