

The background of the slide features a dark, textured surface with numerous stylized, light-colored coronavirus particles scattered across it. These particles are depicted with characteristic spherical bodies and protruding spike proteins.

Employment Webinar: Coronavirus - An Employer's Legal Guide to Planning, Response, and Mitigation

March 19, 2020

Changes in the law may have occurred since the airing of this webinar.



NAVIGATING THE CORONAVIRUS PANDEMIC

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Today's Presenter



Tory Summey

Employment & Labor

- Focuses on employment counseling and litigation for multistate employers in various industries
- Advises on issues related to the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), Title VII, state wage and hour laws, the Fair Credit Reporting Act (FCRA), and employee benefits issues.



Health and Safety

Workplace Policies

- Cleaning and Hygiene
- Social Distancing
 - Spacing workers
 - Staggered commuting
 - Electronic communications
 - No in-person meetings
- Identification and Isolation of sick employees
- Encourage remote work
- Consider performing daily health checks (temperature and symptom screening)

Travel Policies

- Postpone non-essential business travel
- Require employees to disclose travel to Level 3 Health Warning Countries
- Cancel work-sponsored conferences, tradeshow, etc.

Health and Safety

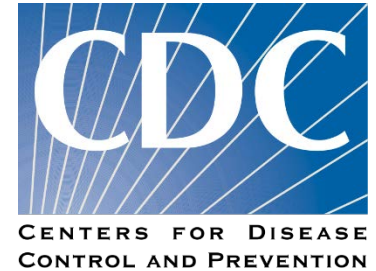
OSHA Guidance

- Infection prevention measures
- Identification and isolation of sick employees
- Workplace controls:
 - Engineering
 - Administrative
 - Personal protective equipment

Worker's Compensation

- Illness may be compensable if arises in course of employment
 - Exception in South Carolina (S.C. Code § 42-11-10)
- Washington changed policy to cover healthcare workers and first responders

Health and Safety (Next Steps)



- CDC has issued guidance for heavily impacted areas
 - Santa Clara, CA, Seattle, WA, New Rochelle, NY, Massachusetts, Florida
- Includes guidance for employers:
 - Extensive telework and e-meetings
 - Cancel work sponsored events
 - Social distancing in office
 - Liberal leave policies:
 - Consider 7-day leave for employees with COVID-19 symptoms
 - Alternate team approaches for work schedules
 - Cancel non-essential work travel
 - Regular health checks on arrival each day of staff and visitors

Business Continuity

Key Policies

- Communications
- Travel
- PTO and Leave
- Telecommunications and remote work policies
- Infectious disease control policy

Critical Activities

- Communicate policies
- Enhanced cleaning and hygiene procedures
- Test remote access infrastructure
- Identify contact information for key vendors
- Update employee contact information
- Cross train employees

Leave Topics

- Where we are now:
 - Paid Time Off
 - Sick Leave
 - FMLA
 - ADA
- What is next:
 - Families First Coronavirus Response Act
 - Quarantine

PTO and Sick Leave

Paid Time Off

- Not required under State or Federal Law
- Consider advancing PTO to encourage sick employees to stay home

Sick Leave

- Not required under NC or SC state law
- Waive any requirement for a doctor's note to take leave or return to work
 - But, make sure employees are healthy before returning



ADA

- WHO declared COVID-19 a pandemic on March 11, 2020
- Invokes “during pandemic” portions of EEOC’s Pandemic Preparedness in the Workplace and the ADA guidance
 - May send symptomatic employees home
 - May ask employees if they are experiencing symptoms
 - May take employees temperature
 - May ask about travel and require sit-out period
- Confidentiality still applies

FMLA – General Rules

- DOL Guidance issued on March 11, 2020
- General Eligibility:
 - 12 months work
 - at least 1,250 hours
 - location with 50 employees
- COVID-19 may constitute a “serious health condition”
 - Also applies to family members
- Leave to avoid infection / for fear of infection does not qualify
- Doctor’s notes and fitness-for-duty certifications
 - Waive requirement to take leave
 - Ensure employees are not contagious before returning to work (may require testing)



Families First Coronavirus Response Act (FMLA Expansion)

- Employers with fewer than 500 employees
 - Potential hardship exemption for employers with fewer than 50 employees
- Permits leave for:
 - Care of children if schools are closed
- Eligible employees
 - employed for at least 30 days
- Relation to Paid Leave:
 - First 10 days may be unpaid
 - Employee may elect to use paid leave instead
 - Paid leave for each day after 10 days at not less than two-thirds of regular rate of pay
 - Capped (\$200 per day; \$10,000 aggregate)
- Tax credit
- Effective date: April 2, 2020
- *(note change from webinar)*



Families First Coronavirus Response Act (Emergency Paid Sick Leave)

- Employers with fewer than 500 employees
 - Potential hardship exemption for employers with fewer than 50 employees
- Paid leave for:
 - Self-quarantine after diagnosis
 - To obtain diagnosis/care after symptoms
 - Quarantine
 - Care of family member
- Duration:
 - Full-time = 80 hours
 - Part-time = equivalent of two weeks
- Compensation:
 - Diagnosis / care = Full rate (capped at \$511 per day and \$5,110 aggregate) if sick/quarantined
 - Care for others = 2/3 (capped at \$200 per day and \$2000 aggregate) if caring for others
- Existing policies:
 - In addition to existing leave (*note change from webinar*)
 - Employer **may not** require use of other paid leave before emergency sick leave
- Tax credit
- Effective date: **April 2, 2020**
(*note change from webinar*)



Quarantine

- If employee is subject to mandatory quarantine:
 - Non-exempt: pay for only work that is performed
 - Exempt: pay weekly salary unless performed no work that week
- May require employee to self-quarantine for 14 days (per CDC recommendations) if:
 - Recently travelled to high-risk area
 - Exposed to COVID-19
 - Acquired COVID-19



FLSA Issues

- DOL issued guidance on March 11, 2020
- Hourly workers (non-exempt) – paid for time worked
- Salaried – Pay unless did not perform **any** work for a full week
 - Exception: if employee exhausted leave and
 - Absence initiated by employee – may deduct pay for full-day absences only
 - Absence initiated by employer – may deduct full-week absences only
- Remote work – important to emphasize need for accurate time records

Unemployment Benefits

DOL Guidance (3/12/20)

- Provides flexibility for changes to state law
- Federal law permits benefits for:
 - Temporary shutdowns
 - Quarantine
 - Care for family member
- Employees need not be discharged
- Encourages waiver of waiting periods

Coronavirus Response Act

- \$500 million if states meet requirements including:
 - Require employers to notify employees of availability of benefits at separation
- \$500 million for states with 10% increase in unemployment:
 - Demonstrate steps to ease eligibility, such as waiving work requirements and waiting periods

Unemployment Benefits

North Carolina

- EO118 (3/17/20)
- Waives one-week waiting period
- Waives work search requirement
- Employees who lose jobs or have had hours reduced
- Phone or online applications
- Employers not charged

South Carolina

- Has not waived one-week waiting period
- Guidance indicates that claimants impacted by COVID-19 “may” be eligible for benefits
- Employers may not be charged because of “natural disaster”

WARN Act

- General Rule:
 - Employers with 100 or more employees required to provide 60-days advance notice of temporary shutdown if will (i) affect 50 or more employees at a single site and (ii) result in at least a 50 % reduction in hours of work of individual employees during month of shutdown
- Shutdown as a result of “natural disaster” or “unforeseeable business circumstances”
 - 60-day notice not required
 - Must still provide as much notice as practicable
 - COVID-19 could qualify
- Beware state WARN Acts (none in NC or SC)

FAQs

- Do I have to report if an employee tests positive for COVID-19 to the government?
 - No requirement to report to the CDC
 - No requirement to report to report to NC or SC.
 - Generally medical providers are required to report
 - Mecklenburg County Public Health Hotline 980-314-9400
- How do I balance confidentiality with the need to inform employees of potential exposure?
 - You may inform employees that they have been exposed to COVID-19. You may not identify the employee who was diagnosed.
- Can I require employees to travel domestically?
 - Yes, but we recommend using video and teleconference whenever available for the foreseeable future

FAQs

- Can I require employees to inform the company if they have been diagnosed with COVID-19?
 - Yes. All employers should request this from their employees immediately.
- Can I require employees returning from affected areas to self-quarantine?
 - Yes. We recommend adopting the CDC's guidance that travelers returning from countries with widespread sustained transmission self-quarantine for 14 days from the time they left the area before returning to work.

FAQs

- Can I require asymptomatic employees with no known exposure to telework as a preventative measure?
 - Generally yes as long as their duties allow telework
- Can I require employees to stay home and use PTO/vacation time?
 - Generally, yes, if permitted by your policy
 - May not require use of other paid leave before emergency paid sick leave under FFCRA
- Can I ask customers or visitors whether they are experiencing symptoms of COVID-19?
 - Generally yes so long as you do not discriminate



Department of Labor Resources

COVID-19 or Other Public Health Emergencies

The Wage and Hour Division provides information on common issues employers and employees face when responding to influenza, pandemics, or other public health emergencies, and their effects on wages and hours worked under the Fair Labor Standards Act and job-protected leave under the Family and Medical Leave Act.

- [COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act: Questions and Answers](#)
- [COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act: Questions and Answers](#)

For further information about Coronavirus, please visit the HHS's [Centers for Disease Control and Prevention](#).

Source: <https://www.dol.gov/agencies/whd/pandemic>

Contact Us with Questions

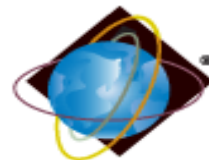


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