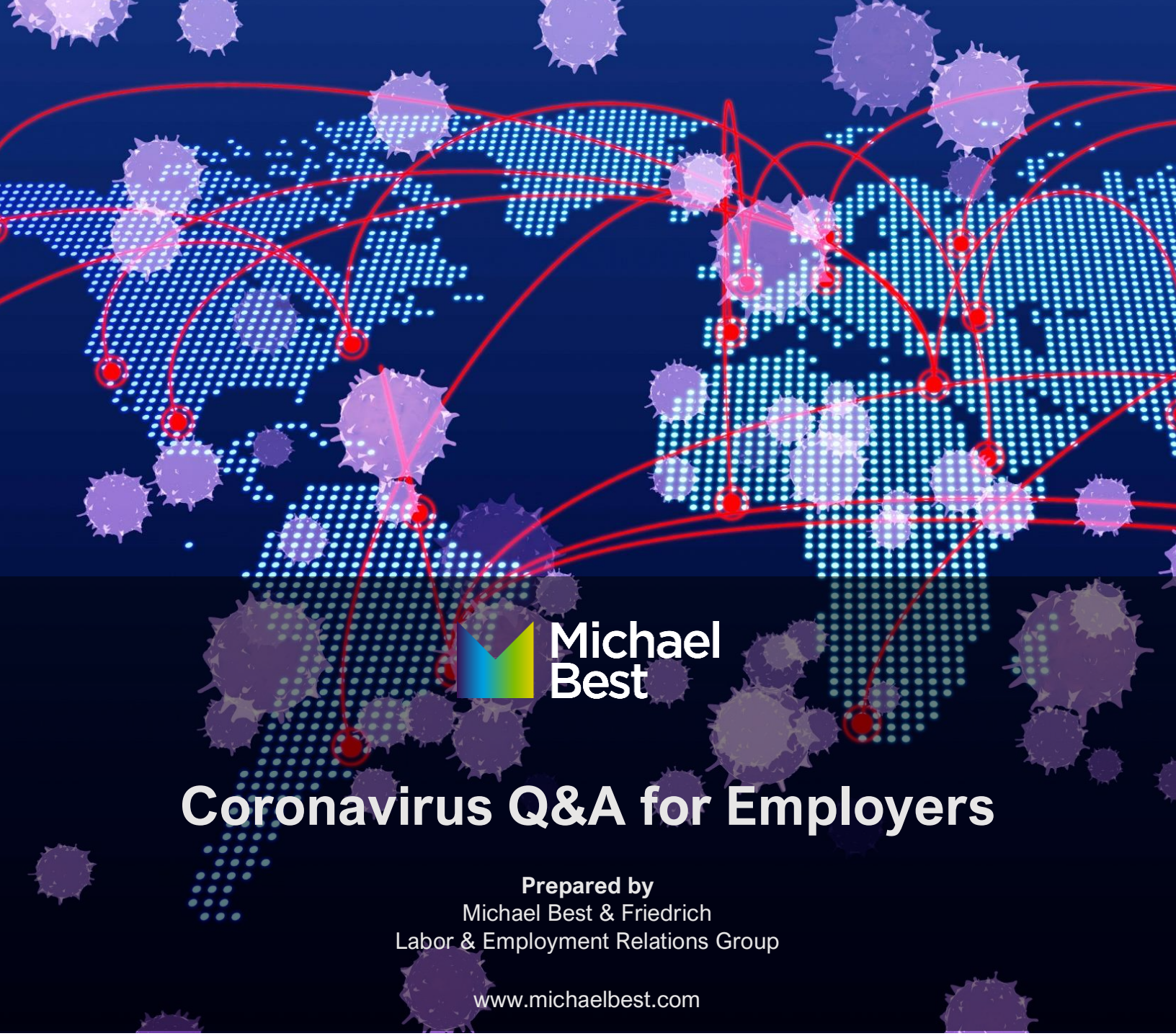

Michael Best

Coronavirus Q&A for Employers

Prepared by
Michael Best & Friedrich
Labor & Employment Relations Group

www.michaelbest.com

UPDATED: March 24, 2020

Michael Best

CORONAVIRUS – MARCH 2020 QUESTIONS AND ANSWERS ©

INTRODUCTION

To help employers adjust to today's rapidly changing circumstances, Michael Best has compiled this set of most-asked employment law questions and answers. This list is current as of **Tuesday, March 24, 2020** and is intended to provide short, introductory responses to important questions.

Obviously, in many cases, additional facts are necessary to assess specific situations, and we are here to answer follow-up questions as needed. Toward this end, after each question/answer in the following pages, we have included the names of the Michael Best attorneys who provided that answer. If you have follow-up questions or need guidance, please feel free to get in touch with the identified attorneys. Their direct contact information is as follows:

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This guide will be updated as new information becomes available; we will alert you to each major update, and you can always download the most current version here. We are also posting frequent updates on a variety of issues on our COVID-19 Task Force website at www.michaelbest.com/Practices/COVID-19-Resource-Center, as well as circulating daily email digests. Please let us know if you'd like to receive the daily digests.

This document is prepared for general information and is not a substitute for specific advice. Readers should contact their Michael Best attorney regarding the specific facts and circumstances of individual matters due to the rapidly changing legal and epidemiological landscape surrounding this subject matter.

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FMLA AND LEAVE-RELATED QUESTIONS (UPDATED MARCH 24, 2020)

1. IS JOB PROTECTION UNDER FMLA IMPACTED BECAUSE OF COVID-19? FOR EXAMPLE, IF SOMEONE ISN'T ELIGIBLE FOR FMLA LEAVE AND THEY GET SICK, CAN WE FILL THEIR POSITION?

Family and Medical Leave Act (FMLA) job protection will apply to those who are eligible. If someone is not eligible for FMLA leave, you'll need to evaluate your obligations under the disability laws—it may be a reasonable accommodation to provide a short leave during recovery. Not providing that leave (particularly if you provide leaves for others) could rise to a cause of action for discrimination on some other basis too.

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020 and addresses this, as discussed in this Michael Best alert. The FFCRA amends the FMLA to provide significant additional leave during the public health emergency to eligible employees working for employers with fewer than 500 employees and all government employers.

Employees who work for an employer with 25 or more employees and who are on public health emergency leave under the FFCRA have job protection. For employers with fewer than 25 employees, job restoration rights do not apply for public health emergency leave if the position held when the leave began no longer exists due to economic or operation conditions of the employer, so long as the employer makes a good-faith effort to try to restore the employee to an equivalent position. The FFCRA also prohibits employers from discharging, disciplining, or discriminating against an employee who takes Emergency Paid Sick Leave.

Various states are also passing laws. The situation is fluid, and we will continue to provide guidance. Contact your Michael Best attorney for the latest information at any time. Kirk Pelikan, Ashley Felton, Daniel Kaufman

2. PLEASE CLARIFY FMLA LEAVE V. SHORT-TERM DISABILITY. WHO MAKES THAT DETERMINATION?

The FMLA addresses the right to be absent from work and be reinstated, as well as health insurance coverage during absence. The additional leave provided to eligible employees under the Families First Coronavirus Response Act also addresses the right to be absent from work and such employees' job restoration rights. After the first 10 days of public health emergency leave under the FFCRA, an employer must pay the employee on leave two-thirds (2/3) of the employee's regular rate of pay or $200 per day, whichever is less. (Pay for the first 10 days of leave is available under the "Emergency Paid Sick Leave Act" section of the FFCRA, discussed throughout this guide).

Short-term disability (STD) provides income replacement when an employee's condition prevents them from working. The two can run concurrently with one another, i.e., an employee could be on FMLA leave for a serious health condition that also is disabling from the STD standpoint. Fundamentally, STD has no job protection function, only wage replacement (unless

the employer has a policy that states otherwise). Eligibility for both programs is determined under the terms of their respective policies. Kirk Pelikan, Ashley Felton, Daniel Kaufman

3. WHAT HAPPENS WHEN A CHILD NEEDS TO BE HOME BECAUSE SCHOOL OR DAYCARE CLOSED? IS THAT FMLA, OR SHOULD THE EMPLOYEE USE PTO?

The Families First Coronavirus Response Act was signed into law on March 18, 2020 and addresses this, as discussed in this Michael Best alert. Employers with fewer than 500 employees and government employers (regardless of the number of employees) must provide employees with paid sick time sufficient for an employee to be away from work continuously for 10 days.

To be entitled to this benefit, the employee need not have been employed for more than one day. Full-time employees would receive 80 hours of paid sick leave, and part-time employees would receive a pro-rata portion of paid sick leave. For absences based upon a need to be home to care for a child due to school or daycare closing, leave will be paid at two-thirds (2/3) of the employee's regular rate or $200 per day, whichever is less.

Employees must be allowed to use this additional paid sick leave before using any other paid leave benefits. There is no advance notice requirement in the law (notice can be required after the first date leave is used), nor is there a required certification methodology. Employees do not need to find a replacement when using this leave.

After the first 10-day period, the employer must provide paid leave under the FFCRA's amendments to the FMLA (up to 12 weeks). For employers already covered by the FMLA, this leave can be coordinated with the leave under the employer's policy, including limiting an employee to a total of 12 weeks of leave.

To be eligible for this extended FMLA leave, the employee must have been employed for at least 30 days. The amount of paid leave is calculated as the employee's normal number of hours times two-thirds (2/3) of the employee's regular rate of pay or $200 per day, whichever is less. Paid leave for variable-hour employees is based on either an average looking back the prior six months or what the employee would have worked (if the employee did not work during such period). Certain healthcare employers are excluded, and there is a mechanism for employers with fewer than 50 employees to be exempted.

For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions." Charles Palmer

4. IF AN EMPLOYEE IS NOT ELIGIBLE FOR FMLA LEAVE, CAN WE REQUIRE DOCUMENTATION TO VERIFY THE VALIDITY OF THE COVID-19 ILLNESS?

The Families First Coronavirus Response Act was signed into law on March 18, 2020, as discussed in this Michael Best alert. Under the Emergency Paid Sick Leave section of the FFCRA, for the first 10 days of absence, employees are eligible for paid leave for COVID-19–

related illness or due to school or daycare closings. The FFCRA also amends the FMLA to provide significant additional leave due to a need to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed, or if the childcare provider is unavailable, due to a public health emergency. Both types of leave apply to employees working for employers with fewer than 500 employees and all government employers.

The FFCRA is silent on what kind of documentation an employer can require to establish that an employee qualifies for leave for the public health emergency and paid sick leave under the FFCRA. Pending guidance on this documentation issue, employers can require employees to provide a written statement indicating the reason for the leave and whom the employee is caring for during the leave. After the first day of paid sick leave, employers can require an employee on sick leave to follow reasonable notice procedures to continue receiving paid sick leave.

The Occupational Safety and Health Administration (OSHA) has issued guidelines that state:

> *Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide documentation in a timely way*.

The Equal Employment Opportunity Commission (EEOC) has also issued updated guidance (effective March 18, 2020) stating that, during a pandemic, covered employers under the Americans with Disabilities Act (ADA) may ask employees who call in sick if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Charles Palmer and Daniel Kaufman

5. MUST AN EMPLOYER PROVIDE FMLA LEAVE TO AN EMPLOYEE WHO IS ABSENT BECAUSE OF FEAR OF CORONAVIRUS?

No. The Families First Coronavirus Response Act was signed into law on March 18, 2020 and addresses this, as discussed in this Michael Best alert. However, these laws do not currently apply to fear of infection alone. The FMLA and related leave laws only apply to employees of covered employers who have either a serious health condition or a family member with a serious health condition, or absences related to care for children due to school closings (among other non-related reasons).

As of right now, COVID-19 may equate to a serious health condition, as defined under the FMLA, when complications arise. On the other hand, employers should be prepared for claims that the "fear" is triggering a mental health condition that could be described by a healthcare provider as a serious health condition.

If an employee lacks a serious health condition and does not otherwise have an ill family member in need of care, or a child home from school, these leave laws will not currently apply. Employees who want to stay home due to the *threat* of exposure to COVID-19 should be

permitted to use any accrued paid time off (PTO) or unpaid leave (if permitted or offered by the employer) or offered the ability to work remotely, to the extent remote work is possible.

However, employers should note that if an employee is directed by a healthcare professional to self-quarantine due to possible exposure to COVID-19 or if the employee is displaying symptoms of COVID-19, the employer must provide 10 days of Emergency Paid Sick Leave pursuant to the FFCRA at the employee's regular rate of pay, prior to requiring the employee to use his or her accrued paid time off. This leave would not necessarily be treated as FMLA leave (recall that if the symptoms result in complications, this analysis could change). When any such leave is requested by the employee, employers should take care to distinguish a request to quarantine based on the employee's own assumptions versus a request to quarantine by a healthcare professional. Ashley Felton, Charles Palmer, Kirk Pelikan

6. DO WE NEED TO PAY EMPLOYEES WHO SELF-QUARANTINE BECAUSE OF POSSIBLE EXPOSURE?

It depends. If the quarantine is due to the order of a federal, state, or local public health official or a medical provider, or because the employee is exhibiting symptoms of COVID-19, the Families First Coronavirus Response Act provides for compensation for up to 10 days (80 hours). The FFCRA, which was signed into law on March 18, 2020, is discussed in this Michael Best alert. The situation is fluid, and we will continue to provide guidance. This analysis may be impacted by rapidly changing federal and state leave laws and the availability of paid time off.

If the above conditions do not apply, then for nonexempt employees, the employer must compensate the employee for all compensable time worked. Therefore, if an employee continues to work remotely while self-quarantined, the employer must compensate that employee for the time spent working. If an employee does not perform any compensable work while self-quarantined, the employer does not have to pay the employee for that time. However, to the extent the employer offers PTO or paid sick leave, the employee may be able to use any accrued paid leave to cover this time away from work. Certain states may require paid sick leave that may apply in this situation. Employers should make sure any remote workers have the ability to track their time worked, so the employer has an accurate record of self-reported time and any potential overtime worked.

For exempt employees, it will depend on several factors:

1. Whether or not the exempt employee is self-quarantined due to sickness or disability; and
2. Whether the employer has a bona fide policy, plan, or practice of deducting from an exempt employee's salary for missed days due to sickness or disability.

If an employer has a bona fide plan, policy, or practice of deducting from an exempt employee's salary for missed days due to sickness or disability and the exempt employee believes him- or herself to be sick or disabled, the employer can treat the self-quarantine as unpaid so long as

the exempt employee misses one or more full days of work. In other words, to consider the self-quarantine unpaid, the exempt employee must not be working while self-quarantined.

If the employee is not sick or disabled, the employer can permissibly deduct from the exempt employee's salary for missing one or more full days due to a personal reason other than sickness or disability, with no policy, plan, or practice required. Once again, the deduction is proper only if the employee is not working remotely while self-quarantined.

It is important to note that in order to deduct from an exempt employee's salary, the employee must not perform any work for one or more days. If an exempt employee works any part of a day, the employer must pay that exempt employee for the entire day.

Bottom Line: Employers need to be clear on whether an employee is working remotely while self-quarantined or not working at all. This may be obvious for some employees due to an inability to work remotely; but for others, especially exempt employees, this may be a trickier analysis. Having an open dialogue with employees regarding expectations while away from the workplace, plus an ability to keep track of compensable time, is recommended. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions." Ashley Felton, Charles Palmer, Kirk Pelikan

7. DO WE NEED TO PAY EMPLOYEES WHO MISS WORK DUE TO THEIR OWN COVID-19 SYMPTOMS?

It depends. If the quarantine is due to the order of a federal, state, or local official or a medical provider, or because the employee is exhibiting symptoms of COVID-19, the FFCRA provides for compensation for up to 10 days (up to 80 hours). This paid leave for the employee's own absence due to these conditions must be paid at their regular rate of pay, up to a limit of $511 per day and $5,110 total. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions."

If the above conditions do not apply, then for exempt employees, employers can only deduct from an exempt employee's salary if the employee misses one or more days of work for personal sickness or disability and the employer has a bona fide plan, policy, or practice of making such deductions. However, if the exempt employee works during any part of a day, the employer must compensate the exempt employee for the entire day. For nonexempt (hourly) employees, pay is only required when the individual works.

Nevertheless, for both exempt and nonexempt employees, the employee may be able to use accrued paid time off or paid sick leave, if available. For both exempt and nonexempt employees, any leave taken due to a serious health condition or to care for a family member with a serious health condition may be covered under the FMLA. Previously, the FMLA did not apply to employers with fewer than 50 employees. Under the FFCRA, the FMLA has been temporarily amended to apply to all employers with fewer than 500 employees and all government employers.

The FMLA generally requires reinstatement to the same or equivalent position after leave. The FFCRA provides that employers with fewer than 25 employees are not obligated to reinstate an employee if the position is no longer available as a result of the COVID-19 pandemic.

Certain state and local laws may also require paid sick leave under certain circumstances. The FFCRA, which was signed into law on March 18, 2020, is discussed in this Michael Best alert. The situation is fluid, and we will continue to provide guidance. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions." Ashley Felton, Charles Palmer, Kirk Pelikan

8. DO WE NEED TO PAY EMPLOYEES WHO MISS WORK TO CARE FOR A FAMILY MEMBER WITH COVID-19 SYMPTOMS?

Most likely. Depending on the actual diagnosis and/or symptoms, and on whether the leave is needed to care for the family member or due to the employee's exposure to that family member, the Emergency Paid Sick Leave provisions may apply. The law requires the employee be given paid leave, if the employee is caring for an individual who is subject to a recommendation from a doctor or an order by a public official to isolate or self-quarantine.

Even if the employee is not caring for that family member, if the employee is/was exposed to that family member, the employee may be advised to self-isolate by a doctor or ordered to do so by a public official. In that case, the employee would also be eligible for the Emergency Paid Sick Leave. This Emergency Paid Sick Leave is available for up to 10 days (80 hours).

If the FFCRA is triggered, the employer will need to pay the employee two-thirds (2/3) of the regular rate of pay or $200 per day (whichever is less). This Emergency Paid Sick Leave is capped at 80 hours or 10 days. The employee cannot be required to first exhaust their accrued PTO, but rather must be allowed to immediately access paid sick leave under the FFCRA.

If an employer chooses to allow unpaid leave following exhaustion of the Emergency Paid Sick Leave and any accrued paid time off, be advised that for exempt employees, employers can only deduct from salary if the employee misses one or more days of work due to personal reasons other than sickness or disability. No plan, policy, or practice is required. However, if the exempt employee works during any part of the day, the employer must compensate for the entire day. Certain state and local laws may require paid sick leave to care for sick family members under certain circumstances.

For both exempt and nonexempt employees, any leave taken to care for a family member with a serious health condition may be covered under the FMLA, requiring reinstatement to the same or equivalent position after leave. Previously, the FMLA did not apply to employers with fewer than 50 employees. Under the FFCRA the FMLA has been temporarily amended to apply to all employers with fewer than 500 employees and all government employers. The FFCRA provides that employers with fewer than 25 employees are not obligated to reinstate an employee if the position is no longer available as a result of the COVID-19 pandemic.

Federal, state, and local leave laws may also apply. If an employee requests FMLA leave to care for a family member with symptoms of COVID-19, the employer should begin the process of certifying the medical condition as a "serious health condition." The Families First Coronavirus Response Act was signed into law on March 18, 2020 and addresses this, as discussed in this Michael Best alert. The situation is fluid, and we will continue to provide guidance. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions." Ashley Felton, Charles Palmer, Kirk Pelikan

9. DO WE NEED TO PAY EMPLOYEES WHO NEED TO STAY HOME TO CARE FOR OTHERS DUE TO A SCHOOL CLOSING?

If the need to stay home is for the employee's minor child, yes. The Families First Coronavirus Response Act was signed into law on March 18, 2020 and addresses this, as discussed in this Michael Best alert. The situation is fluid, and we will continue to provide guidance.

The FFCRA provides for two types of leave:

1. Emergency Paid Sick Leave for up to 10 days (up to 80 hours), which—if not already exhausted for other reasons related to COVID-19 illness—must be provided for the employee's absence due to a school or daycare closing.

2. The FFCRA expands FMLA coverage to parents who need to take time off work to care for a minor child whose school or daycare has closed due to COVID-19. This leave is unpaid for the first two weeks (but may be covered by the Emergency Paid Sick Leave if unused for other conditions). The employer must compensate the employee at two-thirds (2/3) his or her regular rate of pay for the leave. The total FMLA leave per year per employee is 12 weeks (thus it aggregates with other FMLA leave the employee may have taken in the leave year).

The FFCRA expands eligibility for FMLA leave to employees who have worked for the employer for at least 30 days (as opposed to 12 months). (Employees do not have to have worked for 30 days in order to be eligible for Emergency Paid Sick Leave for the first 10 days (up to 80 hours.) Note that FMLA leave, including for childcare purposes under the FFCRA, is job-protected. However, if an employer has fewer than 25 employees, special rules regarding job protection may apply.

State or local laws regarding time off for childcare may also apply to this situation. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled "Tax Credit Questions." Ashley Felton, Charles Palmer, Kirk Pelikan

10. WHICH EMPLOYERS WILL BE REQUIRED TO PROVIDE EXTENDED FMLA AND PAID SICK LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT?

The Families First Coronavirus Response Act requires employers with fewer than 500 employees and all government employers to provide 10 days (up to 80 hours) of Emergency Paid Sick Leave and additional Family and Medical Leave Act protections to employees during the coronavirus emergency.

Employers making payments under these provisions will be eligible for reimbursement from the federal government by virtue of a credit on their quarterly payroll tax return with the government. For information on the tax reimbursement mechanism for such leave payments, see the section below entitled “Tax Credit Questions.”

For Emergency Paid Sick Leave, the amount of pay is equal to the hours the individual would have worked over a two-week period times the employee’s regular rate. Full-time employees are deemed to work 40 hours per week. Part-time employees are calculated based upon scheduled hours or, if there is no history available, the hours they were expected to have worked.

Pay is available for this Emergency Paid Sick Leave for up to 10 days (80 hours) if the employee is:

- Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Isolated or quarantined (because either medical professionals or federal, state, or local public health officials have ordered it);
- Required to provide care for (a) someone who is isolated or quarantined (because either medical professionals or federal, state, or local public officials have ordered it) or (b) a son or daughter (under 18) who is unable to go to school or childcare because the facility is closed or the regular caregiver is unavailable.

Pay is limited to two-thirds (2/3) of compensation when the reason for leave is caring for someone else. For the employee’s own absence due to these conditions, the employee must be paid at their regular rate of pay, up to a limit of $511 per day and $5,110 total.

Additional paid FMLA protection will be available for employees who have worked for the employer for at least 30 days. Such employees will be eligible for up to 12 weeks of leave in a year if the individual is required to provide care for someone who is unable to go to school or to childcare because the school or childcare facility is closed or the regular caregiver is unavailable. As with other FMLA leave, notice rights and procedures apply. This leave is paid after the first 14 days of leave, and pay is limited to two-thirds (2/3) of compensation, up to a maximum of $200 per day.

Unlike the Emergency Paid Sick Leave available for the first 10 days (up to 80 hours), pay for leave is not available under these FMLA amendments for any reasons other than school or daycare closings.

Failure to provide the two weeks of additional Emergency Paid Sick Leave, if required, will be treated as a failure to comply with the Fair Labor Standards Act (FLSA). Failure to provide the additional family and medical leave protection will be treated as a failure to comply with the FMLA. Both laws have a two-year statute of limitations period, or three years if the violation is willful.

For more details concerning other impacts of the new legislation, please review our recent client alert and check back to this document for further developments. Kirk Pelikan

TAX CREDIT QUESTIONS (UPDATED MARCH 24, 2020)

The President signed the Families First Coronavirus Response Act on March 18, 2020. Among its many components, it provides for up to 10 days (up to 80 hours) of additional paid sick leave ("Emergency Paid Sick Leave") and additional Family and Medical Leave protections including paid leave ("Temporary Extended FMLA Leave") during the COVID-19 emergency for employees of employers with fewer than 500 employees and government employers. Please see the first section of this document, "FMLA and Leave-Related Questions," for more details.

The FFCRA provides tax credits and refunds to private employers to cover the entire cost of the paid sick leave and the paid family and medical leave that is required to be provided under the FFCRA. The credits/refunds are also increased by the amount of the employer's qualified health plan expenses that are allocable to the qualified sick leave wages and qualified family leave wages. Finally, the amount of the credit will be increased by the amount of the employer's side of the Medicare tax (1.45%) that would apply to the qualified sick leave wages and qualified family leave wages required to be paid by the employer under the FFCRA.

A number of questions about the new law remain. Below is what we understand at this point.

11. WILL AN EMPLOYER BE ABLE TO REDUCE ITS FEDERAL PAYROLL TAXES (OR RECEIVE A REFUNDABLE CREDIT) FOR ALL OF THE PAID LEAVE IT IS REQUIRED TO PROVIDE UNDER THE FFCRA?

Yes. Keep in mind that the FFCRA only applies to employers under 500 employees. Also keep in mind that the offset/credit only applies to the extent you are required to provide the paid leave under the FFCRA. Martin Tierney and Carrie Byrnes

12. WHAT IF AN EMPLOYER PROVIDES PAID LEAVE IN EXCESS OF THE LEAVE REQUIRED TO BE PROVIDED UNDER THE FFCRA?

If an employer offers paid leave in excess of the leave required to be provided under the FFCRA, the employer cannot reduce its federal payroll tax withholdings for such amounts (and the employer will not receive a refundable credit for such amounts). Martin Tierney and Carrie Byrnes

13. WHAT IS THE MECHANISM FOR OFFSETTING FEDERAL PAYROLL TAXES?

Eligible employers who provide Emergency Paid Sick Leave or Temporary Extended FMLA Leave under the FFCRA will be allowed to retain an amount of the federal payroll taxes equal to the amount of the leave, rather than depositing the taxes with the IRS. Martin Tierney and Carrie Byrnes

14. WHICH FEDERAL PAYROLL TAXES ARE ALLOWED TO BE RETAINED, INSTEAD OF SENT IN TO THE FEDERAL GOVERNMENT?

According to a press release from the IRS, the payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of the leave, employers will be able to file a request for an accelerated payment from the IRS. The exact filing mechanism for this will be announced next week. Here are two examples from the IRS press release:

> *If an eligible employer paid $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $5,000 of the $8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $3,000 on its next regular deposit date.*
>
> *If an eligible employer paid $10,000 in sick leave and was required to deposit $8,000 in taxes, the employer could use the entire $8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining $2,000.*

Martin Tierney and Carrie Byrnes

15. HOW WILL THIS WORK FOR SELF-EMPLOYED INDIVIDUALS?

According to the IRS press release, the similar childcare leave and sick leave credit amounts that are available to self-employed individuals will be applied as credits that can be claimed on their income tax returns and will reduce estimated tax payments. Martin Tierney and Carrie Byrnes

16. WHAT "QUALIFIED HEALTH PLAN EXPENSES" ARE INCLUDED IN THE CREDIT/REFUND?

Qualified health plan expenses are those expenses incurred by the employer to provide a group health plan, but only to the extent that such amounts are excluded from an employee's income because they are paid by the employer. Martin Tierney and Carrie Byrnes

17. HOW DOES THE EMPLOYER FIGURE OUT THE PROPER ALLOCATION OF THE QUALIFIED HEALTH PLAN EXPENSES TO THE PERIOD OF PAID LEAVE?

Pending further guidance from the IRS, the allocation is generally proper if made pro rata among covered employees and pro rata based on periods of coverage. Martin Tierney and Carrie Byrnes

TRAVEL POLICY QUESTIONS (UPDATED MARCH 17, 2020)

18. WHAT SHOULD OUR POLICY BE FOR NONESSENTIAL BUSINESS TRAVEL?

The Centers for Disease Control (CDC) recommends employers cancel all nonessential business travel while there is an active outbreak of COVID-19 in the United States. Employers should remain aware of all global travel restrictions and recommendations resulting from the coronavirus pandemic. The CDC recommends that international travel to certain countries result in a 14-day self-quarantine. This recommendation may be expanding to travel within the United States based upon the community spread status in certain states, including, as of March 16, 2020: Washington, Colorado, Illinois, and New York.

Therefore, it is reasonable for employers to begin implementing policies discouraging international and interstate travel and advising employees who choose to travel that they may not be allowed back into the workplace for 14 days after such travel. The CDC's travel guidance can be found here. Ashley Felton

19. HOW SHOULD WE EVALUATE ESSENTIAL BUSINESS TRAVEL?

The evaluation of essential versus nonessential travel will vary from business to business. In general, an employer's response to coronavirus must balance the needs of the business and its employees with the overall threat of the pandemic. Some factors to consider when evaluating the essentialness of travel include:

1. Can the purpose of the travel be accomplished without face-to-face interaction or an in-person visit to a specific location?
2. Is there a way to leverage available/affordable technology to accomplish the same goals of the travel (e.g., webcams, webinar presentations, recordings, etc.)?
3. Is there a high risk of exposure to COVID-19 due to the nature or destination of the travel?
4. Does the overall benefit of the in-person travel outweigh the risk of exposure to COVID-19? Ashley Felton

20. DO WE NEED TO ACCOMMODATE AN EMPLOYEE'S REQUEST NOT TO TRAVEL IF WE DETERMINE THE TRAVEL TO BE ESSENTIAL?

The ADA protects persons with disabilities, which may include an employee who has an immune deficiency or respiratory compromise condition, as well as other conditions that may be impacted by COVID-19. "Reasonable accommodation" requires that the accommodation permit the employee to perform the essential functions of their position. If the employee is requesting to not travel, but travel makes up an essential function of their position, there may be an argument that it would constitute an undue hardship to accommodate the request. In that case the employee may be entitled to leaves of absence depending on employer policies and state or federal laws. Employers need to be careful with accommodation issues, which are very fact-

specific. Generalized rules should not be applied without considering the specific employee's situation.

If the employee refuses to fly based upon fear of disease, or fear of being stranded due to flight cancellations or other limitations that may arise, the employer should assess whether the employee's fears are realistic. If not, the employer should educate the employee regarding objective evidence that those fears are not reasonable. It will be difficult during the peak of the COVID-19 outbreak to reasonably force an unwilling employee to fly, so legal counsel should be consulted regarding the specific circumstances. Kirk Pelikan

WORKPLACE SCENARIOS WITH COVID-19 (UPDATED MARCH 20, 2020)

21. SCENARIO: EMPLOYEE ARRIVES AT WORK WITH VISIBLE SYMPTOMS OF COUGH AND FEVER. WHAT STEPS NEED TO BE TAKEN?

On March 18, 2020, the EEOC issued updated guidance stating that, while the ADA and Rehabilitation Act rules continue to apply, they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19.

In this situation, the CDC recommends that employees who appear to have acute respiratory illness symptoms (e.g., cough, shortness of breath) upon arrival to work or who become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available). If employees with such symptoms remain on the premises, they should be placed in an isolated room with a door, away from others. If surgical masks are available, the employee should be asked to wear one to protect others from the spread of disease through coughing.

Depending upon the type of workplace (e.g., customer or guest exposure, close contact between employees), immediately determining what contact the employee had with others may be in order, by asking the employee in person while maintaining a six-foot distance. If this can be achieved by telephone after the employee has left the premises, that is a better practice.

The EEOC's updated guidance affirms that the ADA does not interfere with employers following the CDC's advice to have employees who become ill with symptoms of COVID-19 leave the workplace. The guidance also states that because the CDC and state/local health authorities have acknowledged the community spread of COVID-19 and issued attendance precautions, employers may measure employees' body temperatures. However, employers should be aware that some people with COVID-19 do not have a fever. Charles Palmer and Daniel Kaufman

22. SCENARIO: EMPLOYEE CALLS AND INFORMS THAT THEY HAVE TESTED POSITIVE FOR COVID-19. WHAT STEPS NEED TO BE TAKEN?

If an employee is confirmed to have the coronavirus infection, and that employee is at the workplace, s/he must be sent home. The EEOC's March 18, 2020 updated guidance affirms that the ADA does not interfere with employers' following this advice from the CDC. The positive employee should not return to work until 14 days after symptoms have abated. Under the EEOC's updated guidance, employers are allowed to require doctors' notes certifying fitness for duty upon an employee's return to work. However, the EEOC also acknowledges that, as a practical matter, doctors and other healthcare professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, employers may need to rely on local clinics to provide a form, stamp, email, or other confirmation to certify that an individual does not have the pandemic virus.

Public health officials should be conducting an investigation when an infection is identified, but if they have not yet made contact with your employees who may have been exposed, assess whether other employees have a risk of having been "exposed" based on the CDC guidelines. Employers should inform fellow employees of their possible exposure to the coronavirus in the workplace, but maintain confidentiality as required by the ADA.

If sharing the individual's name is necessary to identify other individuals who may have been exposed, you should obtain permission to share this information from the COVID-19–positive employee, if possible. This is particularly important because, in its updated guidance, the EEOC affirmed the need to maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Employees who may have been exposed to a co-worker with confirmed coronavirus should refer to CDC guidance for how to conduct a risk assessment of their potential exposure: https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html.

Exposed individuals should be instructed to self-quarantine under all circumstances. It will be difficult to require testing, as it appears that there are insufficient numbers of tests available at this time. Symptomatic individuals should be directed to seek medical help. Asymptomatic individuals should remain in self-quarantine for 14 days at home, or as instructed by public health officials. If testing is required by an employer, the employer should pay for it or encourage the individual to submit through a health plan.

In cases where further cleaning and decontamination may be necessary, consult CDC guidance for cleaning and disinfecting environments: https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html

Workers who conduct cleaning tasks must be protected from exposure to blood, certain body fluids, and other potentially infectious materials covered by OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) and from hazardous chemicals used in these tasks. In these cases, the PPE (29 CFR 1910 Subpart I) and Hazard Communication (29 CFR 1910.1200) standards may also apply. Do not use compressed air or water sprays to clean potentially contaminated surfaces, as these techniques may aerosolize infectious material. If your employees cannot meet these standards, consider using an outside cleaning service.
Kurt Ellison, Charles Palmer, Daniel Kaufman

23. SCENARIO: EMPLOYEE CALLS AND INFORMS THAT A FAMILY MEMBER HAS TESTED POSITIVE FOR COVID-19 BUT THE EMPLOYEE HIM/HERSELF DOES NOT HAVE SYMPTOMS. WHAT STEPS NEED TO BE TAKEN?

The employee must not be allowed to return to work until 14 days after last exposure, even if the employee tests negative. The CDC does not require any special actions with respect to individuals (employees, guests, customers, etc.) that may have come in contact with your

employee, unless your employee has the virus. The CDC is currently taking the following approach:

> *Contacts of Asymptomatic People Exposed to COVID-19*
> *CDC does not recommend testing, symptom monitoring or special management for people exposed to asymptomatic people with potential exposures to SARS-CoV-2 (such as in a household), i.e., "contacts of contacts;" these people are not considered exposed to SARS-CoV-2.*
> https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html

When a person tests positive for COVID-19/SARS-CoV-2, public health officials must by law be notified by the healthcare location that received the result. The public health department will commence an investigation of the known contacts with that COVID-19–positive individual and their family members, including your employee. Due to the Health Insurance Portability and Accountability Act (HIPAA), the health department will not notify you and will not expand that investigation unless your employee tests positive. If the ill individual is in a different community than your workplace, your public health department may be contacted by the health department in the location of the person with the illness. However, depending on the demands placed on the public health offices, this may take time.

Depending on the spread of the disease and demands on health officials, at some point in the future you may not be able to get information regarding the status of your employee. In that case, having a doctor available to consult with your business ahead of time will be valuable. Your doctor may be able to get information regarding your employee that you cannot get due to HIPAA restrictions. Charles Palmer

24. SCENARIO: EMPLOYEES ATTEND EVENT, AND THE NEWS LATER REPORTS THAT ONE OR MORE PERSONS WHO ATTENDED THE SAME EVENT HAVE BEEN DIAGNOSED WITH COVID-19. WHAT STEPS NEED TO BE TAKEN?

Public health officials will investigate cases of the virus and determine those who may have had contact with individuals who have the virus. Due to HIPAA, the health department will not notify you and will not expand that investigation unless your employee tests positive. If the ill individual is in a different community than your workplace, your public health department may be contacted by the health department in the location of the person with the illness. However, depending on the demands placed on the public health offices, this may take time.

Depending on the spread of the disease and demands on health officials, at some point in the future you may not be able to get information regarding the status of your employee. In that case, having a doctor available to consult with your business ahead of time will be valuable. Your doctor may be able to get information regarding your employee that you cannot get due to HIPAA restrictions. Charles Palmer

25. SHOULD WE ALLOW EMPLOYEES TO WORK REMOTELY?

Yes, if feasible. Telework is an effective infection-control strategy that is also familiar to ADA-covered employers as a reasonable accommodation. In addition, employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their risk of infection during a pandemic.

That said, whether your company implements a remote-work policy is dependent on your business needs and circumstances, the location of your business, and the nature of your work. You may not want to introduce a new system if you have not yet had the opportunity to test and develop your remote work capabilities. However, if protocols for such work exist, this is a good opportunity to utilize them. Whatever you decide, it should be based on a careful consideration of objective criteria and not a spur-of-the-moment decision driven by fear. Kurt Ellison

26. HOW SHOULD WE BE TREATING EMPLOYEES WITH OTHER NON-COVID-19 CONTAGIOUS ILLNESSES, SUCH AS FLU OR OTHER VIRUS?

It is not required that you treat all contagious conditions in a similar manner. COVID-19 has a higher degree of contagiousness and a higher mortality rate than other conditions. Thus, it has received heightened attention and heightened preventive measures. For other, less severe contagious illnesses, an employer's industry will have a great deal of influence on how the employer responds. For example, an employee with the flu would generally be excluded from performing food service, but might still perform work from home if an accountant or attorney. Kirk Pelikan

27. SHOULD WE REQUIRE TESTING FOR ANY EMPLOYEE EXPOSED TO COVID-19 OR WHO HAS TRAVELED TO A LEVEL 3 COUNTRY OR COMMUNITY SPREAD AREA? DO WE NEED TO PAY FOR THE TESTING IF WE REQUIRE IT?

Such individuals should be instructed to self-quarantine under all circumstances. It will be difficult to require testing, as all indications are that there are insufficient numbers of tests available at this time. Symptomatic individuals should be directed to seek medical help. Asymptomatic individuals should remain in self-quarantine. If testing is required by an employer, the employer should pay for it or encourage the individual to submit through a health plan. Kirk Pelikan

28. WHAT WORKER'S COMPENSATION OBLIGATIONS DO WE HAVE IF EMPLOYEES CONTRACT THE VIRUS AT WORK OR AT A WORK-RELATED FUNCTION?

Worker's compensation laws vary from state to state and are driven by individual carriers and policies. Generally, if there is a causal connection between work and an injury, worker's compensation will apply. Arguably, this could extend to COVID-19 if an employee (or group of employees) contracts the illness while at work or while attending a work-mandated conference or event. If more than one employee is diagnosed with COVID-19 in close time proximity, there is a greater likelihood a causal connection between work and the illness can be established,

particularly if the employees affected work in the same location, attended the same work event, or work with the same group of employees.

Employers may be liable for illness contracted in the scope and course of employment. An employee may be able to establish a causal link between the illness and their employment if they contract the disease during required travel or if a cluster of employees becomes infected with COVID-19 after working in close contact with another employee who has COVID-19. This possible source of claims further emphasizes the need for employers to take proactive steps to avoid the spread of the virus in the workplace. Ashley Felton, Kurt Ellison

29. WHAT COMMUNICATION ARE WE REQUIRED TO PROVIDE TO EMPLOYEES IF WE LEARN OF AN EXPOSURE?

If your employee discloses that s/he has been exposed to a COVID-19–positive individual, that employee should self-quarantine at home for 14 days. All information about employees obtained through medical examinations must be kept confidential under the ADA. This has been affirmed by the EEOC's updated March 18, 2020 guidance. However, employers have a duty to protect their workplace and should consider carefully communicating necessary information to employees related to the risk of exposure to COVID-19, so that employees can take necessary precautions to avoid contracting or spreading the disease. If sharing the individual's name is necessary to identify other individuals who may have been exposed, consider obtaining permission to share this information from the affected employee, if possible.

It is important to define an "exposure." Currently, the CDC considers this to involve contact with a COVID-19–positive individual. "Contact with a contact"—in other words, being exposed to someone who was exposed to a COVID-19–positive person—is not exposure according to the CDC.

> *Contacts of Asymptomatic People Exposed to COVID-19*
> *CDC does not recommend testing, symptom monitoring or special management for people exposed to asymptomatic people with potential exposures to SARS-CoV-2 (such as in a household), i.e., "contacts of contacts;" these people are not considered exposed to SARS-CoV-2.*
> https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html

Public health officials will make the determination as to whether someone has had contact with a COVID-19–positive individual, by conducting an investigation. Employers should not be making that determination at this time. Instead, employers should do a risk assessment for other employees who may have had contact with the exposed employee. If the exposed employee later develops symptoms, any employees who were exposed to that employee should then be sent home and asked to self-quarantine for 14 days.

Depending on the demand placed on public health departments, there may come a time when employers must make determinations for themselves. In that case, having a doctor available to consult with your business ahead of time will be valuable. Your doctor may be able to get

information regarding exposure to your employees or guests that you cannot get due to HIPAA restrictions. Kurt Ellison and Charles Palmer

30. WHAT COMMUNICATION ARE WE REQUIRED TO PROVIDE TO GUESTS IF WE LEARN OF AN EXPOSURE?

With other contagious diseases, there is usually a state-level expectation of an on-site posting to alert visitors that the condition was previously present at the location. For example, occasionally you'll see a notice that there has been a case of the whooping cough at a location. While the coronavirus outbreak is a rapidly evolving situation, we anticipate a similar requirement for a confirmed case of COVID-19 on premises will be forthcoming. We are not yet aware of a specific state mandate having been issued on the topic. From a business perspective, it may make sense to be proactive on this issue. Kirk Pelikan

31. WHAT PREVENTIVE COMMUNICATION SHOULD WE BE SENDING TO EMPLOYEES?

You should be educating employees about the signs and symptoms of the virus and the practices that they can use to reduce the risk of transmission. OSHA recommends that employers inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure to the disease, and employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19.

Encourage workers to stay home if they are sick. Encourage respiratory etiquette, including covering coughs and sneezes appropriately. Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible. The following links provide helpful CDC posters that may be distributed to employees:

https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf
https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf
https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts-h.pdf
https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf

Charles Palmer

32. SHOULD WE COMMUNICATE ANY POLICY AND/OR REQUEST TO VISITORS / VENDORS?

The CDC recommends limiting potential exposure to employees whenever possible. In addition to considering travel restrictions as discussed in the "Travel Policy Questions" section above, employers should consider limiting workplace access to personnel only. If it is possible to limit visitors and vendors, employers are encouraged to do so. However, employers should consider the applicable risks and benefits of limiting access, based on their industry and type of business.

If an employer decides to restrict access by visitors and vendors, the employer should attempt to provide as much advance notice as possible to any known visitors and vendors and make

notice available to any unplanned visitors or vendors (e.g., notice on door, published through news media or newspapers, on website and social media platforms). This may include notifying customers of current or pending closures and contacting vendors about alternative delivery and/or pick-up times. Communication will be key to limiting business disruptions and maintaining continuity of business to the greatest extent possible. Ashley Felton

33. SOME COMPANIES IN MY AREA ARE IMPLEMENTING A NO-VISITOR POLICY. SHOULD I CONSIDER DOING SO?

Yes, given the spread and risks of coronavirus, it is advisable to consider implementing a no-visitor policy. At a minimum, visitors who are symptomatic or at high risk for COVID-19 should not visit or should leave the workplace if they do visit. In addition, if you do not bar all visitors, it is advisable to consider having visitors sign a form indicating that they do not have, and have not had, any symptoms of coronavirus within the past 14 days; have not been exposed to anyone who has tested positive for coronavirus or been directed to take a test for coronavirus in the past 14 days; have not been exposed to anyone who has visited an affected country within the past 14 days; and agree to take common-sense health precautions during their visit. Daniel Kaufman

34. DOES WARN ACT APPLY TO LAYOFFS DUE TO COVID-19?

Employers who are facing a decision to shut down business operations should consult with the requirements of the federal Worker Adjustment and Retraining Notification (WARN) Act and applicable mini-WARN statutes passed by their state. Under the federal WARN Act, employers must provide written notice at least 60 calendar days prior to a covered plant closing or mass layoff, and some state mini-WARN Statutes require 90 days. Under federal WARN, covered situations include: (1) Plant closings involving 50 or more employees during a 30-day period; and (2) layoffs within a 30-day period involving 50 to 499 full-time employees constituting 33% of the full-time workforce at a single site of employment. Layoffs of 500 or more are covered regardless of percentage of workforce.

However, not all layoffs trigger these requirements. Temporary layoffs of less than six months are not considered “employment loss” under the federal WARN Act, and this same principle is true in many state WARN Acts. Federal WARN Act requirements require at least 50 employment losses at a single site of employment in a 90-day period. State mini-WARNs may have lower threshold requirements.

Under the federal WARN Act, an exception to the 60-day notice requirement exists where the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required. In this case, notice may be given before the 60-day period ends, but must be “as much notice as practicable.” Closings or layoffs due to the COVID-19 pandemic may qualify as a condition not reasonably foreseeable, because it involved “a sudden, dramatic, and unexpected action or condition outside the employer’s control”; however, due to the fact-specific analysis required, this

exception is often litigated. A government-ordered closing that occurs without prior notice may also be unforeseeable. Kurt Ellison

35. DOES THIS PUBLIC HEALTH EMERGENCY QUALIFY AS A "DISASTER" THAT ALLOWS EMPLOYERS WHO WANT TO PAY FOR CHILDCARE FOR THEIR EMPLOYEES (TO ALLOW THEM TO WORK WHILE SCHOOL IS NOT IN SESSION) TO EXCLUDE CHILDCARE BENEFITS FROM THE EMPLOYEE'S INCOME AS A "DISASTER RELIEF PAYMENT"?

Maybe. Internal Revenue Code § 139 provides that an amount paid by an employer as a "qualified disaster relief payment" is not includible in income/taxable compensation. This means such amounts would not be subject to income tax withholding, FICA, or FUTA; do not have to be reported by an employer making the payment on the receiving employee's W-2; and do not have to be reported as income by the affected employee. However, state laws may impact this analysis and should be consulted before relying upon this exclusion.

The term "qualified disaster relief payment" includes amounts paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster.

For this purpose, a "qualified disaster" includes (a) any federally declared disaster (requiring assistance under the Robert T. Stafford Act); (b) any disaster resulting from terroristic or military action; and (c) any disaster that the IRS determines to be from an event "of catastrophic nature." While President Trump has declared a "national emergency" under the Stafford Act, it is not entirely clear whether this qualifies as a "federally declared disaster." We await additional clarification from the President and federal agencies. Carrie Byrnes

OSHA WORKPLACE SAFETY AND HYGIENE QUESTIONS (UPDATED MARCH 20, 2020)

36. IF AN EMPLOYEE REPORTS A CORONAVIRUS-LIKE ILLNESS, MUST WE REPORT TO OSHA?

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following criteria are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g., medical treatment beyond first aid, days away from work).

37. WHAT INCREASED CLEANING/SANITATION STEPS SHOULD WE TAKE AS A PREVENTIVE MEASURE?

The Occupational Safety and Health Administration places employers into four risk categories: Very High, High, Medium, and Lower Risk. OSHA recommends that all employers maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)–approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against COVID-19 or coronavirus, based on data for harder-to-kill viruses.

The current list of EPA-approved disinfectants is found here. Follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, applications method and contact time, Personal Protective Equipment such as gloves, aprons, and goggles). These chemicals are subject to the OSHA Hazard Communication standard. Employees should be trained in proper use and the information on the Safety Data Sheet (SDS). If you do not obtain an SDS for these disinfectants, you should search for that online or contact the manufacturer for a copy.

The CDC's recommendations for businesses include the following:

- Routinely clean all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label.
- No additional disinfection beyond routine cleaning is recommended at this time.
- Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) can be wiped down by employees before each use.

Charles Palmer

38. WHAT INCREASED CLEANING/SANITATION STEPS SHOULD WE TAKE IF WE LEARN OF THE PRESENCE OF SOMEONE WHO HAD/HAS COVID-19 SYMPTOMS?

Obviously, in healthcare facilities there are very specific guidelines regarding infection control and sanitation. According to OSHA, because the transmissibility of COVID-19 from contaminated environmental surfaces and objects is not fully understood, employers should carefully evaluate whether work areas occupied by people suspected to have the virus may have been contaminated and whether they need to be decontaminated in response.

In cases where further cleaning and decontamination may be necessary, consult CDC guidance for cleaning and disinfecting environments. Workers who conduct cleaning tasks must be protected from exposure to blood, certain body fluids, and other potentially infectious materials covered by OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) and from hazardous chemicals used in these tasks. In these cases, the PPE (29 CFR 1910 Subpart I) and Hazard Communication (29 CFR 1910.1200) standards may also apply. Do not use compressed air or water sprays to clean potentially contaminated surfaces, as these techniques may aerosolize infectious material. Charles Palmer

39. WHAT FOOD HANDLING CHANGES SHOULD BE IMPLEMENTED?

One of the most important preventive measures for mitigating viral and foodborne illness while working with food is to wash hands with soap and water frequently, in between the handling of raw and uncooked foods, and before handling any food. Raw meats should be separated from other foods and cooked to the right temperature, and foods should be promptly refrigerated. While there is currently no evidence that COVID-19 is transmitted to people via food in the United States, the virus should be killed by normal cooking temperatures. Regularly clean and disinfect the surfaces of your kitchen. Keep sick employees away from areas where food is being prepared. Kurt Ellison

40. IN RECREATIONAL FACILITIES/HOTELS, HOW SHOULD WE ADDRESS TRASH HANDLING/ROOM CLEANING?

It may be best to designate a single person to handle trash, wearing specific personal protective equipment including a respirator, gloves, apron, and shoe covers. If possible, use trash can

liners that extend over the edge of the receptacle, so that they can be easily tied without touching the trash. Empty receptacles before they reach full capacity. These individuals can be trained to enter rooms first and triage to make sure there is no potentially soiled debris requiring special handling before entry by room cleaners. Other helpful suggestions can be found here. Charles Palmer

41. EMPLOYEE WAS ON A FLIGHT AND RECEIVED A NOTICE THAT A FELLOW PASSENGER TESTED POSITIVE FOR COVID-19. WHAT ACTIONS SHOULD WE TAKE?

By the time this Q&A is issued, air travel may be substantially limited. But reports of positive tests of air passengers may continue to arise for weeks after a passenger was on an airplane.

If the employer has a reasonable objective belief that the employee was exposed to the coronavirus on the plane, in order to take prudent precautions, the employee should not come to the workplace and should work from home (if possible) for at least a 14-day quarantine period. If the employee comes to work, the employee should be sent home. The employee should be instructed to keep the employer informed about their status and symptoms during that 14-day period.

Ask the employee to identify any co-workers who were also on the flight on which the passenger tested positive, or who were exposed to the employee after the employee was on the flight. Ask the employee for permission to discuss his/her exposure with other fellow employees, who may have been exposed to her/him or the other passenger. It is important to obtain this permission before sharing the individual's name, as the EEOC's updated March 18, 2020 guidance affirms that employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Any affected workers should be told that the employee is not exhibiting any symptoms of the virus and has not tested positive (if true), and that the employer is taking necessary precautions out of concern for the health and safety of all employees. If the employee does not consent to disclosure of their name, do not disclose their name, but inform the other employees that an unnamed employee has reported being on a flight with a COVID-19–positive passenger. Educate employees regarding the coronavirus by using these posters from the CDC:

https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf
https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf
https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts-h.pdf
https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf

Also consider adopting a temporary policy requiring employees who have been exposed to the virus, traveled to affected regions, or had direct contact with others who have done so to stay home for 14 days following their exposure or return from such travel. This could be applied retroactively to employees who are back to work but traveled within the last 14 days. Daniel Kaufman

42. HOW SHOULD WE MANAGE POTENTIAL SURFACE CONTAMINATION OF RADIOS AND OTHER SHARED DEVICES USED BY EMPLOYEES?

Employers should maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on EPA-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder-to-kill viruses. Follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE). Employees should be trained in proper use and the information on the Safety Data Sheet (SDS). If you do not obtain an SDS for these disinfectants, you should search for that online or contact the manufacturer for a copy. Charles Palmer

43. WHAT STEPS/RESOURCES SHOULD WE PROVIDE TO DELIVER RAPID RESPONSE EXPOSURE EVALUATIONS FOR EMPLOYEES WHO REPORT A SUSPICION OF EXPOSURE TO A CUSTOMER OR MEMBER OF PUBLIC WITH SUSPECTED SYMPTOMS?

The CDC has released a risk assessment for individuals who have been exposed to or are experiencing symptoms of COVID-19. This could be shared with impacted employees and could aid the employer in determining which employees should be sent home.

For purposes of employee rapid response exposure evaluation, employees should be educated that CDC defines an exposure as:

> (a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case;
>
> – or –
>
> (b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on).

44. WHEN INVESTIGATING POTENTIAL EXPOSURES, HOW MUST WE PROTECT IDENTITIES OF SUPPOSED SYMPTOMATIC PERSONS OR POTENTIALLY EXPOSED EMPLOYEES, WHILE ATTEMPTING TO ASK QUESTIONS ABOUT EXPOSURE?

This is perhaps one of the more difficult aspects of responding to the coronavirus. If a symptomatic employee is at work and others are in close proximity to that individual while symptomatic (fever, cough, shortness of breath), can you inquire about that exposure by identifying the symptomatic person by name to other employees? How do you conduct a thorough investigation without using names?

Inquiries about a person's health condition related to COVID-19 are considered disability-related inquiries by the EEOC. See the EEOC's "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act." The EEOC considers inquiry about symptoms in this situation to be justified, even if such inquiries are disability related, due to the potential for a direct threat. But the EEOC also considers information about an individual's illness to be a confidential medical record. This was affirmed in the EEOC's March 18, 2020 guidance.

Confidential medical records can only be disclosed by an employer in certain limited circumstances, which do not include disclosure in order to determine whether another employee has been in close proximity with someone who has symptoms of coronavirus. Public health officials will not disclose names of persons with symptoms except when that person has a confirmed case of the new coronavirus, and then only as necessary to conduct an investigation about exposure. Employers should leave such inquiries to medical professionals.

The CDC does not consider proximity to a person with symptoms, but no diagnosis of illness, as an exposure requiring quarantine. Consequently, the best practice is to educate employees as to what is considered an exposure (see discussion of rapid response exposure evaluations above) and to ask the symptomatic individual about persons with whom they may have been in close proximity. From that evaluation, the employer may determine it is necessary to discontinue office, manufacturing, or other operations within the zone or group of employees that have been in close proximity of the employee with symptoms, without identifying that person by name.

Disclosure of symptomatic persons by name can lead to harassment by other employees. Disclosure could lead to a claim for breach of confidentiality under the ADA and subject the employer to liability for the discrimination based upon shaming or harassment by fellow employees that follows from that disclosure. Human resource and safety professionals must treat confidentiality seriously for this reason. Moreover, if employees fear disclosure or reprisal, they are less likely to disclose symptoms, which can undermine the employer's ability to keep employees safe.

45. WHAT PERSONAL PROTECTIVE EQUIPMENT (PPE) SHOULD WE HAVE AVAILABLE FOR EMPLOYEES? RESPIRATORS, FACE SHIELDS, GLOVES, ETC.?

Outside of high-risk environments, such as healthcare, there are no specific requirements for respirators, face shields, gloves, or similar PPE. Surgical masks are recommended, if available and practical, where an employee has symptoms of the new coronavirus such as coughing, shortness of breath, and fever, in order to protect other workers. The recommendation is for the mask to be worn by the potentially infected individual, not by other employees. Most employers are asking employees who have symptoms to go home, but there may be circumstances where the employee cannot leave immediately, and a surgical mask would then be useful (assuming those are available to the employer).

46. IF A GROUP OF EMPLOYEES REFUSES TO WORK DUE TO CONCERNS OVER COVID-19, HOW SHOULD WE RESPOND?

Listen to the employees' concerns and try to determine whether they are genuine, including, for example, if they have a belief that they are in "imminent danger" under OSHA. If so, explore alternative work arrangements, such as working from home, taking a leave, or moving to another area of the workplace away from others, if possible. If the employees reject the alternative work arrangements and refuse to work, then it is necessary to consider other options.

It would be difficult to take disciplinary action against the employees if their concerns are genuine. The potential impact of such an action on employee morale and public relations should be assessed carefully. If the concerns are not genuine, depending upon the particular facts and circumstances, an employer might not be obligated to pay an employee during such an absence.

OSHA considers employee education an important response to fear of risk. Educating employees as to the measures they can take to reduce risk (as discussed in OSHA guidance issued in March 2020, discussed below), and educating employees regarding the CDC definition of exposure, provides the employer a better defense if choosing to deny requests to be absent.

Finally, when a group of employees refuses to work, they are engaging in concerted activity, which may, if reasonable, be protected by the National Labor Relations Act (NLRA). Federal and state laws are changing rapidly to address the COVID-19 emergency, and legal counsel should be consulted before disciplining or discharging employees in these circumstances. Daniel Kaufman and Charles Palmer

47. EMPLOYEES ARE ASKING FOR MASKS AND HAND SANITIZER. IS THE EMPLOYER REQUIRED TO PROVIDE THESE?

Generally, unless an employer is engaged in healthcare, there are no requirements to provide masks to employees. Surgical masks are recommended, if available and practical, where an employee has symptoms of COVID-19 such as coughing, shortness of breath, and fever, in order to protect other workers. The recommendation is for the mask to be worn by the potentially infected individual.

Most employers would likely not have the employee remain at the workplace while going to obtain masks that are not readily available. But there may be cases where the employee cannot leave immediately, because of lack of transportation, or the employee needs to be taken in an ambulance, or the employer needs to discuss the symptoms and potential exposure to others, for example. In those cases, having a supply of surgical masks for an employee with symptoms to wear is a good practice.

According to guidance issued in March 2020 by OSHA on Preparing Workplaces for COVID-19, employers should promote frequent and thorough hand-washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol. Charles Palmer

48. IF WE PROVIDE RESPIRATORS TO OUR EMPLOYEES, DO WE HAVE ANY OTHER OBLIGATIONS UNDER OSHA?

The Occupational Safety and Health Administration regulates respiratory protection. Often, we think of respirators as looking like a gas mask or SCUBA mask. However, dust masks such as the white N95 (NIOSH 95) mask that many people are wearing are considered respirators covered by OSHA standards. They are very popular and widely used, but are also in short supply. If employers are requiring use of these or if the use by employees is not "voluntary," then the employer must comply with the requirements of the OSHA PPE standards, 29 CFR 1910.134. Requirements include fit testing, medical evaluation, and training of employees. If the use is truly voluntary, the employer is only required to provide a copy of Appendix D to the OSHA standard. Charles Palmer

49. WHAT IS THE DIFFERENCE BETWEEN A RESPIRATOR AND A SURGICAL MASK? HOW SHOULD EACH BE USED?

Respirators, such as the N95 mask discussed above, are designed to protect the wearer from outside contaminants.

Surgical masks are not the same as respirators. While surgical masks provide some level of protection to the wearer from outside contaminants, they are primarily intended to protect others from exposure to the wearer. For example, surgeons wear the mask so that saliva or other fluid from their mouth or nose, including blood, does not enter the patient. Surgical masks are also recommended to be worn by persons suspected of having symptoms of the new coronavirus, so that their coughing or sneezing does not expose others.

Surgical masks are not considered respirators covered by the OSHA respiratory protection standard, according to a statement by Patrick Kapust (Deputy Director, Directorate of Enforcement Programs, OSHA) during the American Bar Association 2020 Annual Midwinter Meeting of the Occupational Safety and Health Law Committee. Therefore, there are no OSHA fit testing, medical evaluation, or training requirements applicable to their use. Charles Palmer

EMPLOYEE BENEFITS QUESTIONS (UPDATED MARCH 23, 2020)

50. DOES OUR HEALTH PLAN HAVE TO COVER COVID-19 TESTING?

Yes. The Families First Coronavirus Response Act requires health insurance plans to provide coverage of COVID-19 diagnostic screening and testing, including the cost of a provider, urgent care center, emergency room visit, or telemedicine visit in order to receive testing, without any patient cost-sharing effective as of March 18, 2020. In other words, screening and testing must be provided without cost-sharing. Carrie Byrnes and Martin Tierney

This provision applies all fully insured and self-insured plans, including grandfathered plans under the Affordable Care Act (ACA). Retiree-only plans and HIPAA-excepted benefits are not required to comply. Carrie Byrnes and Martin Tierney

51. DOES OUR HEALTH PLAN HAVE TO COVER COVID-19 TREATMENT?

Although many plans already cover treatment based on their existing terms, federal law does not specifically require plans to provide such coverage. State laws and positions of issuing health insurance carriers will govern fully insured plans. Employers with insured health plans should stay in close contact with their carriers.

Self-insured plans are governed by federal law under the Employee Retirement Income Security Act (ERISA) and have different considerations. Again, employers with self-insured plans should talk to their administrative services only (ASO) providers to discuss the options. Involvement of actuaries to model increased costs might also be wise. Finally, to the extent changes (particularly expansions in coverage) are made, the self-insured plan sponsor should likely incorporate the feedback of its stop-loss carrier.

In terms of high-deductible health plans (HDHPs), pursuant to a recently issued IRS Notice, an HDHP may cover all costs for coverage associated with testing and treatment of COVID-19 prior to satisfying any applicable minimum deductible required under the HDHP rules. Carrie Byrnes and Martin Tierney

52. WHAT IF I WANT MY EMPLOYEES TO USE TELEHEALTH FOR ALL CARE; HOW WILL THAT BE COVERED?

Check with your carrier/broker on this point. Although many employers want to afford this opportunity to use telehealth, it is important to understand how the visit will be coded/covered. For HDHPs, it is an open question as to whether this coverage can be afforded pre-deductible (i.e., without cost-sharing). While Notice 2020-15 would allow pre-deductible coverage of COVID-19 testing and treatment via telehealth, it does not appear to extend to telehealth visits that are not related directly to COVID-19. Advocacy groups are working to have this guidance expanded to cover telehealth more broadly. Carrie Byrnes and Martin Tierney

53. WHAT HAPPENS TO BENEFITS IF WE DO A LAYOFF BASED ON COVID-19?

Generally, if there is a layoff, benefits will end subject to their terms, any collective bargaining agreement, and any severance package/policy. COBRA continuation coverage may need to be extended. Note that the layoff could trigger a partial termination of a retirement plan, thus mandating accelerated 100% vesting of employer contributions, if the laid-off employees are deemed terminated. Carrie Byrnes and Martin Tierney

54. HOW WILL BENEFITS CHANGE FROM MY EMPLOYEES IF WE DO A FURLOUGH BASED ON COVID-19?

It depends. Close review of plan/policy documents is essential to determine many things, including when COBRA coverage needs to be extended, how employee premiums can be collected, whether a change in benefit elections can be afforded, and whether 401(k) plan contributions will continue. Carrie Byrnes and Martin Tierney

55. THE STOCK MARKET VOLATILITY IN THIS COVID-19 ERA CHANGED THE FINANCIAL POSITION OF OUR RETIREMENT PLAN; WHAT CAN WE DO NOW?

It is currently unclear. More guidance on pension funding relief is expected from Congress in the coming weeks. In addition, relaxation of 401(k) plan rules to allow participants access to their retirement plan funds is being considered by legislators and the agencies charged with oversight of retirement plans. Carrie Byrnes and Martin Tierney

UNEMPLOYMENT BENEFIT AND RELATED TAX QUESTIONS (UPDATED MARCH 23, 2020)

56. HAVE THERE BEEN ANY CHANGES TO UNEMPLOYMENT INSURANCE LAWS BASED UPON THE COVID-19 PANDEMIC?

The President signed the Families First Coronavirus Response Act on March 18, 2020. Among its many components, it boosts unemployment benefits and provides nearly $1 billion in state grants to cover the cost of these benefits paid by state unemployment compensation agencies. Some states are further ahead of others in getting the word out and changing their policies relative to payment of benefits and the taxing of those benefits to employer unemployment tax accounts.

Understanding the provisions of the FFCRA, which govern the states' receipt of federal money, and understanding what some states have done already, will help employers know what to expect from their states. It may also help employers interact with state government to prompt changes more rapidly in order to assist employers with staff planning during the COVID-19 response and recovery.

The section of the FFCRA addressing unemployment compensation funding is entitled the "Emergency Unemployment Insurance Stabilization Act." This enactment contains funding that will be awarded to states, so long as the state adopts mandatory benefit and tax policy changes. In order for a state to receive the funding, the following requirements must be met:

> *3. (B) The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.*

Charles Palmer

57. WHAT CHANGES TO UNEMPLOYMENT BENEFIT ELIGIBILITY HAVE OCCURRED AS A RESULT OF THE FFCRA?

Elimination of the work search and waiting week requirements are changing. In response to the Unemployment Insurance Stabilization Act that was part of the FFCRA, some states have already adopted changes that waive the standard requirement for employees to search for employment, while collecting unemployment compensation benefits. Most states are likely to do so in the coming weeks. Some states have adopted changes that waive the standard one-week waiting period for benefit payments. Most states are likely to do so in the coming weeks.

While employees will be entitled to unemployment benefits for the first week of wage loss in most (if not all states), it is important to keep several points in mind:

- It takes time to get the money (two to four weeks or longer, depending on the state), and that time period may increase based upon the load placed on the state agency, especially with ordered closings and government staffing reductions due to COVID-19.
- Unemployment compensation is not equivalent to an employee's regular pay (often only 50%-70%, depending on the specific state).
- States may require the use of PTO and paid leave before payments will be made.
- Orders by the employer or state officials to stay home, or layoffs by the employer for any reason, will entitle the employee to benefits.
- States may take differing approaches to benefit eligibility, where the absence is only:
- Due to employee concerns about COVID-19;
- Absences due to illness of the employee or others, but neither a public health official or the employer, has directed the employee not to come to work or laid the employee off from work; or
- Absences due to school or daycare closure.

Employers should continue to monitor changes under state law regarding eligibility for benefits under the above circumstances. Charles Palmer

58. WILL THE BENEFITS PAID TO EMPLOYEES FOR UNEMPLOYMENT COMPENSATION BE CHARGED TO MY COMPANY UNEMPLOYMENT INSURANCE TAX ACCOUNT?

Many states have already adopted rules that will not result in charging benefits (noncharging) to an employer's unemployment insurance account, or increase taxes to the employer, if the state orders employees to stay home, or orders a business to discontinue operations.

If you lay off due to lack of business only, the state unemployment insurance agency generally charges an employer's account for those benefits. However, some states are taking the position that benefits paid to employees who are laid off due to loss of business, but not due to an order to close, will still not be charged to the business, so long as the loss of business is connect with the COVID-19 pandemic.

If you lay off employees because you were impacted due to an illness in the workplace, or you were ordered to shut down, your account won't be charged. The question is whether an employer's account will be charged if the layoff is not due to an ordered shutdown, and not due to an isolation or quarantine order. Where there is no ordered closing, isolation, or quarantine,

the decision to non-charge the employer tax account may vary from state to state in the following circumstances where a layoff or reduction in hours occurs due to:

- Employee fears of COVID-19 arising from potential exposures employees may have had;
- Symptoms of an employee; or
- A decision to stagger shifts to create social distancing or avoid illness, but there was no order to shut down, quarantine, or isolate.

Employers should carefully develop communications with employees regarding filing claims for unemployment benefits and the reasons for layoff, reduction in hours, or directions not to come to work, as those messages may impact whether employees receive benefits, and whether those benefits are paid out of federal grant monies or the employer's unemployment insurance tax account. Charles Palmer

IMPORTANT RESOURCES FOR UPDATES ON COVID-19 (UPDATED MARCH 23, 2020)

59. HOW SHOULD WE KEEP OURSELVES UPDATED WITH CURRENT INFORMATION?

Several government agencies have updated, real-time information and data on their websites. In addition to Michael Best's COVID-19 Resource Center, we recommend reviewing the following agency websites for current information:

Agency Name	Website
Centers for Disease Control	https://www.cdc.gov/coronavirus/2019-ncov/index.html
World Health Organization	https://www.who.int/emergencies/diseases/novel-coronavirus-2019
National Institutes of Health	https://www.nih.gov/health-information/coronavirus
Equal Employment Opportunity Commission	https://www.eeoc.gov/facts/pandemic_flu.html
U.S. Department of Labor	https://www.dol.gov/coronavirus
DOL Wage and Hour Division	https://www.dol.gov/agencies/whd/pandemic
White House	https://www.whitehouse.gov/
State Resources	https://www.cste.org/page/EpiOnCall
Local Resources	https://www.naccho.org/membership/lhd-directory

State and local governments may also have resources available to consumers and businesses online. Please check with your state's Department of Health and Human Services and Department of Labor (or equivalent agencies) to determine what resources are available.
Ashley Felton

60. WHAT STEPS SHOULD WE TAKE TO ESTABLISH A RELATIONSHIP WITH LOCAL AND/OR NATIONAL PUBLIC HEALTH ORGANIZATIONS? ANY OTHER ENTITIES?

Employers should take time to familiarize themselves with local, state, and federal public health organizations to ensure that the employer is receiving accurate information regarding how to handle the coronavirus pandemic and how to address concerns from employees and related parties.

While employers are encouraged to establish working relationships with local and state public health agencies and departments, employers should understand that these agencies are dealing with an unprecedented pandemic and may or may not be responsive to non-emergency inquiries. However, employers can still be proactive and regularly check the websites and/or social media accounts of local and state public health agencies to stay apprised of the latest updates regarding coronavirus.

There are about 3,000 local public health agencies across the United States, according to the National Institutes of Health (NIH). While we cannot list every local agency, below we have included resources to help employers identify sources of valuable COVID-19 information during this time.

STATE PUBLIC HEALTH AGENCIES

State	Link to Information
Alabama	Alabama Department of Public Health: http://www.alabamapublichealth.gov/
Alaska	Alaska Department of Health and Social Services: http://dhss.alaska.gov/Pages/default.aspx
Arizona	Arizona Department of Health Services: https://www.azdhs.gov/
Arkansas	Arkansas Department of Health: https://www.healthy.arkansas.gov/
California	California Department of Health Care Services: https://www.dhcs.ca.gov/ California Department of Public Health: https://www.cdph.ca.gov/ California Health and Human Services Agency: https://www.chhs.ca.gov/
Colorado	Colorado Department of Public Health and Environment: https://www.colorado.gov/cdphe
Connecticut	Connecticut Department of Public Health: https://portal.ct.gov/dph
Delaware	Delaware Division of Public Health: https://www.dhss.delaware.gov/dhss/dph/index.html Delaware Health and Social Services: https://www.dhss.delaware.gov/dhss/index.html
Florida	Florida Agency for Healthcare Administration: https://ahca.myflorida.com/ Florida Department of Health: http://www.floridahealth.gov/
Georgia	Georgia Department of Public Health: https://dph.georgia.gov/
Hawaii	Hawaii Department of Health: https://health.hawaii.gov/
Idaho	Idaho Department of Health and Welfare: https://healthandwelfare.idaho.gov/
Illinois	Illinois Department of Health: http://www.dph.illinois.gov/
Indiana	Indiana Department of Health: https://www.in.gov/isdh/
Iowa	Iowa Department of Public Health: https://www.idph.iowa.gov/
Kansas	Kansas Department of Health and Environment: http://www.kdheks.gov/
Kentucky	Kentucky Cabinet for Health and Family Services: https://chfs.ky.gov/Pages/index.aspx
Louisiana	Louisiana Office of Public Health: http://ldh.la.gov/index.cfm/subhome/16
Maine	Maine Center for Disease Control and Prevention: https://www.maine.gov/dhhs/mecdc/ Maine Department of Health and Human Services: https://www.maine.gov/dhhs/health.shtml
Maryland	Maryland Department of Health and Mental Hygiene: https://health.maryland.gov/pages/home.aspx

State	Link to Information
Massachusetts	Massachusetts Department of Public Health: https://www.mass.gov/orgs/department-of-public-health
Michigan	Michigan Department of Health and Human Services: https://www.michigan.gov/mdhhs
Minnesota	Minnesota Department of Human Services: https://mn.gov/dhs/ Minnesota Department of Health: https://www.health.state.mn.us/
Mississippi	Mississippi Department of Human Services: https://www.mdhs.ms.gov/
Missouri	Missouri Department of Health and Senior Services: https://health.mo.gov/
Montana	Montana Department of Public Health and Human Services: https://dphhs.mt.gov/
Nebraska	Nebraska Department of Health and Human Services: http://dhhs.ne.gov/Pages/default.aspx
Nevada	Nevada Department of Health and Human Services: http://dhhs.nv.gov/
New Hampshire	New Hampshire Department of Health and Human Services: https://www.dhhs.nh.gov/
New Jersey	New Jersey Department of Health and Senior Services: https://www.nj.gov/health/
New Mexico	New Mexico Department of Health: https://nmhealth.org/
New York	New York State Department of Health: https://www.health.ny.gov/
North Carolina	North Carolina Department of Health and Human Services: https://www.ncdhhs.gov/
North Dakota	North Dakota Department of Health: https://www.health.nd.gov/
Ohio	Ohio Department of Health: https://odh.ohio.gov/wps/portal/gov/odh/home
Oklahoma	Oklahoma State Department of Health: https://coronavirus.health.ok.gov/
Oregon	Oregon Public Health Division: https://www.oregon.gov/oha/ph/pages/index.aspx Oregon Department of Human Services: https://www.oregon.gov/dhs/pages/index.aspx
Pennsylvania	Pennsylvania Department of Health: https://www.health.pa.gov/Pages/default.aspx
Rhode Island	Rhode Island Department of Health: https://health.ri.gov/
South Carolina	South Carolina Department of Health and Environmental Control: https://www.scdhec.gov/
South Dakota	South Dakota Department of Health: https://doh.sd.gov/
Tennessee	Tennessee Department of Health: https://www.tn.gov/health/
Texas	Texas Department of Health and Human Services: https://hhs.texas.gov/
Utah	Utah Department of Health: https://health.utah.gov/

State	Link to Information
Vermont	Vermont Department of Health: https://www.healthvermont.gov/
Virginia	Virginia Department of Health: http://www.vdh.virginia.gov/
Washington	Washington Department of Health: https://www.doh.wa.gov/ Washington COVID-19 Response: https://www.doh.wa.gov/Emergencies/Coronavirus
West Virginia	West Virginia Department of Health and Human Resources: https://dhhr.wv.gov/Pages/default.aspx
Wisconsin	Wisconsin Department of Health Services: https://www.dhs.wisconsin.gov/
Wyoming	Wyoming Department of Health: https://health.wyo.gov/
District of Columbia	DC Department of Health: https://dchealth.dc.gov/

Additional resources for accredited local health departments can be found here: https://www.cdc.gov/publichealthgateway/accreditation/departments.html#LocalHD

A telephone number list of state health departments is available through CDC here: https://www.cdc.gov/coronavirus/2019-ncov/downloads/Phone-Numbers_State-and-Local-Health-Departments.pdf

We will continue to update and add to this Q&A document as additional developments and changes in the law occur. we will alert you to each major update, and you can always download the most current version here.

If you have any questions about dealing with the impact of COVID-19 in your workplace, please reach out to your Michael Best attorney or any of the lawyers listed in this guide. We're here to help.