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MEMORANDUM

TO: Business Clients
RE: Guidance to Employers Responding to Employee with COVID-19
DATE: Wednesday, August 5, 2020

This memorandum is designed to provide general advice to employers seeking to limit exposure to COVID-19 and/or to respond to a documented case of COVID-19 at your place of business. The response fashioned by employers to a documented case of COVID-19 may be governed by the Families First Coronavirus Response Act (“FFCRA”) which **went into effect on April 1, 2020.**

Each situation is unique; therefore, we ask that you contact our office to discuss your individual concerns.

I. Understanding COVID-19 and its Symptoms

The “novel coronavirus” is scientifically known as severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2 for short. Becoming infected with SARS-CoV-2 can trigger a potentially deadly respiratory disease called **Covid-19**, an illness which presents with three main acute symptoms: fever, a deep, dry cough and a shortness of breath which can become quickly life-threatening.

While roughly 80% of cases report mild symptoms, some progress into severe pneumonia and multi-organ failure and can led to death. Current data indicates the risk of death for those contracting COVID-19 notably increases for individuals above the age of 60 or for individuals with autoimmune conditions.

The following symptoms may appear **2-14 days after exposure.**

- Fever
- Cough
- Shortness of breath

II. How Does the Virus Spread?

The virus is thought to spread mainly from person-to-person, specifically:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes.
 - These droplets can land in the mouths or noses of people who are nearby or possibly

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be inhaled into the lungs.

- People are thought to be most contagious when they are most symptomatic (the sickest).
- Some spread might be possible before people show symptoms; there have been reports of this occurring with this new coronavirus, but this is not thought to be the main way the virus spreads.

III. Slowing the Spread

Employers should plan to respond in a flexible way to varying levels of disease transmission in the community and be prepared to refine their business response plans as needed.

Consider minimizing face-to-face contact between employees or assign work tasks that allow employees to maintain a distance of six feet from other workers, customers and visitors, or to telework if possible.

Employers are encouraged to take time to study the work environment to identify areas where workers might be exposed to COVID-19 at the workplace. Once identified, take appropriate actions to protect workers.

If you have not already, consider putting in place policies and procedures related to illness, cleaning and disinfecting, and work meetings and travel.

Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection.

Avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.

IV. Dealing with COVID-19 at the workplace

Employers should actively encourage sick employees to stay at home.

- ✓ Be sure that your business is complying with the *Families First Coronavirus Response Act* (FFCRA) which requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19.

Employees who appear to have symptoms (i.e., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day should immediately be separated from other employees, customers, and visitors and sent home.

a. When an employee has COVID-19

If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

Employees who test positive for COVID-19 (using a viral test, not an antibody test) should be excluded from work and remain in home isolation if they do not need to be hospitalized.

Employers should provide education to employees on what to do if they are sick.

Employers may need to work with local health department officials to determine which employees may have had close contact with the employee with COVID-19 and who may need to take additional precautions, including exclusion from work and remaining at home.

Most workplaces should follow the Public Health Recommendations for Community-Related Exposure and instruct potentially exposed employees to stay home for 14 days, telework if possible, and self-monitor for symptoms.

b. Disinfecting the workplace

According to the Centers for Disease Control (“CDC”), in most cases, you do not need to shut down your facility. But do close off any areas used for prolonged periods of time by the sick person:

- Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.

Follow the CDC cleaning and disinfection recommendations:

- Clean dirty surfaces with soap and water before disinfecting them.
- To disinfect surfaces, use products that meet EPA criteria for use against SARS-Cov2 external icon, the virus that causes COVID-19, and are appropriate for the surface.
- Be sure to follow the instructions on the product labels to ensure safe and effective use of the product.
- You may need to wear additional personal protective equipment (PPE) depending on the setting and disinfectant product you are using.

c. When can the employee return to work?

According to the CDC, accumulating evidence supports ending isolation and precautions

for persons with COVID-19 using a symptom-based strategy. Specifically, researchers have reported that people with mild to moderate COVID-19 remain infectious no longer than 10 days after their symptoms began, and those with more severe illness or those who are severely immunocompromised remain infectious no longer than 20 days after their symptoms began.

CDC guidance states **employers should not require a sick employee to provide a negative COVID-19 test result or healthcare provider's note to return to work.** Employees with COVID-19 who have stayed home can stop home isolation and return to work when they have met one of the sets of criteria for discontinuation of isolation.

CDC has updated the recommendations for discontinuing home isolation as follows:

- ✓ **Persons with COVID-19 who have symptoms** and were directed to care for themselves at home may discontinue isolation under the following conditions:
 - At least 10 days have passed since symptom onset (persons with severe illness may need to isolate up to 20 days after symptom onset) **and**
 - At least 24 hours have passed since resolution of fever without the use of fever-reducing medications **and**
 - Other symptoms have improved.
- ✓ **Persons infected with SARS-CoV-2 who never develop COVID-19 symptoms** may discontinue isolation and other precautions 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

V. Other Considerations

a. TESTING EMPLOYEES PRIOR TO RETURNING TO WORK – GUIDANCE FROM U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”)

The EEOC has stopped short of saying that employers are required to test employees for COVID-19. Instead, EEOC guidance provides that **employers may require testing where “testing is job-related and consistent with business necessity.”** The EEOC states further that **testing is justified where there is a threat to the safety of employees,** and that COVID-19 does constitute such a threat. Testing includes screening employees for COVID-19 symptoms such as fever, chills, cough, shortness of breath, or sore throat, taking the temperature of employees, or conducting swabbing tests for detection of the virus.

If an employer chooses to require testing prior to allowing employees to return to work, the results of such tests MUST be kept confidential, like any other medical information regarding an employee.

EEOC guidance can viewed here: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

b. CENTERS FOR DISEASE CONTROL GUIDANCE

Employers should access and review CDC guidance for businesses here: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

c. FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

The FFCRA provides certain paid leave benefits to employees of covered employers. Employers are required to post Employee Rights Posters in a conspicuous place for employee reference by **April 1, 2020!**

The federal Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020 and requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Additional information about FFCRA can be found at <https://www.dol.gov/coronavirus>

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SAMPLE COVID-19 INFECTION NOTICE TO EMPLOYEES

Dear [employee name]:

Please be advised that [Company name] was notified that an employee has [tested positive/insert circumstances] for COVID-19. As an immediate response to protect the health and safety of our workforce, we are [notifying all employees/insert preventative action taken, such as temporary closure or other action].

We are also taking the following steps (as applicable):

- [Instituting remote workforce]
- [Sanitizing and closing workplace]
- [Notifying building management]
- [Other]

We ask that you abide by the following federal Centers for Disease Control and Prevention (CDC) guidelines to protect your health and those around you:

- Wash your hands often with soap and water for at least 20 seconds, especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
- If soap and water are not readily available, use a hand sanitizer that contains at least 60 percent alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Follow all recommendations provided by the CDC here: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.

If you, or someone in your household, exhibits COVID-19 related symptoms, please notify [HR or other/contact info] so that we may track any potential outbreaks within our company. All such personal information will be maintained confidentially.

Your health and safety are our priority. We are immediately assessing this situation and will contact you by [insert reasonable date/legally compliant date based on company action] via [email/phone] with any/all relevant workplace notices detailing your rights and protections as our employee.

You may contact [HR or other/contact info] with your questions.

These are trying times for us all, and we are here for you.

Respectfully,

[name]

[contact information]

REQUIRED FFCRA NOTICE TO BE POSTED BY APR



The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 2/3 for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

<ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);	<ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
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▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:

1-866-487-9243

TTY: 1-877-889-5627

dol.gov/agencies/whd

