

COVID19 and EMPLOYMENT LAW ISSUES

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Overview: COVID19 & Employment Law

- **Layoffs, Furloughs, Wage Reductions & Wage Replacements**
- **The new Paid Sick and Paid Family Medical leaves under the Families First Coronavirus Response Act**
- **How state, federal, and employer-provided time off and income replacement programs can be used and integrated**
- **Teleworking – Reimbursements & Accommodation**
- **Discrimination, Harassment & Retaliation**
- **Disability In the COVID19 Workplace**

Layoffs, Furloughs, Wage Reductions – Wage Replacements

Reductions in Pay

- **Non-exempt employees:** Pay can be reduced
 - Don't go below minimum wage
- **Exempt employees:** Generally, pay should not be reduced based on hours worked (See more on next slide). However, employers can make salary adjustments – for example, 15% reduction of salary.
 - Don't go below "Salary Basis Test" requirement
 - \$49,920,00 annually (\$960/week) – employers w/25 or fewer employees
 - \$54,090 annually (\$1,040/week) – employers w/26 or more employees

Layoffs, Furloughs, Wage Reductions – Wage Replacements

Reductions in Pay

- **Beware:**

- Wage/Salary reductions cannot be retroactive
- Give advanced written notice of change in wages
 - For non-exempt employees, use Wage Theft Prevention Act Form
- Be sure to review any employment agreements where the employee is not at-will
- Be sure to review any applicable Employee Handbook provisions/policies

Layoffs, Furloughs, Wage Reductions – Wage Replacements

Wage Reduction/Furloughs (exempt employees)

- **Full-week furloughs** are permissible, but if exempt employee performs any work during the week, the employee is entitled to full salary.
 - Evaluate need to pay out accrued unused vacation/PTO
- **Partial week furloughs** occur when an exempt employee's workweek is reduced (*e.g.*, to 3 days per week instead of 5) with a corresponding reduction in salary. This is generally permissible, so long as:
 - Done in advance
 - Changes are not made so frequently as to appear to be the functional equivalent of an hourly wage
 - Partial-week furloughs could be supplemented by available vacation/PTO

Layoffs, Furloughs, Wage Reductions – Wage Replacements

Layoffs:

- No work/business necessity – make decisions objectively
- Provide final paycheck, including payout of vacation/PTO, even if the hope is employees return to work
- Cal-WARN – requirements have been relaxed by Governor Newsom
- Federal WARN – likely do not apply to this audience for a variety of reasons (layoff of less than 6 months; size of firm)

Unemployment Insurance Benefits

California Unemployment Insurance (UI)

- Layoff or reduction in hours
- Full or partial wage replacement
- Up to 26 weeks
- \$40 to \$450 a week
- 1-week delay waived by Governor

Tips Applying Online (Have Following Information Available):

- Name & Phone Number
- Address/Physical Location of Company (or Companies) worked for
- Type of work performed
- Dates Worked
- Gross Earnings and How Earnings Were Paid (hourly, weekly, by contract, etc.)
- If true, applicant should answer “Yes” to question – “Are you unemployed as a direct result of a cent disaster (for example: earthquake, flood, mudslide, or fire) in California?” and select “Public Health” as the “type of disaster.”

Unemployment Insurance Benefits

EDD & UI Status:

- [In the last four weeks](#) (previous to April 4th), California has processed about 2.3 million unemployment insurance claims, which is more than the total number of claims filed in 2019
- Just for the week ending on April 4th, EDD processed 925,450 claims, which is a 2,418% increase over the same week last year
- [EDD is currently open](#) 6:00 am to 8:00 pm, 7 days a week, in an effort to process claims, and [UI will open a call center](#) on Monday, April 20th which will be open 8:00 am to 8:00 pm, 7 days a week

Daily Notices of the COVID-19 Impact on the Legal Community

- Law360 email notifications of layoffs, reductions in force and salary
- April 2nd, Above the Law began a Firm Tracker - [The COVID Crisis Law Firm Layoff Tracker: What's Your Firm Doing to Survive?](#) - included 50 firms as of April 15th and is updating daily.

State of California, Employment Development Department

[Coronavirus 2019 \(COVID-19\) Resources](#)

[Coronavirus 2019 \(COVID-19\) FAQs](#) FAQ Includes Information concerning following areas: Disability or Paid Family Leave Benefits; Unemployment Insurance Benefits; and, Employer Information

[Work Sharing Program \(Reduced Hours\)](#)

Federal CARES Act

Federal Coronavirus, Aid, Relief, and Economic Security (CARES) Act

Created three new benefit programs providing additional unemployment benefits as well as providing those benefits to more workers, including independent contractors.

Pandemic Unemployment Assistance (PUA)

- Emergency unemployment benefits for workers left out of regular state UI or who have exhausted benefits as well as extends benefits
- PUA applies to an expanded group of employees including self-employed workers, independent contractors, freelancers, workers seeking part-time worker and workers who do not have sufficient history to qualify for UI benefits.
- Unemployment or partially unemployed due to COVID-19 from January 27, 2020 through December 31, 2020, thus retroactive to prior to bill passage and prior to when claim made
- **NOTE:** Self-employed individuals and independent contractors, to access PUA should apply for UI Benefits with the California EDD, [online](#). HOWEVER, on [April 14th Secretary Su](#) and on [April 15th Governor Newsom](#) announced EDD will set up a one-stop shop for applying for PUA benefits distinct from UI by Tuesday, April 28, 2020.
- PUA benefits will be issued within 24-48 hours, not the traditional 21 days for UI benefits.

Federal CARES Act

Federal Coronavirus, Aid, Relief, and Economic Security (CARES) Act

Pandemic Unemployment Compensation (PUC)

- Provides those who qualify for UI and PUA benefits with additional \$600 per week through July 2020

Pandemic Emergency Unemployment Compensation (PEUC)

- Provides an extra 13 weeks of state UI benefits through December 31, 2020, thus in California extends benefits from 26 to 39 weeks

See [Governor Newsom Announces](#) New Initiatives to Support California Workers Impacted by COVID-19, April 15, 2020

See Also [California Labor Secretary, Julie A. Su's April 14, 2020](#) Open Letter to Californians Regarding Unemployment Insurance (UI) and Pandemic Unemployment Assistance Timeline

Independent Contractors and Self-Employed

Self-Employed Employees

The federal CARES Act specifically extends Pandemic Unemployment Assistance (PUA) to *self-employed* individuals for up to 39 weeks of lost income between January 27, 2020 and December 31, 2020.

AB 5 - Misclassification & Wage Replacement

- Employees misclassified as independent contracts, have the same rights to sick leave, unemployment, as well as other benefits noted
- Important for employers to engage an AB 5 analysis with a qualified attorney to ensure properly classified and providing appropriate benefits
- Misclassified employees can still file a claim for benefits such as with EDD

State of California, Employment Development Department
[AB 5 – Employment Status](#)

[Self-Employed/Independent Contractor](#)

Labor & Workforce Development Agency,
[Employment Status Portal](#)

State Disability Insurance

- Unable to work due to medical quarantine or illness related to COVID-19
 - SDI has confirmed this includes people who cannot work due to “having or being exposed” to COVID-19
- If you are disabled as a result of coronavirus, the EDD has waived the usual one-week waiting period during which you otherwise would not received SDI benefits
- Non-work-related injury
- Certified by a medical professional
- Full/part time employee
- Full/partial loss of wages
- Up to 52 weeks
- Approximately 60-70% of compensation or \$50-\$1,300 a week
- Tax exempt

State of California, Employment Development Department

[Disability Insurance Claim \(SDI\)](#)

Paid Family Leave

- Unable to work caring for ill or quarantined family member with COVID-19
- Certified by a medical professional
- Up to 6 weeks of benefits full/partial loss of wages (Effective July 1, 2020 – up to 8 weeks)
- Approximately 60-70% of compensation or \$50-\$1,300 a week

State of California, Employment Development Department

[Am I Eligibility for Paid Family Leave Benefits?](#)

[How to File a Paid Family Leave Claim in SDI Online](#)

Paid Sick Leave

- [The Healthy Workplaces, Healthy Families Act of 2014](#), Cal. Lab. Code §§ 245-249, 2810.5, requires all California employers to provide eligible employees at least three (3) days of paid sick leave
- Can be used if you or a family member are sick or for preventive care when civil authorities recommend quarantine
- Paid at your regular rate of pay (based on average of last 90 days)
- Several cities have additional sick leave policies: Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica (6 to 9 days of sick leave.)

State of California, Department of Industrial Relations

California Paid Sick Leave: FAQ

[New Questions Concerning the Paid Sick Leave Law, March 29, 2017](#)

Childcare & Potential Wage Replacement

- Wage replacement due to reduced hours and/or wages as a result of school/childcare closures caused by COVID19
- [California Unemployment Insurance](#) (UI) – Claims are being determined on a case-by-case basis
- Federal Families First Coronavirus Response Act (*see below slides*)
- Kin Care, California Labor Code Section 230.8
 - Employers with 35 or more employees must provide 40 hours of leave per year for specific school related emergencies including school closures by civil authorities
 - Paid or unpaid, depends on employer's policies though cannot require employee use paid sick leave

Age & Potential Wage Replacement

- The CDC has deemed persons 65 years or older more susceptible to COVID-19; are they eligible for wage replacements?
- California EDD has not yet confirmed applicants who are 65-years or older.
 - It appears such a claim will be reviewed on a case-by-case basis as noted within the UI FAQ
- Older workers who are in an age-defined vulnerable population who obtain medical certification of their age-related condition as an “illness” may be eligible for California State Disability (SDI) benefits, however, this is also not yet confirmed.
 - Discussion has been given that when doctors complete SDI forms, attention has been directed to the “R54” classification of disease code for “age-related physical debility” if there is not a more specific condition the doctor can delineate.

State of California, Department of Industrial Relations

[FAQ on Essential and Non-essential Workers](#)

See: *“Should I still report to work if I am an essential worker who is 65 years old or older...”*

Additional Wage Replacement Info.

Additional Wage Replacement Information:

- [Workers Compensation](#) (unable to work because exposed to COVID-19 during regular course of work)
- Private Benefits include: [Short Term Disability & Long Term Disability](#)

Additional Wage Replacement Resources:

California Labor & Workforce Development Agency

[Coronavirus 2019 \(COVID-19\) Resources for Employers and Workers](#)

[Chart -Benefits for Workers Impacted by COVID-19](#) **Extremely helpful chart research with built in links.*

State of California, Department of Industrial Relations

[Coronavirus Disease –FAQs on laws enforced by the California Labor Commissioner’s Office](#)

CONTINUATION OF MEDICAL BENEFITS (COBRA)

Loss of medical coverage triggers [Federal COBRA](#) (20 or more employees, 18 or 36 months depending on qualifying event) and [California-COBRA](#) (2 to 19 employees, up to 36 months) where employers are required to offer continuation of the employer-sponsored health plan at the same monthly rate the employer paid for the premium.

Laid off employees can enroll in [Covered California](#), where subsidies available under the Affordable Care Act may offer less expensive coverage than the employer's COBRA plan.

- The Special Enrollment Period to enroll in a plan through Covered California lasts 60 days from losing job-based coverage.
- Due to the emergency, special enrollment is open for all Californians until June 30, 2020.

Important to be mindful of enrollment deadlines to ensure continuation of health benefits.

California Department of Insurance, [Information About Coronavirus](#)
Department of Managed Health Care, [Coverage Options](#)

FFCRA - General Provisions

- Effective April 1, 2020 – December 31, 2020
- Applies to employers with less than 500 employees
- Only provides some income replacement and protected leave for specific Covid-19 related reasons
- DOL notice must be provided to all employees
- Employers will receive a payroll tax credit for qualified wages they pay, subject to the caps.
- DOL FAQs, Notices, and initial Regulations can be found here:

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

FFCRA – Expanded Family and Medical Leave

- FMLA already provides up to 12 weeks of family medical leave for certain reasons
- E-FMLA adds the following as a qualifying reason: **the need to care for a child whose school has been closed (or childcare provider is unavailable) due to the coronavirus**
- Employees must have worked at least 30 days
- First 10 days of E-FMLA may be unpaid (employee can elect to use accrued vacation, personal paid sick, or may use E-Paid Sick Leave (below))
- Remaining E-FMLA (day 11-Week 12) paid at not less than 2/3 regular rate of pay up to \$200/day and \$10,000 in the aggregate
- Employers are required to restore employees to their same or equivalent position, however there are exceptions
- Exception for employers with 50 or fewer employees

FFCRA – Expanded Paid Sick Leave

- E-PSL can be used for the following reasons:
 1. Employee is subject to a Federal, State, or local quarantine or isolation order.
 2. Employee has been advised by a healthcare provider to self-quarantine.
 3. Employee is experiencing symptoms and seeking a medical diagnosis.
 4. Employee is caring for an individual who is subject to a quarantine or isolation order, or has been advised by a healthcare provider to self-quarantine.
 - 5. Employee is caring for his/her child whose school has been closed or alternative childcare provider is unavailable. (E-FMLA may apply).**
 6. Employee is experiencing any other substantially similar condition, specified by HHS and DOL.
 - Reasons (1), (2) or (3): regular rate of pay up to \$511 per day, \$5,110 in total
 - Reasons (4), (5) or (6): two-thirds regular rate of pay up to \$200 per day, \$2,000 in total

FFCRA – Expanded Paid Sick Leave, cont.

- Full-time employees are entitled to two weeks (80 hours) and part-time employees are entitled to the typical number of hours they work in a typical two-week period.
- Employers cannot require employees to use other paid leave provided by the employer before using E-PSL. Existing paid leave is to be in addition.
- Law provides for what information employee must provide to employer to use E-PSL and/or E-FMLA

FFCRA – Common Questions

- Employees who refuse to come to work for fear of contracting the virus would not likely qualify for FFCRA
- Employees furloughed/laid off prior to April 1, are not eligible for FFCRA (unless they are brought back to work)
- Employees furloughed/laid off on or after April 1, are not entitled to FFCRA upon the effective date of furlough/layoff
- Employers can provide more sick leave/PTO/vacation; can/should create a new leave policy for Covid-19; and/or can suspend attendance policies.
- Employees who and are teleworking could be eligible for FFCRA if employee experiences a qualifying reason (1-6 above), and could take E-PSL and/or E-FMLA intermittently.
- Employees who are working at normal worksite cannot take intermittent E-PSL/E-FMLA except if the leave is due to child care/school closure (reason #5).

Working Remote: Overall Considerations

- **Whether or not you should establish a temporary remote work policy?**
 - Dependent on organization's circumstances
 - Employers may not want to establish if they have not yet had time to test and develop.
 - Leverage established protocols
 - Make decisions based on objective evidence, not fear
- **Who should work remotely?**
 - Identify employees critical to operations and determine whether they can work remotely.
 - Assess your technological capabilities, as well as security and privacy protocols.

Working Remote: Overall Considerations, cont.

- **How to prepare for a temporary remote work situation?**
 - Develop a remote work policy, or review and update any existing policy
 - Inventory of types of equipment employees need to perform their jobs, and ensure they have access to them (i.e. laptops, monitors, phones, printers, chargers, office supplies, etc.)
 - California requires reimbursement of business expenses (e.g., mandatory use of their personal cell phones for work-related calls, internet, etc.)
 - Clearly communicate which physical items can be taken from the workplace, and which need to stay in the workplace at all times.
 - Be mindful of any pre-existing accommodations and discuss with those employees who those accommodations will be addressed at home.

Working Remote: Overall Considerations, cont.

- **What to include in a remote work policy?**
 - Overall expectations for employees working remotely – including time recording for non-exempt employees (and meal/rest breaks)
 - Expectations that employees help the organization maintain normal business operations
 - Whether employees are encouraged to work at home or are absolutely barred from coming to the office, as well as any exceptions
 - Whether employees will need to be available at all times during working hours; whether remote meetings and appointments will be scheduled ahead of time
 - An anticipated end date, but based on public health guidelines

Working Remote: Overall Considerations, cont.

- **How to help ensure remote work time is productive and successful?**
 - Agree on a single communications platform (i.e. instant messaging, Skype, Zoom Conferencing, etc.)
 - Keep an eye on the bigger picture and track overall productivity
 - Monitor employee burnout
 - Consider using the following tactics to prevent employees from feeling disconnected:
 - Develop and distribute agendas for all team meetings
 - Schedule virtual team lunches and social time
 - Connect new remote workers with experienced remote workers

Workplace Safety – CDC Recommendations

- CDC recommends "social distancing": Creating ways to increase distance between people in settings like the workplace.
- Employers should:
 - Require symptomatic employees to stay home
 - Emphasize respiratory etiquette and hand hygiene
 - Limit number of participants at live meetings
 - Perform routine environmental cleaning
 - Limit/cancel business travel
 - Advise employees before traveling to take certain steps
 - Inform employees of any possible exposure (i.e. an employee's confirmed diagnosis or potential exposure)

- **Bay Area – required Social Distancing Protocol:**

<https://cchealth.org/coronavirus/pdf/2020-0331-Appendix-A-Social-Distancing-Protocol.pdf>

Workplace Rights During a Pandemic

Workplace discrimination, harassment and retaliation laws remain in effect despite the CDC classification of a Pandemic and the government Emergency Orders.

Overview: COVID-19 Workplace Rights

- Discrimination, Harassment & Retaliation based upon Real and Perceived Race, National Origin, Disability, Association with a Protected Classification
- Discrimination, Harassment, Retaliation and Interference With Medical/Disability Request for Accommodation including Request for Accommodation of Leave for Self and/or Family Member
- Retaliation for exercising right to protected leaves and benefits

FEHA & CFRA Considerations

Fair Employment and Housing Act (FEHA)

- Right to Reasonable Accommodation for Disability Including
- Telecommuting or Leave
- [Medically Certified](#) – Traditional; however, as medical documentation of a COVID-19 related disability may be difficult to obtain, the DFEH is recommending employers waive this requirement, and grant reasonable accommodations until such time as the employee can reasonably obtain documentation.
- 5 or more Employees

California Family Rights Act (CFRA)

- Medical Leave for own serious health condition or to care for family member's serious health condition
- Medically certified (same notation as FEHA above)
- Job-protected unpaid leave for up to maximum of 12 weeks (can be intermittent)
- Continuation of health benefits
- Employee must have worked 1 year, 1250 hours, at least 50 employees work within 75 mile radius
- Often paid, though can apply for benefits through other means

Department of Fair Employment and Housing (DFEH) Employment Information on COVID-19, [FAQ](#)

Anti-Retaliation Provisions

Anti-Retaliation Provisions

An employer cannot retaliate against an employee for seeking or taking leave as well as or exercising a right to leave compensation including exercising the following rights:

- Reasonable Accommodation of Teleworking or Leave under the Fair Employment and Housing Act (FEHA);
- Medical Leave for self or family under the California Family Rights Act (CFRA);
- Sick Leave, Paid Family Leave or KinCare under the California Labor Code;
- Government Benefits including Unemployment, State Disability or Workers Compensation
- An employee who fears going to work due to safety or has complained the workplace is unsafe based on COVID-19, and experiences retaliation, the employee may have a statutory or tort claim based on the specific circumstances
- Should an employee be terminated for refusing to work when under a shelter-in-place order and is not an essential worker, the employee may claim wrongful termination in violation of public policy

State of California, Department of Industrial Relations

[Laws that Prohibit Retaliation and Discrimination](#)

Race & National Origin Discrimination & Harassment

Throughout history, in times of high anxiety and uncertainty, existing stereotypes and prejudices are amplified, and racism and xenophobia—the dislike or prejudice of people from other countries—become more apparent, frequent, and violent. Though this is **NOT** an excuse, the following are a few recent blatant examples of this hostile discrimination.

On January 30, 2020, University Health Services at the University of California, Berkeley, listed [Common Reactions](#) to COVID-19, including, "*Xenophobia: fears about interacting with those who might be from Asia and guilt about these feelings.*" Shortly after numerous complaints were received, the post was removed and an apology was issued.

On March 18, 2020, Yamiche Alcindor with [PBS News Hour](#) engaged the following exchange with President Trump:

- Alcindor: *"At least one White House official used the term 'Kung Flu,' Referring to the fact that this virus started in China. Is this acceptable? Is it wrong? That having this virus be talked about as a "Chinese virus" ... puts Asian Americans at risk?"*
- President Trump: *"No, not at all. I think they probably would agree with it a hundred percent. It comes from China."*

Race & National Origin Discrimination & Harassment

Asian-Americans across the country are citing instances of implicit and explicit episodes of racism and xenophobia.

In San Francisco, the [Asian Pacific Policy and Planning Council](#) (AAPPI) created a tool to track hate crime reports affiliated with COVID-19 in response to a shocking uptick in crime and racial profiling. On April 3, 2020 a summary of 2 weeks of reporting was issued:

- In the first 2 weeks the STOP HATE reporting center was launched, over 1,100 complaints were received
- Women were twice as likely to be harassed as men
- AAPPI children/youth are involved in 6.3% of the incidents
- Despite shelter-in-place policies being implemented across the nation, the number of discriminatory incidents remains high
- With shelter-in-place, a significant number of incidents are now taking place in grocery stores, pharmacies and big box retail
- At least 4.6% of reported incidents of discrimination against people of Asian descent occurred on the job
- Asian employees complained of being the subject of derogatory comments, baseless accusations that they have COVID-19, workplace bullying and even termination because of their race or national origin

Race & National Origin Discrimination & Harassment

Race & National Origin Discrimination & Harassment:

- Race
- National Origin (geographic places of origin, ethnic groups and tribal affiliations)
- Association (includes marriage or co-habitation)
- Real & Perceived

It is unlawful under California's Fair Employment and Housing Act (Gov. Code §12940 et seq.) for an employer to discriminate against or treat an employee less favorably than another employee because of the employee's race or national origin. Discrimination can take many forms, including derogatory comments, slurs, stereotyping, and adverse employment actions such as poor performance reviews, demotion, or termination. Harassment based on race or national origin is similarly unlawful under the FEHA.

Employer's must take reasonable steps to prevent and promptly correct discriminatory and harassing conduct in the workplace.

"Sadly, there have also been reports of mistreatment and harassment of Asian Americans and other people of Asian descent. In the workplace, these actions can result in unlawful discrimination on the basis national origin or race."

[Message from EEOC Chair Janet Dhillon on National Origin and Race Discrimination During the COVID-19 Outbreak](#)

[National Origination of Asian American and Pacific Islander Working People Guidance on How to Protect AAPI Workers in light of COVID-19](#)

Disability Discrimination & Harassment

Disability Discrimination & Harassment (Real or Perceived)

- Discrimination, harassment or retaliation against a person with a [disability](#), including disciplining them, treating them differently than other workers or terminating them is prohibited under California law.
- An employer should not make assumptions about an employee's illness or health condition, [real or perceived](#), including but not limited to assuming an employee has coronavirus or treat an employee as if they are sick.
- Employer cannot ask an employee if they have a health condition that would be or could be affected by coronavirus, such as a compromised immune system, doing so would violate privacy and disclose a confidential disability
- As noted above, the duty to engage in the interactive process, includes providing options as to teleworking prior to forcing leave.
- Further, the DFEH is encouraging employers to grant reasonable accommodations without first requiring medical certification

ADA & FEHA – Navigation

Disability Discrimination During COVID-19

The ADA & FEHA protects applicants and employees from disability discrimination, however during a pandemic, there are some manners in which the traditional structure is altered

- During a pandemic, an employer may request information from their employees report feeling ill or call in sick, including COVID-19 CDC identified symptoms, however said information must be maintained as confidential medical information in compliance with the ADA
- During a pandemic, an employer may require an employee to wear personal protective gear; an employer should provide an employee with disability needs relating to a reasonable accommodation for said gear, absent an undue hardship
- *See below for further detail and examples*

US Equal Employment Opportunity Commission

[What You Should Know about the ADA, the Rehabilitation Act and the Coronavirus](#)

[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)

ADA/FEHA Considerations: Temperature Check

- Employers normally cannot check employees' temperatures under the ADA.
- Because CDC and state/local health authorities have acknowledged community spread of COVID-19, EEOC/DFEH have stated that employers may check employees' temperature. (Note: some with COVID-19 do not have a fever.)
- Employers should abide by the following testing guidelines:
 - Test in a non-discriminatory manner.
 - Use non-invasive/thermal imaging equipment.
 - Remember that any information recorded is a medical test subject to confidentiality requirements (e.g., it should not be documented in personnel files).
 - Employers may recommend that employees (particularly those with low-risk exposure) check their own temperatures before coming to work.

Workplace Safety – Isolating Employees

- **Discretion to bar employees from the workplace**
 - Diagnosis of confirmed COVID-19 or suspected exposure awaiting confirmation
 - Close contact with the above
 - Member of household
 - Intimate partner
 - Caregiver
 - Coworker in close proximity
 - Symptoms consistent with COVID-19: fever, flu-like symptoms such as coughing, sore throat and fatigue, shortness of breath
 - Recent travel (14 days) to what was a hotspot or concern at any time during an employee's visit
 - Good middle ground: international, cruise, any state or locality experiencing widespread community transmission

Workplace Safety – Isolating Employees

- **Conditions to return to work depend on:**
 - Asymptomatic for 14 days after return from travel/close contact exposure to confirmed COVID-19
 - Free of symptoms for at least 24 hours, without the use of any fever or other symptom reducers/maskers (in the case of no positive test)
 - While permissible, realistically unlikely to be able to require medical fitness for duty if COVID-19 not confirmed
 - Can require employees to certify they meet above criteria subject to discipline for falsification
 - Medical fitness for duty if COVID-19 confirmed
 - Detailed, specific guidance for healthcare employers

Employee Communications/Privacy

Confirmed Employee case of Covid-19:

- ADA confidentiality applies to communications.
- Employers should not disclose identity of employees diagnosed with, or suspected of having, the coronavirus (unless otherwise directed by government).
- Instead, employers should send a communication:
- Reporting that there has been a confirmed case of a co-worker
- Urging employees to be careful in observing symptoms
- Directing employees to avoid the office and seek medical attention if symptoms occur
- Employers should reach out separately to any smaller populations that may have been at a higher risk of close contact with the affected employee (i.e. shared cubicle block, officemate, recently in meetings together).

Employee Communications/Privacy

Un-confirmed/Possible exposure to coronavirus:

- Employers should carefully consider whether and how to disclose suspected exposure based on numerous factors including:
- Likelihood of infection based on other facts (e.g., employee has had exposure to someone who has been exposed, employee recently travelled to hot spot, absence of other indicators of likely exposure);
- Potential extent of exposure within the workplace;
- Timing of confirmation of test;
- Impact on business of disclosing (e.g., potentially unnecessary anxiety) vs. impact of not disclosing (distrust of employees who may subsequently blame employer for subsequent spread).

Travel Restrictions

Avoid requiring non-essential travel

- Particularly avoid countries identified by the CDC, and other high-impact areas of the United States.
- Other non-essential day-to-day travel should be avoided in order to promote social distancing.

Employers cannot prohibit employee personal travel plans, however employers can:

- Deny time off if the denial is based on the destination, business cost of a resulting quarantine, or other legitimate business-driven reasons (but not the national origin of the employee, i.e. employees of Asian descent).
- Advise employees that such travel may result in quarantine or self-monitoring (including work from home, if applicable), possibly for a prolonged period (at least 14 days).
- Remain aware of obligations under leave laws to allow employees leave to care for others who are ill, including persons in affected areas.

Questions?



THANK YOU!

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