

COVID-19 Resources Webinar Series:

Ongoing Compliance Support and FAQs for Employers



Presented By
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CORONAVIRUS CONSIDERATIONS FOR EMPLOYERS

- ▼ ADA
- ▼ FMLA & Sick Leave
- ▼ FLSA
- ▼ HIPAA
- ▼ COBRA
- ▼ Concerted Activity
- ▼ Health Coverage Considerations
- ▼ ACA Employer Mandate



Visit: [COVID-19 Task Force and Resources](#)

CORONAVIRUS CONSIDERATIONS FOR EMPLOYERS

- ▼ What *can* you do? –vs- What *should* you do?
 - ▼ Consider employee morale
 - ▼ Consider impact on future operations
 - ▼ “Time to Shine”
- ▼ Establish COVID-19 Response Plan
- ▼ Resources:
 - ▼ [Centers for Disease Control and Prevention \(CDC\) - Coronavirus Resource Page](#)
 - ▼ [CDC's Interim Guidance for Businesses and Employers on COVID-19 \(February 2020\)](#)
 - ▼ [The World Health Organization's "Advice for Public" on COVID-19](#)
 - ▼ [OSHA's COVID-19 Website](#)
 - ▼ [OSHA Guidance on Preparing Workplaces for COVID-19 \(PDF\)](#)

Families First Coronavirus Response Act (FFCRA)

- ▼ Signed into law March 18th
- ▼ Becomes effective on **April 1*** and expires December 31, 2020
- ▼ Final law provides temporary provisions for:
 - ▼ Expansion of FMLA
 - ▼ Employer paid sick leave
 - ▼ Food assistance
 - ▼ Expansion of unemployment insurance, with relaxed qualification standards
 - ▼ Increase in Medicaid funding to states
 - ▼ Mandates for health insurance coverage of COVID-19 testing

*Original indications were that the law would be effective on April 2, 2020; however, the DOL released guidance shortly after the webinar indicating that the effective date is April 1, 2020.

Families First Coronavirus Response Act (FFCRA)

- ▼ Emergency Family and Medical Leave Expansion Act
 - ▼ Employers with **fewer than 500 employees** and all gov't employers must provide up to 12 weeks of leave under the FMLA for employees who:
 - ▼ Are “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years... if the school or place of care has been closed or the child care provider ... is unavailable” due to an emergency related to COVID-19
 - ▼ Employees are eligible who have worked **for only 30 days** or more
 - ▼ **First 10 days of leave are unpaid, but employees could elect to take paid leave** concurrently
 - ▼ After 10 days, workers receive benefit from employers of at least **2/3 of their “regular rate of pay”** consistent with the number of hours they would have been expected to work – not to exceed \$200/day or \$10,000 in the aggregate

Families First Coronavirus Response Act (FFCRA)

▼ Emergency Paid Sick Leave Act

- ▼ Employers with **fewer than 500 employees** and all gov't employers must provide paid sick time off if the employee is unable to work (or telework) due to a need for leave because, due to COVID-19:

- ▼ Federal, state or local quarantine* order
- ▼ Health care provider advised employee to self-quarantine
- ▼ Employee is experiencing symptoms and seeking diagnosis
- ▼ Providing care to a family member who is subject to a gov't quarantine order or health care provider advice to self-quarantine
- ▼ Provide care for child under 18 whose school or child care provider closed

*DOL guidance released shortly after the webinar indicates that isolation orders are treated as quarantine orders for these purposes.

- ▼ **All employees eligible**, regardless of tenure
- ▼ Full-time employees receive **80 hours of paid sick leave**; part-time workers receive paid sick leave equal to scheduled or normal work hours at regular rate of pay, **not to exceed \$511/day or \$5,110 in aggregate for “sick” reasons or \$200/day or \$2,000 in aggregate for “care” reasons**

Families First Coronavirus Response Act (FFCRA)

- ▼ Common Rules Applicable to Expanded FMLA & Paid Sick Leave
 - ▼ Applicable to employers with **fewer than 500 employees** and all gov't employers
 - ▼ No exception for non-profits
 - ▼ Secretary of Labor has authority to exempt small businesses with **under 50 employees** if compliance “would jeopardize the viability of the business”
 - ▼ Initial guidance on 3/23/20 suggests this exemption **may only apply to paid leave related to a school closure..**
 - ▼ Federal agencies announced on 3/20/20 that the first 30 days will be a **“non-enforcement period”** for employers attempting to comply in **“good faith”**

Tax Credits for Employer Paid Leave Payments

▼ Employer Tax Credits

- ▼ Payroll tax credits to employers equal to paid sick leave payments under both **FMLA and Paid Sick Leave** programs
- ▼ Includes tax credits for **employer-provided health insurance** during paid FMLA leave period
- ▼ Federal **guidance on 3/20/20**, authorized **all federal payroll taxes (withheld income taxes, employer & employee share of Social Security and Medicare) for all employees may be used** as credit
- ▼ Dollar for dollar credits may **be taken immediately**, without having to wait to file (i.e. employers may retain federal payroll taxes equal to benefits paid)
- ▼ Credits in excess of federal payroll taxes would be treated as overpayment entitled to refund from Treasury **“as quickly as possible”** and **“expedited”**
- ▼ IRS to release a **“streamlined claim form”** for refunds in excess of employers payments during week of 3/23/20

▼ Corresponding Provisions for Self-Employed

Families First Coronavirus Response Act (FFCRA)

- ▼ **Coverage Mandates for COVID-19 Related Healthcare**
 - ▼ All group health plans and insurers must cover, without being subject to copays, coinsurance, deductibles or pre-authorization:
 - ▼ COVID-19 diagnostics approved by FDA
 - ▼ Medical care and items provided to an individual in connection with obtaining a diagnostic test
 - ▼ Includes Medicare advantage plans, Medicaid, CHIP, and TRICARE

Families First Coronavirus Response Act (FFCRA)

▼ What Happens Next

- ▼ Effective on **April 1**
- ▼ IRS to release a **“streamlined claim form”** for employer paid sick leave and FMLA refunds in excess of employer federal payroll tax payments during week of 3/23/20
- ▼ IRS **to release guidance** during week of 3/23/20, instructing employers how to retain tax credits immediately
- ▼ DOL to release **“emergency” guidance** on availability of **small business exemption**

Benefits Considerations

- ▼ How will our benefit plans be affected by COVID-19 testing and treatment?
 - ▼ FFCRA coverage requirements
 - ▼ State law? Preemption?
- ▼ Can our HDHP cover COVID-19 testing prior to deductible? (IRS Notice 2020-15)
- ▼ Can employees change their cafeteria plan elections?

Benefits Considerations

- ▼ **What if we learn of an employee's positive COVID-19 test through our (self-funded) health plan?**
 - ▼ **Minimum Necessary Standard**
- ▼ **If employees are no longer working, are they still entitled to group health plan coverage?**
 - ▼ **FMLA**
 - ▼ **COBRA coverage**
- ▼ **401(k) Plan Hardship Distributions**

Benefits Considerations – Employer Mandate

- ▼ How does COVID-19 and employee leave affect ACA employer mandate obligations?
- ▼ Monthly Measurement Method
- ▼ Measurement and Stability Period
- ▼ FMLA – special *unpaid* leave
 - ▼ Educational employers – four-week break period
- ▼ Break in service – 13 weeks
- ▼ *Hours of service* include each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Employee Communications

- ▼ Assign senior member to be the “point-person” – *One Voice*
- ▼ Communicate information from official sources of public health information and consult with trusted medical providers
 - ▼ Avoid “editorializing”
 - ▼ Encourage employees to follow CDC guidelines!
- ▼ Remind employees regarding existing policies concerning absences and working from home, including vacation, sick pay, FMLA, and short term disability
- ▼ Instruct employees to inform employer if they are experiencing symptoms or have come into contact with someone who has tested positive
 - ▼ **Train managers**
- ▼ Communicate travel policies (company and personal)
- ▼ Stay in touch – evolving situation

Work From Home Considerations

- ▼ Establish system to track hours for FLSA non-exempt employees
- ▼ **Communicate performance expectations**
- ▼ If we implement telework, do we have to pay for an employee's internet service or supply a computer, tools, etc.?
 - ▼ State law?
- ▼ If we allow some employees to work from home, do we have to allow all employees to work from home?
- ▼ Our local schools just closed due to COVID-19 and although our employees' children are not sick, they have no childcare. What do we do?

Health Inquiries

- ▼ The ADA prohibits employers from requiring medical examinations and making disability-related inquiries unless (1) the employer can show that the inquiry or exam is **job-related and consistent with business necessity**, or (2) the employer has a reasonable belief that the employee poses a **“direct threat” to the health or safety** of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

Health Inquiries

- ▼ If we have an employee exhibiting symptoms, what can we require of them? Can we make a sick employee get tested? Who pays?
- ▼ Should we encourage employees at risk based on age or pre-existing health condition to stay home?
- ▼ Can we take employee temperatures before they start their shift?

Leave – FMLA, PTO, Sick Leave

- ▼ We have an employee who believes he has COVID-19 and he has notified us that he is self-quarantining at home. How do we treat this?
- ▼ Can we require an employee to bring a doctor's excuse for a sick absence?
- ▼ Should we approve FMLA without a physician certification?
- ▼ What if an employee fears that because of their own health factors, they should stay home, even though they do not have COVID-19?
- ▼ We have a very generous PTO policy, but I'm concerned that if everyone is out on it at the same time, it could break it could break the company. Can we change our policy temporarily due to the outbreak?

Layoffs / RIFs

- ▼ What is the difference between layoff and furlough?
- ▼ If we tell employees to not to come to work, do we have to pay them? What options do we have?
- ▼ What are our responsibilities if we need to layoff some employees due to reduced workload? Notice?
- ▼ We are going to temporarily shut down a work location to protect our employees from COVID-19. How much notice do we need to give our employees?
- ▼ If we are not covered by WARN, what do we have to do if we have a layoff?

Liability

- ▼ **What obligations do we have to protect employees from COVID-19?**
- ▼ **What do we do if employees refuse to come to work because of concerns about contracting COVID-19?**
- ▼ **Can employees sue us if they get COVID-19 at work?**
- ▼ **Do we have to shut down our business/location if an employee tests positive for COVID-19?**
- ▼ **Any difference for union employees?**



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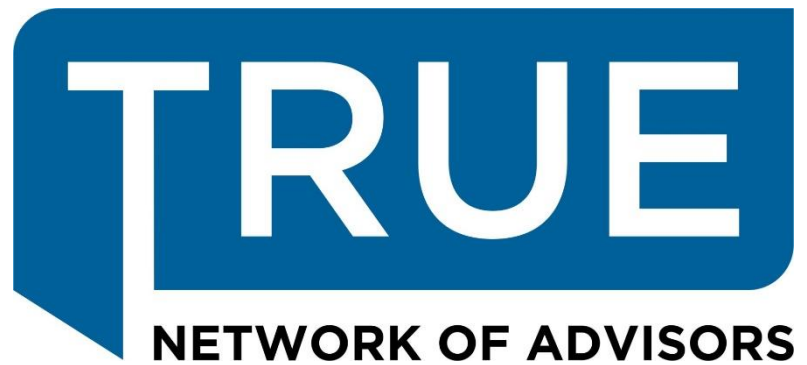


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