

Navigating Employment Issues and the Coronavirus - What To Do and Not To Do

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In partnership with Mauldin & Jenkins, LLC



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The Coronavirus – Navigating Employment Issues

- **What If An Employee Tests Positive For The Coronavirus?**
 - 14 day quarantine after EE started exhibiting CV symptoms, unless a doctor expressly certifies that it is safe for the employee to return to work earlier.
 - Try and determine who interacted closely with EE in the 7 day period before symptoms started
 - Notify those who interacted closely with EE of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms
- **What Should An Employer Do If An Employee's Household Member Tests Positive For The Coronavirus Symptoms?**
 - Ask employees to notify you;
 - EE should be quarantined for 14 days after Household Member started exhibiting CV symptoms, unless a doctor expressly certifies that it is safe for the employee to return to work earlier.
 - Try and determine who interacted closely with EE in the 7 day period before Household Member started exhibiting CV symptoms
 - Notify those who interacted closely with EE of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms
- **What Should An Employer Do If An Employee Presents Coronavirus Symptoms, But Is Not Confirmed With The Coronavirus?**
 - 14 day quarantine after EE started exhibiting CV symptoms, unless a doctor expressly certifies that it is safe for the employee to return to work earlier.
 - Try and determine who interacted closely with EE in the 7 day period before symptoms started
 - Notify those who interacted closely with EE of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms

The Coronavirus – Navigating Employment Issues

- **What Should An Employer Do If An Employee Reports That He/She Interacted With Somebody Who Has Been Diagnosed With The Coronavirus Or Exhibited CV Symptoms?**
 - Assess the type of interaction and when interaction took place
 - If close interaction and within 7 day period of when individual started exhibiting symptoms, EE should be quarantined for 14 days, unless a doctor expressly certifies that it is safe for the employee to return to work earlier.
 - Try and determine who interacted closely with EE in the 7 day period before individual started exhibiting CV symptoms
 - Notify those who interacted closely with EE of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms
- **Can I Require All My Employees To Get Tested For The Coronavirus?**
 - Yes, but not really practical since test kits are so limited
- **Can I Take The Temperature Of All My Employees?**
 - Yes.
- **Can I Require An Employee Who Tested Positive For CV Or Exhibited CV Symptoms To Submit An “All Clear” From A Doctor Before Returning To Work?**
 - Yes, but may not be feasible due to lack of test kits so more realistic to rely upon 14 day self-quarantine

The Coronavirus – Navigating Employment Issues

- **What Should An Employer Do If An Employee (Or An Employee's Household Member) Returns From An International Trip, But Has Not Exhibited Any Coronavirus Symptoms**
 - If international travel, then 14 day self-quarantine or secure confirmation of negative test
- **Can I Restrict Employees From Traveling Internationally?**
 - If travel is work-related -- yes
 - If travel is not work-related -- yes
 - POSSIBLE CAVEAT: State law "off-duty lawful activity" statutes
- **Can I Restrict Employees From Traveling Domestically?**
 - If travel is work-related -- yes
 - If travel is not work-related -- yes
 - POSSIBLE CAVEAT: State law "off-duty lawful activity" statutes

The Coronavirus – Navigating Employment Issues

- **What If An Employee Refuses To Come To Work (Or Travel) Because Of A Generalized Fear Of Being Exposed To CV?**
 - Must have a reasonable objective belief that someone in workplace has CV (or interacted with someone with CV)
 - Can discipline, but prudent to assess individual circumstances and try and work something out
 - Exempt – must pay for any day where EE worked in that week
 - Non-Exempt – don't have to pay
- **What If An Employee Wants To Wear A Respirator Or Mask At Work?**
 - No requirement at this time so ER has a lot of discretion
- **Can I Send All Of My EEs Over 60 Or With Compromised Immune System Home?**
 - We strongly recommend against it
- **What If An Employee Who Has A Compromised Immune System Because Of A *Disability* Does Not Want To Come To Work?**
 - Have to assess whether teleworking or staying out is a reasonable accommodation

The Coronavirus – Navigating Employment Issues

- **What If An EE Request Leave To Take Care Of A Family Member With CV?**
 - FMLA + See Coronavirus Response Act
 - Check state Laws
 - Example: Georgia Sick Leave Law
- **With So Many School Closures, What Happens If An Employee Can't Come To Work Because Of Child's School Is Closed Or Childcare Provider Is Closed/Unavailable**
 - See Coronavirus Response Act
 - Check state law
 - Example: NY – ERs have to provide EEs with leave if absence necessitated by school closure because of public health emergency
- **What Should You Do If An EE Complains About Your Company's CV Response On Social Media?**
 - Take a deep breath
 - If disciplinary action considered, evaluate whether lawful or prudent

The Coronavirus – Navigating Employment Issues

- **How To Avoid Discrimination Claims In Dealing With CV Issues?**
 - No judgments based on race or national origin of employee.
- **Do I Have To Allow Employees To TeleWork?**
 - No, unless EE has disability and telework is an accommodation
- **If I Do, Can Those Same Employees Request To TeleWork After CV Crisis Ends?**
 - Have to make clear that TeleWork is because of extraordinary circumstances
- **If I Allow An Employee To TeleWork, Can I Require Them To Document Their Activities At Home?**
 - Yes and you should have a Remote Work Policy in place

Families First Coronavirus Response Act

- **What Is The Coronavirus Response Act?**
- **Employment Components**
 - FMLA Amendment Act
 - Emergency Paid Sick Leave Act
- **How Will the Coronavirus Response Act Impact Employers?**
 - Establishes Paid Leave for specific qualifying reasons
 - Reimburses Employers for costs of leave through credits on SS tax

Families First Coronavirus Response Act

FMLA Amendment Act

- **Effective:** April 1 – December 31, 2020 (not retroactive)
- **Eligible EEs:** Full and Part-time EEs employed for minimum of 30 days
 - Employers of “*healthcare providers*” and first responders may exclude such employees from this Act
- **Covered ERs:** Fewer than 500 EEs (calculated as of the day leave is taken)
 - Possible exemption for Employer with less than 50 EEs
- **Reason for Leave:**
 - EE can't work or telework because under 18 child's school/place of care or childcare provider has closed because of CV

Families First Coronavirus Response Act

FMLA Amendment Act

- **First 10 Days**

- First 10 days – *Not paid* under the FMLAAA
- EE can elect to use PTO (or EPSL) during first 10 days

- **After 10 Days**

- F/T EE: No less than 2/3 of EE's regular rate of pay for the number of hours that the employee would otherwise normally be scheduled to work, not to exceed \$200/day or \$10,000 in aggregate
- P/T and Varying Schedule -
 - (a) average number of hours EE was scheduled per day over the 6 month period ending on the date on which the employee takes such leave; or
 - (b) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring, of the average number of hours per day that the employee would normally be scheduled to work.

- **Does Regular Rate of Pay Include Overtime?**

- Yes, requires you to pay for hours EE normally would have worked

- **Reinstatement of Employee**

- Same as traditional FMLA, except employers of less than 25 employees where certain conditions are met

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **Effective:** April 1 – December 31, 2020 (not retroactive)
- **Eligible EEs:** Full and Part-time EEs (no minimum tenure)
 - Employers of “*healthcare providers*” and first responders may exclude such employees from this Act
- **Covered ERs:** Fewer than 500 EEs (calculated as of the day leave is taken)
 - Possible exemption for Employer with less than 50 EEs
- **Reasons for Leave:**
 - (1) EE is subject to quarantine or isolation order related to Coronavirus;
 - (2) EE has been advised by health care provider to self-quarantine due to concerns related to Coronavirus;
 - (3) EE is experiencing symptoms of Coronavirus and seeking medical diagnosis;
 - (4) EE is caring for individual who is subject to order described in (1) or (2)
 - (5) EE is caring for a child of EE whose school or place of care has been closed or whose child care provider is unavailable due to Coronavirus precautions; or
 - (6) EE is experiencing other substantially similar condition specified by Sec. of Health and Human Services in consultation with others; Employers of health care providers or emergency responders may exclude such employees from this subsection

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **How Much Time?**

- Full-Time EEs: Entitled to cap of 80 hours
- Part-Time EEs: Average hours over two week period (varying schedule same as FMLA Amendment Act)

- **Calculation of Employee Payment**

- EE who:

- is quarantined or subject to isolation order;
- advised by health care provider to self-quarantine due to CV concerns ; or
- experiencing CV symptoms and seeking medical diagnosis,

... must be paid EE's regular rate of pay, or federal, state or local minimum wage, whichever is greater; Not to exceed \$511/day or \$5,110 in aggregate

- EE who uses leave to:

- care for individual subject to quarantine/isolation order or advised to self-quarantine; or
- care for child because of school/daycare closure or unavailability of child care provider due to CV precautions; or
- EE is experiencing other substantially similar condition specified by Sec. of Health and Human Services,

- must be paid 2/3 of EE's regular rate of pay, or federal, state or local minimum wage, whichever is greater; Not to exceed \$200/day or \$2,000 in aggregate

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **Substitution of PTO**
 - An EE may first use sick leave under this Act before using other PTO
 - ER may not require EE to use other PTO before using sick leave under this Act
- **Replacement Condition**
 - Can't require an EE to first find a replacement before using sick leave
- **Carryover Of Sick Leave**
 - Doesn't carry over
- **Payout Upon Separation**
 - ER's usual rules apply

The Coronavirus – Navigating Employment Issues

- **Do I Have To Pay The Employee While Out Of Work For CV Issue?**
 - Coronavirus Response Act
 - FLSA
 - Non-Exempt Employee – Only when working (unless EE uses PTO)
 - Exempt Employee –
 1. If ER imposes quarantine, then have to pay EE entire week if any work performed in that week
 2. If EE imposes self-quarantine, then only have to pay EE for any day where EE performs work
 - State Laws
 - Some states have “reporting time” laws.
- **Can An Employee Take PTO While Out On Leave During This Crisis?**
 - Yes
- **Can I Deny An Employee’s Request to Take PTO While Out On Leave During This Crisis?**
 - Generally, yes, but have to eventually provide use or payout of accrued PTO before end of benefit year

The Coronavirus – Navigating Employment Issues

- **Can We Temporarily Shut Down An Office/Facility Because Of A Diagnosed Case Of CV In An Office?**
 - Yes, but assess the individual circumstances of that office to determine necessity of doing so
 - Have to assess any type of applicable WARN (or mini-WARN) notice obligations
- **What Is The Difference Between A “Lay-Off” And A “Furlough?”**
 - Layoff – Termination of employment
 - Furlough – Mandatory unpaid leave of absence
- **What Are The Pro/Cons Of Each Within CV Crisis?**
 - Layoff
 - Pros: clear separation of relationship, no FFCRA issues down the road
 - Cons: WARN, unemployment, costs of new hire process
 - Furlough
 - Pros: more efficient reentry, maintain insurance, increased morale
 - Cons: uncertainty on return, possible FFCRA issues if a SISO issued

The Coronavirus – Navigating Employment Issues

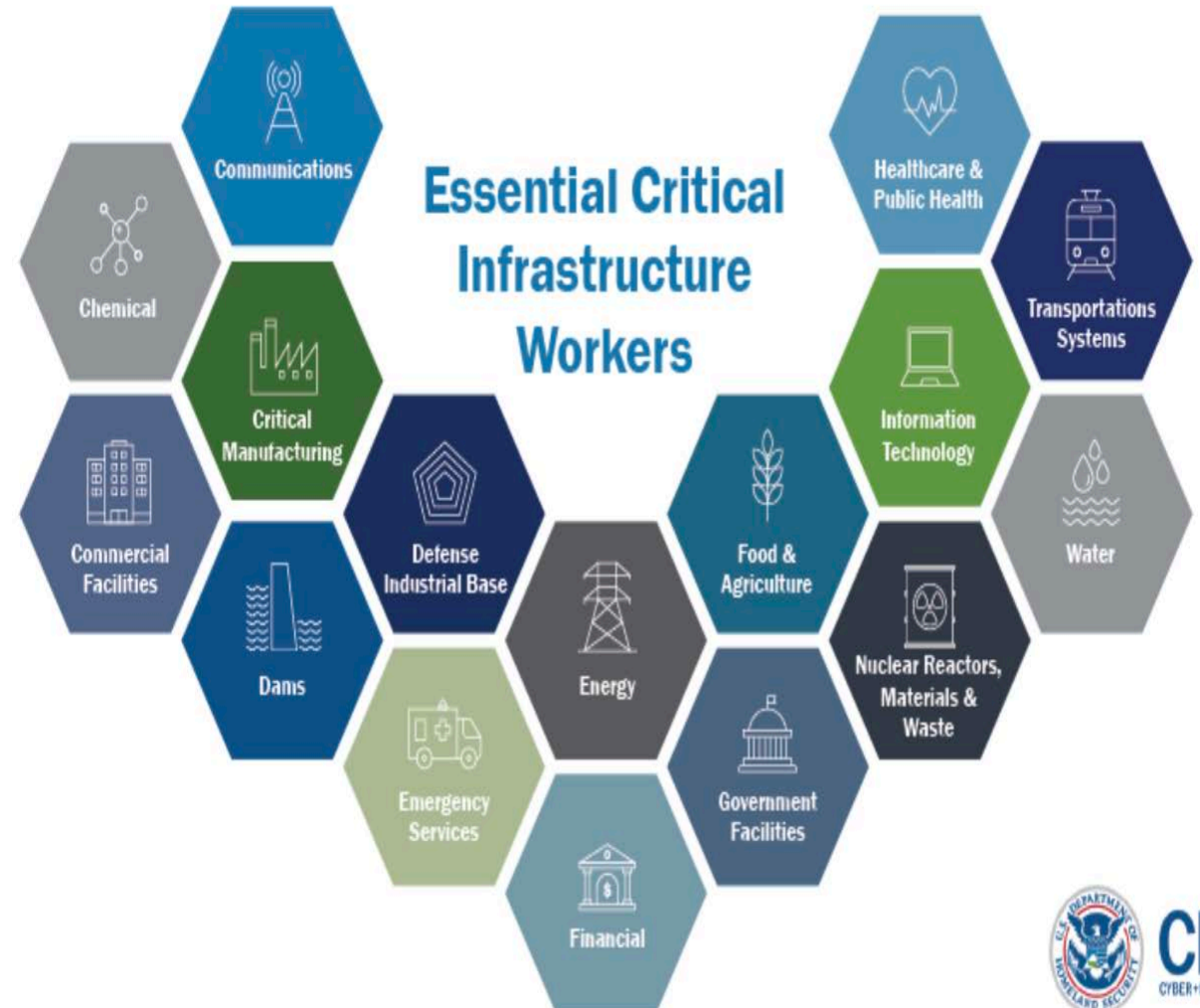
- **Can We Lay Off Of Employees Because Of Downturn (Or Anticipated Downturn) In Business Because Of Coronavirus?**
 - Yes
 - Assess any type of applicable WARN (or mini-WARN) notice obligations or exceptions to notice period
 - Assess U/E obligations
- **Can We Furlough Employee(s) Because Of Downturn (Or Anticipated Downturn) In Business Because Of Coronavirus?**
 - Yes
 - Assess any type of applicable WARN (or mini-WARN) notice obligations or exceptions to notice period
 - Assess U/E obligations
- **Can An Employee File For U/E If Hours Reduced, Furloughed Or Laid Off?**
 - See DOL Unemployment Compensation Section
- **Can An Employee File For W/C If They Get CV At Work?**
 - Yes, but extremely difficult to prove causation

The Coronavirus – Navigating Employment Issues

- **Does a Stay-In-Shelter Order (SISO) Affect My Employees Eligibility For Expanded FMLA Leave?**
 - No
- **Does a Stay-In-Shelter Order Affect My Employees Eligibility For Emergency Sick Leave?**
 - Is EE able to TeleWork?
 - Furlough before or after SISO
- **How Do I Know If A Stay-in-Shelter Order Requires Me To Shut Down My Office?**
 - **Must Read The Order**
 - Federal
 - State
 - City
 - County

Government Employers – What is “Essential”?

- Government Entities are not businesses
 - All government entities likely not encompassed in the ongoing essential versus non-essential business debate
- What is an Essential Governmental Function?
 - Left to states and local governments to decide
 - At a Minimum:
 - Law Enforcement
 - Fire Suppression
 - Other Emergency Services (911, dispatch, etc.)
 - Waste Management
 - Utilities (Power, Water, etc.)
 - Finances
 - Can Distinguish Between “Essential” and “Discretionary” via local ordinance, resolution, etc.



Government Employers – ADA and Safety Compliance

- How Do I Comply with Federal, State, or Local Shelter in Place Orders?
 - Engage in Interactive Process
- If “essential” personnel have a pre-existing condition covered by Shelter in Place Order:
 - Consider Potential Reasonable Accommodations
 - Temporary Telework
 - Paid and Unpaid Leave in Accordance with new Federal Guidance and Employer-Provided Leave

Government Employers – ADA and Safety Compliance

- What Do We Have to Provide First Responders?
 - The minimum PPE recommended is:
 - A single pair of disposable examination gloves
 - Disposable isolation gown or single-use/disposable coveralls*
 - *If no disposable gown or coveralls, then duty belt and gear disinfected after contact with individual.
 - Any NIOSH-approved particulate respirator (i.e. N-95 or higher-level respirator); Facemasks are an acceptable alternative until the supply chain is restored.
 - Eye protection (i.e. goggles or disposable face shield that fully covers the front and sides of the face)

Families First Coronavirus Response Act

Reimbursement For Cost To Employers Of Paid Sick Leave

- **Tax Credits (Against Employer's Portion of Social Security Taxes) for Cost of Paid Sick Time Under Emergency Paid Sick Leave Act**
 - Credit per employee is limited to \$511/day for employees who are subject to quarantine/isolation order, advised to self-quarantine, or experiencing symptoms of CV and seeking medical diagnosis. Credit per employee is capped at \$200/day for employees who care for an individual who is subject to quarantine/isolation order or advised to self-quarantine, or for child whose school or place of care has been closed or child care provider is unavailable due to CV precautions.
- **Tax Credits (Against Employer's Portion of Social Security Taxes) for Cost of Paid Sick Time Under Amendment to the FMLA for Paid Leave**
 - The amount of credit per employee is capped at \$200/day and \$10,000 total for all calendar quarters.
 - Credit cannot be used in combination with existing credits for ERs that provide paid family and medical leave

Department of Labor

- Detailed information, including FAQ's, can be found by visiting our website, www.mjcpa.com/covid-19-impact
- Communication regarding the new DOL regulations were sent on 3/23
- Email me anytime with questions or concerns, tevens@mjcpa.com

Tax Update

- Tax filing and payment changes can be found by visiting our website, www.mjcpa.com/covid-19-impact
- Email me anytime with questions or concerns, cgarner@mjcpa.com

Questions

We hope you found this presentation helpful.

To learn more about our services, please visit www.mjcpa.com.

Financial and Tax Related Issues: Please contact your M&J relationship partner

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