COVID-19 & YOUR BUSINESS: FREQUENT QUESTIONS

With heightened concern about the possible spread of COVID-19, a number of issues arise that concern businesses of all kinds. In this article, we discuss some questions companies frequently ask.

Because physicians and epidemiologists are still investigating many clinical issues surrounding COVID-19, this is a rapidly evolving situation, and employers in the United States should regularly consult the latest guidance from the Centers for Disease Control and Prevention (CDC) and other reliable sources to ensure that they understand the current situation and to determine whether the measures they are taking to control the spread of COVID-19 in their facilities are up-to-date.

In the meantime, however, employers find themselves faced with the need to develop policies surrounding the illness. Responding to the current circumstances calls for a multi-disciplinary approach, with legal advice being only a part of the decision-making process. We encourage readers to incorporate medical and public health expertise in their processes while operating within legal constraints as well. For that reason, some of the information below incorporates guidance from the CDC and other reliable medical and public health sources to help employers balance legal considerations with their concern for their employee’s overall well-being and contributing to general public health.

General Information

— Where can I find reliable information about COVID-19 to guide my company’s decision-making process about employment policies related to the outbreak?

There is a substantial amount of inaccurate information circulating about COVID-19, some of which is sensational and some of which is affirmatively wrong. Two good sources of accurate information about COVID-19 are the CDC website and local county department of health websites. You can also sign up to receive email updates from the CDC about COVID-19.

Local health departments have the most up-to-date information about the status of the local community, which is the most relevant situational information for most employers and employees. In most areas, county health departments decide whether or not schools or workplaces should be closed. The Society for Human Resource Management website is also a helpful resource for employers, providing both general resources and answers to frequently asked questions as well as detailed member only guides on how to handle communicable diseases in the workplace.

We have provided a collection of sources we consider reliable on our Coronavirus Insights & Resources microsite.

Healthcare

— What regulations govern the steps my business should take to prevent the spread of COVID-19 in our workplace?

View All COVID-19 Insights & Resources
There is currently no specific OSHA standard that covers preventing COVID-19 exposure. Existing OSHA standards may apply, including those regarding personal protective equipment. While not mandatory, OSHA has provided control and prevention guidance and the CDC has issued interim guidance for businesses and employers. Employers should also consult their local health authorities for any mandatory health measures that have been implemented.

Current medical and public health guidance suggests hygiene and social distancing are key to preventing the spread of COVID-19 in the workplace. These sources suggest the same good hygiene measures that protect your employees against the flu and common colds will also help protect against COVID-19. Creating a culture of hygiene in the workplace is an important step employers can take to provide a sense of control to their employees, reduce the transmission not only of COVID-19 but also similar respiratory illnesses also in circulation, and decrease the likelihood of success of claims that might be asserted in the case of workplace transmission of COVID-19.

Many healthcare businesses already provide training about the importance of handwashing and other protocols that reduce the transmission of respiratory illnesses. These approaches can be adopted by businesses of all kinds. A remarkably simple and easy to execute training technique is to provide instructional signage – signs that remind people to wash their hands after they have used a communal space and reminders about the proper way to cough and sneeze. The CDC has a collection of printable resources that cover topics related to stopping the spread of germs. Another effective and inexpensive technique for disease prevention is to provide supplies that encourage desired behavior such as establishing hand sanitizing stations, placing boxes of tissues in communal spaces, and providing a box of tissues at every employee’s desk.

Another way to encourage hygiene is to place sanitation wipes in all communal areas and encourage people to wipe equipment down after using it. Areas where such an approach can be helpful include coffee machines, conference tables, copying and fax machines and other communal equipment that is used more frequently than regular housekeeping staff can make the rounds. While it is also a good idea to require janitorial staff to increase time spent on routine sanitation – paying particular attention to doorknobs and handles, light switches, and elevator buttons in community spaces – continual sanitation by all employees will multiply the attention that is devoted to sanitation.

While these sorts of efforts might seem small, they are actually an important defense against the spread of any sort of illness in the workplace.

It should also be noted that as the spread of COVID-19 has increased, employers are considering more extensive measures that involve allowing workers to work remotely, staggering work hours or providing other means of social distancing, or closing facilities entirely. While in most instances these sorts of measures are not mandatory unless dictated by the local public health authority or other governmental authority, there may be business or public health reasons for adopting such approaches rather than an approach based solely on hygiene.

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**What role can telemedicine play in keeping my employees healthy?**

**I am a healthcare provider. Can I begin offering telemedicine consultations to lower the risk of potential exposure to COVID-19 for my patients and staff?**

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**Labor & Employment**

**Can you provide any tips on how to communicate new policies adopted in response to COVID-19?**

Many factors go into planning the communications elements of a crisis response communications plan. Legal concerns are only one element that should be considered in planning a communications strategy. Employers may wish to create a small task force that includes employees from diverse functions, including the legal function, to plan an internal communications strategy. This task force should issue regular, prompt, and clear communications about company policies, such as remote work policies, travel policies, leave policies, and infectious disease policies, and the context and reasons behind those policies. It may be important to communicate whether a policy is driven by legal requirements, concern about transmission of illness, and/or business-related concerns.

Many businesses appoint a spokesperson for their regular communications and define the cadence of regular communications. Businesses should also consider communicating to their employees how they will provide urgent updates, whether that is through push alert systems, emails, phone trees or a combination of those sorts of systems. Businesses should also consider creating an information hub to archive communications and post urgent alerts, which can also include reliable external resources that employees may find helpful.
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<td>May I legally require employees who believe they are ill with COVID-19 or who may have come into contact with COVID-19 to remain away from the workplace for a period of time?</td>
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<td>Must I close my office, store, or plant if an employee is diagnosed with COVID-19 after coming to work sick?</td>
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<td>Must I provide sick leave to a worker who gets the virus?</td>
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<td>May an employee file for workers' compensation benefits if he or she has been exposed to COVID-19 at work?</td>
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<td>Must employers record and report to OSHA employee illnesses related to COVID-19?</td>
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<td>May employees refuse to come to work for fear of exposure to COVID-19 in the workplace?</td>
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<td>May an employer create a quarantine zone within its workplace and require that employees who have had a potential exposure to COVID-19 work in the quarantine zone?</td>
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<td>Can my business prohibit visitors from outside the company at our facility or require visitors to complete a brief health questionnaire?</td>
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<td>If my business must close due to a quarantine order or other government orders, must I pay the employees?</td>
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<td>If my business has to lay off employees, will they be able to get unemployment compensation payments? How will such payments affect my business' unemployment insurance tax rate?</td>
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<td>What is the difference between furlough and a lay-off?</td>
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<td>Must we provide WARN Act notices if we are forced to close our business due to a quarantine?</td>
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<td>How do you determine the hourly rate to be paid to hourly employees during paid sick leave?</td>
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<td>What is basis for applying the FMLA integrated employer analysis to the Emergency Paid Sick Leave Act even though the Paid Sick Leave Act is not an amendment to FMLA and, instead, seems to reference FLSA definitions?</td>
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<td>If a salesperson is paid a base plus commission, would the commission amounts be included when calculating sick pay?</td>
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<td>Does the amended definition of covered employer take into account the time period of “20 weeks or more in the current or preceding calendar year” that has been a part of the existing definition of covered employer under the FMLA?</td>
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<td>If our company offers PTO of a minimum of 3 weeks per employee, does that cover the 2 weeks of sick time required by the Emergency Paid Sick Leave Act?</td>
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<td>Do employees who have been furloughed qualify for paid sick time under the Emergency Paid Sick Leave Act?</td>
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<td>Are government employers required to comply if we are over 500 employees?</td>
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<td>If a full-time employee only works 70 hours per week, will their paid sick leave be only 70 hours or will they be entitled to 80 hours?</td>
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<td>How do you calculate the hourly rate to be paid to part-time hourly employees who work a varying schedule?</td>
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<td>Is the amount of leave in addition to what an employer may have already given employees during this time off (before the Act was passed)?</td>
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<td>My company has 54 employees, but we have only been at that number recently. Is the law stating a look back period or is it how many employees you have as of April 2?</td>
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How do you determine whether a business entity or a group of separate but related entities has 500 or more employees under the Act?

Travel

May my business require employees to travel?

As a practical matter, it is becoming increasingly difficult to travel to countries or regions of countries with widespread COVID-19 infections. Travelers should consult airline websites and should also check the website for the local health authority for up-to-the-minute guidance on travel restrictions. Some countries are reportedly considering closing their borders entirely, which might present the risk that an employee who travels to such a country remains unable to return home indefinitely.

For U.S. travelers, the CDC website provides guidance about the advisability of travel to countries that have been affected by COVID-19 which employers may consult in determining whether it is advisable to require or permit travel. Travelers should assess the risk profile of their destination country before they travel. Generally, the CDC has classified countries as levels one through three based on risk stratification criteria.

Areas subject to a Level 2 Travel Health Notice pose a sustained or ongoing risk of community transmission. Older adults or those who have chronic medical conditions should consider postponing travel to those destinations. As of March 11, 2020 all global travel became subject to a Level 2 Travel Health notice.

Areas subject to a Level 3 Travel Health Notice pose a widespread, sustained or ongoing risk of community transmission. Travelers should avoid all nonessential travel to those destinations. The CDC has issued a Level 3 Travel Notice for South Korea. The CDC recommends travelers returning from an area subject to a Level 3 Travel Health Notice stay home for 14 days from the time they left the area subject to the Level 3 Notice and practice social distancing.

The CDC has also issued a Level 3 Travel Notice for most of Europe, China, and Iran and has additionally suspended the entry of foreign nationals from those destinations into the United States. American citizens, lawful permanent residents, and member of their families may enter the United States but will be redirected to one of the following 13 airports for health screening:

- Boston Logan International Airport (BOS), Massachusetts
- Chicago O’Hare International Airport (ORD), Illinois;
- Dallas/Fort Worth International Airport (DFW), Texas;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Detroit Metropolitan Airport (DTW), Michigan;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- John F. Kennedy International Airport (JFK), New York;
- Los Angeles International Airport, (LAX), California;
- Miami International Airport (MIA)
- Newark Liberty International Airport (EWR), New Jersey;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington; and
- Washington-Dulles International Airport (IAD), Virginia.

Travelers should pay attention to communications from their airline, from local authorities, and from the U.S. government. U.S. citizens may enroll in the Smart Traveler Enrollment Program (STEP), which is a service of the Bureau of Consular Affairs of the U.S. Department of State that provides information from the local U.S. embassy about safety conditions in the country a traveler is visiting. The STEP program also helps the embassy contact U.S. citizens in an emergency.

Employees who are traveling should also know their foreign medical provider options and determine how to access those options. For companies whose workforces travel extensively, communication around this topic could be helpful.

May airlines screen passengers for signs of COVID-19?

Are travel restrictions that have been imposed on commercial flights also applicable to general aviation?

Can I obtain a refund for travel that I cancel or change as a result of concern for COVID-19?
May an employer impose a quarantine on an employee who has traveled internationally during the COVID-19 outbreak?

Business Continuity, Contracts, & Insurance

What business continuity concerns should I consider with regard to an outbreak of COVID-19 in my community?

In areas where COVID-19 becomes prevalent, it is likely either that employees will request the opportunity to work from home, that businesses themselves will make the decision to close temporarily, or that local authorities could require businesses to close for a period of time. As a result, business continuity plans are critical. Many businesses are in the process of reviewing their plans to assess whether it adequately addresses the legal, business, and practical issues in the event of a voluntary or mandatory closure of business facilities.

For businesses that can be operated with employees working remotely, it is important to consider the adequacy of not only technical capabilities (e.g., adequate computer, monitor, internet for home set-ups), but also continued information security (e.g., adequate security tokens if most workers suddenly operated remotely). Businesses should work closely with their IT professionals to consider both practical preparations and risk assessment for potential data breaches.

Businesses should also reach out to their vendors and suppliers to assess their preparedness and planning. If a critical vendor or supplier is not adequately prepared, steps should be taken to mitigate risk of loss. Before suspending or terminating a relationship based on force majeure or other concerns, please consult legal counsel.

The COVID-19 outbreak has made it difficult or impossible to perform some of my contractual obligations. Can I be excused from performance?

Will my business interruption insurance policy provide coverage if I suffer losses related to an outbreak of COVID-19?

Corporate Finance

COVID-19 is impacting financial institutions and other lenders and their customers. In particular, it is affecting the origination of new financings and compliance with existing loan terms and contractual obligations.

New Financing Arrangements

What factors should borrowers consider in light of COVID-19 when negotiating new financing commitments and loan documents?

Borrowers seeking new financing should pay careful attention to the following terms and conditions in the financing commitment and loan documents:

- Representations and warranties should be carefully reviewed to determine the effect COVID-19 may have on the borrower and its business and, in certain cases, representations and warranties should be modified to include materiality and knowledge qualifiers. In particular, borrowers should scrutinize any representations and warranties that are forward-looking.
- Financial covenants should be reviewed to determine whether the thresholds and testing periods for such covenants allow enough cushion for the borrower to forecast compliance with the covenants. Testing periods may need to be extended so that compliance is not monitored until a future date when the borrower may have more certainty as to whether their business will be able to absorb any adverse financial impact COVID-19 may have on the borrower’s operations and industry as a whole. Pre-approved cure rights (e.g., equity injections or other shock adjustments) should be negotiated into such covenants.
- Material adverse effect or change clauses should be carefully defined and limited so that the borrower understands whether the impact of COVID-19 can trigger such material adverse effect or change and thereby allow lenders the ability to terminate advances on a line of credit (and thereby constrain working capital) or call a default under the loan documents.
- Cross-defaults with other financing arrangements, contracts, or other agreements that may also be potentially affected or interrupted should be limited or eliminated.
Defaults related to death or disability of individual borrowers and guarantors should be modified to allow the borrower to substitute loan parties that satisfy the lender's underwriting standards.

Notice and opportunity to cure periods should be examined to determine whether additional time may be necessary to cure a default caused by the COVID-19's negative impact on the business's financials or operations.

Construction timelines and force majeure clauses should be reviewed and modified to extend or excuse delayed performance to accommodate for any future impact COVID-19 might have on labor, supplies, or materials in connection with a construction project.

What is a market flex provision, and what impact might a market flex provision have on a new financing commitment in light of COVID-19?

What other factors might exist that could delay closing on a new financing commitment?

Existing Financing Arrangements

Will financial institutions be willing to work with borrowers on existing loan facilities impacted by COVID-19?

With encouragement and support from the government and financial regulators, lenders will likely take a pragmatic approach and work with borrowers to meet their needs and mitigate the effect of COVID-19 on their business, while maintaining safe and sound lending practices. Early and thoughtful dialogue and open lines of communication between borrowers and lenders is critical, and will allow all affected parties to prepare for the next steps in an ever-changing environment.

What provisions should be reviewed and monitored in existing credit agreements in light of COVID-19?

What can be done if a borrower breaches or violates, or if borrower forecasts a future breach or violation, of a representation, warranty, or covenant in an existing credit agreement?

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