

Coronavirus Hot Topics

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Presented by



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Employer Actions

Office Rules

01

Suspend all non-essential business travel to countries listed as high-risk by the CDC; Cancel conferences; Avoid meetings and encourage video-conferences

02

Require employees to advise of COVID-19 diagnoses (including household members); Impose quarantines following exposure; Require vendors and guests to answer questions about travel/illness

03

Institute work-from-home, where possible; If not possible, consider social distancing tactics and staggered work schedules/alternative work locations



Must we pay employees who are out for COVID-19-related reasons?

- Quarantine v. sick employee v. sick family member v. public health emergency
- Exempt v. Non-Exempt
- Policies (vacation, personal days, sick time, PTO)
- Other available benefits (STD, PFL, workers' comp)

What if employees request to stay home?

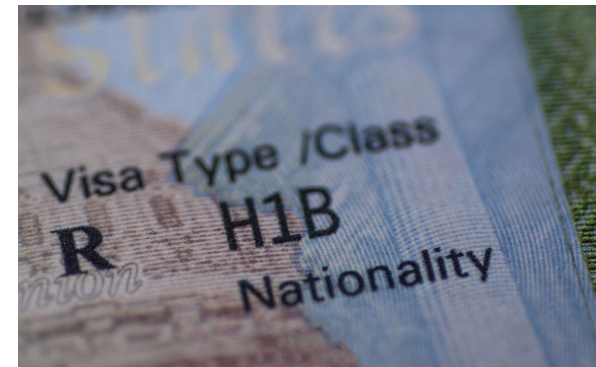
- Consistency
- Applicable policies
- Accommodation issues



What are the cybersecurity concerns associated with working from home?



Does the travel ban or other guidance impact employees on work visas?





Families First Coronavirus Response Act (“FFCRA”)

H.R. 6201 – Sick Time

- 80 Hours of Sick Time
- Employees may use if they are unable to work or telework because they are:
 1. Subject to a government quarantine or isolation order related to COVID-19,
 2. Have been advised by health provider to self-quarantine due to COVID-19,
 3. Experiencing symptoms of COVID-19 and seeking medical diagnosis,
 4. Caring for an individual subject to quarantine order or self-quarantine,
 5. Caring for a son or daughter if school or place of care is closed or their child care provider is unavailable because of a public health emergency, or
 6. Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
- Applies to employers with fewer than 500 employees
- Paid at full pay (cap of \$511/day) for reasons 1-3; 2/3 of pay (cap of \$200/day) for reasons 4-6
- Funded through employer tax credit matching value of sick days paid
- Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid sick leave
- Small (<50) employers may be exempted from certain requirements by Secretary of Labor

FMLA Expansion

- Up to 12 weeks of FMLA leave for when employees must care for a son or daughter whose school or day care is closed or whose child care provider is unavailable because of a public health emergency, and the employee cannot work or telework
- Applies to employers with fewer than 500 employees
- Available to employees employed at least 30 days
- First 10 days unpaid
- Rest paid at 2/3 of pay up to cap of \$200/day and \$10,000 in the aggregate
- Funded through employer tax credit matching value of FMLA paid
- Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid sick leave
- Small (<50) employers may be exempted from certain requirements by Secretary of Labor

Penalties

- Employers who fail to provide mandated leave or unlawfully terminated an employee will be subject to penalties set forth in FLSA
- DOL announced it would not enforce non-compliance for first 30 days after effective date, so long as employer acted in “good faith”
 - “good faith” exists when violations are remedied promptly, not willful, and employer provides written commitment to comply in the future

What Else?

- Unemployment Insurance strengthened
 - States have flexibility on work search requirements
 - States have flexibility on waiting periods
- All provisions sunset 12/31/20
- Tax Credits available
 - During sick time
 - During FMLA
 - For health coverage during both sick time and FMLA
- DOL is expected to release a notice about the EPSLA by March 25, which employers must post conspicuously in the workplace

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State Actions Affecting Employers

Shelter-in-Place/Stay-at-Home Orders

1. California
 - i. [E.O. N-33-20](#) issued & effective March 19, 2020
2. Connecticut
 - i. [E.O. 7H](#) issued March 20, 2020
 - ii. Effective March 23, 2020 at 8:00 PM
3. Delaware
 - i. [Fourth](#) and [Fifth](#) Modifications to State of Emergency declaration issued March 22, 2020
 - ii. Effective March 24, 2020 at 8:00 AM
4. Illinois
 - i. [E.O. 2020-10](#) issued March 20, 2020
 - ii. Effective March 21, 2020 at 5:00 PM
5. Louisiana
 - i. [Procl. No. 33 JBE 2020](#) issued & effective Mar. 22, 2020
6. Michigan
 - i. [E.O. 2020-21](#) issued Mar. 23, 2020
 - ii. Effective Mar. 24, 2020 at 12:01 AM
7. New Jersey
 - i. [E.O. No. 107](#) issued March 21, 2020
 - ii. Effective March 21, 2020 at 9:00 PM
8. New York
 - i. [E.O. No. 202.8](#) issued Mar. 20, 2020
 - ii. Effective Mar. 22, 2020 at 8:00 PM
9. Ohio
 - i. [Stay At Home Order](#) issued March 22, 2020
 - ii. Effective March 23, 2020 at 11:59 PM

Shelter-in-Place/Stay-at-Home Orders

Essential Businesses

- The types of businesses considered “essential” and exempt from the restrictions vary by jurisdiction
- **Example: New York**
 - Health care operations (e.g., research, hospitals, doctors)
 - Infrastructure (e.g., utilities, telecommunications, airports, hotels)
 - Manufacturing (e.g., telecommunications, food processing, chemicals)
 - Retail (e.g., grocery, pharmacies, gas stations, restaurants)
 - Services (e.g., trash, mail, laundromats, funeral homes)
 - News media
 - Financial Institutions (e.g., banks, insurance, accounting)
 - Providers of basic necessities (e.g., food banks, shelters)
 - Construction (e.g., electricians, plumbers, emergency repair)
 - Defense
 - Safety and sanitation services (e.g., law enforcement, fire prevention, building cleaners)
 - Vendors providing essential services or products (e.g., child care, logistics, tech support)

Sick Leave

Enacting New Laws

■ Colorado

- [Health Emergency Leave with Pay](#) (“HELP”) Rules effective March 11, 2020
- Covered employers must provide 4 calendar days of paid sick leave for employees in certain industries who have flu-like symptoms to receive COVID-19 testing

■ New York

- Emergency legislation signed into law on March 18, 2020
- Guarantees job-protected paid leave to workers who subject to mandatory or precautionary quarantine/isolation for COVID-19, or whose minor dependent child is under such an order
- Requirements vary by size of business:
 - Small (10 or fewer employees and <\$1 million net income): job protection for duration of quarantine/isolation
 - Medium (11-99 employees) and Small Employers with >\$1 million net income: job protection & 5 days of paid sick leave
 - Large (100 or more employees): job protection & 14 days of paid sick leave

Sick Leave

Clarifying or Expanding Existing Laws

- California
 - [Paid sick leave](#) available for “preventative care,” which may include self-quarantine as a result of potential exposure to COVID-19 if quarantine is recommended by civil authorities, exposure to COVID-19, or return from traveling to a high risk area
- New Jersey
 - [Earned Sick Leave](#) law covers public health emergencies, and Earned Sick Leave can be used for self-care, or for a person to care for a family member
- Washington, D.C.
 - [COVID-19 Response Emergency Amendment Act of 2020](#) expands DCFMLA to provide “declaration-of-emergency” leave (unpaid) to all employees unable to work as a result of the circumstances giving rise to a public health emergency declared by the Mayor

Unemployment Insurance

State Action

- Waiving mandatory waiting periods
- Suspending requirement that applicant be actively searching for a new job
- **Example: New York** ([Executive Order No. 202.1](#))
 - Suspended the one-waiting period for employees who are:
 1. Quarantined, sick, or have been directed not to report to work due to COVID-19; and
 2. Are not being paid by their employer (because work cannot be done remotely, or because the business has closed, either quarantined, sick, or temporarily or permanently, and has no revenue because of COVID-19)
 - *Temporary Layoffs*: Search for work obligation suspended if layoff is for 4 weeks or less and waiting period is waived
 - *Reduced Hours*: Partial UI benefits available and waiting period is waived



Cost Saving Options

Business Continuity

1. Many companies discussing options

- i. Reduction in pay
- ii. Reduction in hours/days of work
- iii. Furloughs
 - a. With or without stipend
 - b. But note: health insurance concerns
- iv. Voluntary reductions in force
- v. Involuntary reductions in force



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Benefits Matters

Benefits Strategies for COVID 19

1. Continuation of health care coverage during temporary leave of absence or furlough
2. “Qualified disaster relief payments”
3. Coronavirus Act - private employers with fewer than 500 employees payroll tax credits to provide sick leave, emergency FMLA leave and group health plan coverage
4. Taxable childcare and elder-care stipends
5. Pre-tax commuting assistance and other fringe benefits
6. Hardship distributions under their 401(k) plans
7. Home office expenses
8. Employer sponsored leave sharing or leave donation programs for their employees.
9. Tax-free emergency funds through employer affiliates 501(c)(3) charities and private foundations.

Legislative Proposals and Guidance Needed for Benefits

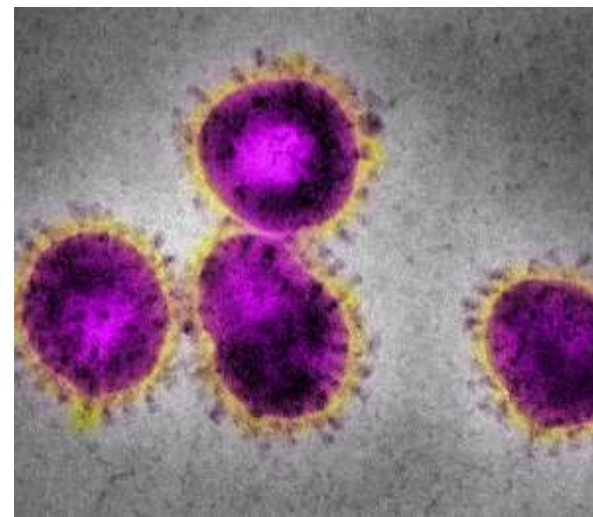
1. Expansion of 401(k) plan loans and hardship withdrawals (CARES Act)
2. Allowing additional changes to cafeteria plan elections
3. Suspension of employer pension funding requirements and employer matching contributions
4. Release of pension prohibitions on work for retired health care professionals
5. Clear declarations of qualified disaster under the Stafford Act, allowing for expanded leave donation programs, qualified disaster assistance payments and hardship withdrawals
6. Relief for ACA imposition of penalties for temporary laid-off and furloughed employees if coverage not continued during layoff or furlough

Epstein Becker Green Coronavirus Resource Center

Epstein Becker Green Coronavirus News and Updates

Employers throughout all industries, and particularly those within health care, are now grappling with how to deal with the various implications of the coronavirus (COVID-19) on their businesses and workforce.

Please see below for our latest news, [subscribe for email notifications](#), and revisit for updates.



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<https://www.ebglaw.com/coronavirus-resource-center/>

Questions?

