

# Coronavirus and the Workplace: Evolving Issues in a National Emergency

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## What We Will Be Covering

- Telecommuting and remote work
- Paid leave under the Families First Coronavirus Response Act
- Travel and other work restrictions
- Employee medical screenings
- Privacy and confidentiality
- Closures, Mass Layoffs and WARN Act
- OSHA
- Labor union issues

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## Telecommuting and Remote Work

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### Considerations for Your Telecommuting and Remote Work Policy

- Eligibility and who should work remotely.
- Employee responsibilities and expectations (e.g., work hours, timekeeping, accessibility, secure remote access procedures, and work expenses).
- Employer responsibilities (e.g., technical support, equipment, and expense reimbursement).
- Defining job duties, work area, and break times.
- All employer policies, including electronic communications policies, remain in effect (heightened need to maintain cybersecurity protocols).
- Consider a formal telecommuting agreement for longer-term assignments.

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### Paid Family and Medical Leave

- It amends the definition of “**employee**” to anyone who has been employed by an employer for at least 30 days.
- It changes the definition of “**employer**” from “50 or more employees” to “fewer than 500 employees.”
- It provides leave to care for a minor child of an employee if the school or place of care has been closed, or the care provider of such child is unavailable due to coronavirus precautions.
- Defines an “inability to work” during a childcare-related leave to include an inability to telework.

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### Paid Family and Medical Leave

- Leave after the first 10 days of any coronavirus-related family leave is to be paid in an amount that is not less than two-thirds of an employee's regular rate of pay for the number of hours the employee would have worked.
- Possible exemptions for health-care workers and small employers (less than 50 employees).
- It caps the amount of paid FMLA at \$200 per day, or \$10,000 in the aggregate.
- It requires job restoration following any such leave for any employee of an employer with 25 or more employees.
- Discrimination and retaliation is **PROHIBITED**.



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### Paid Sick Leave

**It will provide 80 hours of paid sick leave for full-time employees (or prorata for part-time employees) who are unable to work or telework for the following reasons:**

- The employee is quarantined or self-isolating because of coronavirus concerns.
- The employee is experiencing symptoms of coronavirus and seeking a medical diagnosis.
- The employee is caring for an individual who is quarantined or self-isolating because of coronavirus concerns.
- The employee is caring for a child whose school or place of care has been closed, or the care provider is unavailable due to coronavirus precautions.



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### Paid Sick Leave

**The amount of paid sick leave is capped as follows:**

- **\$511 per day** and \$5,110 the aggregate for an employee's own illness or quarantine.
- **\$200 per day** and \$2,000 in the aggregate for any other qualifying reason.



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### Paid Sick Leave

- If an employer already offers paid sick leave to its employees, coronavirus paid sick leave must be in addition to the already-existing leave.
- An employer cannot force employees to use other leave first.
- An employer can amend its sick leave policy to avoid offering additional leave.
- Tax credit to defray employer costs, but limited for the self-employed.
- Possible exemptions for health-care workers and small employers (less than 50 employees).
- Discrimination and retaliation **PROHIBITED**.



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### Status in the Senate?

**“A number of my members think there were considerable shortcomings in the House bill. My counsel to them is to gag and vote for it anyway.”**



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### Recommended Best Practices / Sick Employees

- Sick employees must stay home.
- Employees who have symptoms of acute respiratory illness must not come to work until they are fever- and symptom-free for 24 hours.
- Do not require a healthcare provider's note for employees who are out sick, as they are stretched thin.
- Be flexible to permit employees to stay home to care for a sick family member.
- If someone comes to work sick, immediately separate them and send them home.
- If someone in an employee's household tests positive, the employee is also to be quarantined for 14 days.



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### Recommended Best Practices / Workplace Gathering and Hygiene

- Hang posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene.
- Perform routine environmental cleaning.
- Consider holding all meetings by teleconference or videoconference unless essential to meet in person.
- Consider prohibiting non-employee visitors.
- If possible, consider closing offices or facilities, or rotating employees to enable better social distancing in the workplace.
- No gatherings of more than 10 people.



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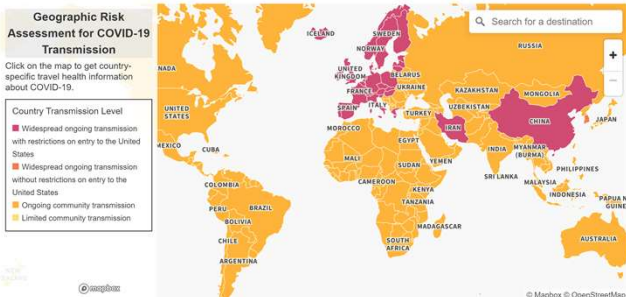
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### Recommended Best Practices / Travel



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### Recommended Best Practices / Travel

- All overseas travel should be temporarily halted.
- Consider halting all domestic travel, or at a minimum, domestic air travel.
- Any travel should be for mission-critical trips only, and only upon pre-approval of an employee’s manager and human resources.
- Require a mandatory 14-day quarantine for anyone returning from any travel, whether work-related or personal.



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Workplace Medical Screenings and Exams

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### Medical Exams Under the ADA

The ADA prohibits an employer from making disability-related inquiries and requiring medical examinations of employees, except under limited circumstances.

During employment, the ADA prohibits employee disability-related inquiries or medical examinations unless:

- they are job-related and consistent with business necessity; or
- an employee will pose a direct threat due to a medical condition.



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**During a Pandemic, an Employer MAY:**

- Send employees home who exhibit coronavirus symptoms.
- Ask employees if they are experiencing coronavirus-like symptoms.
- Take its employees' temperatures to determine whether they have a fever.
- Ask employee who have traveled if they may have been exposed.

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**During a Pandemic, an Employer MAY:**

- Encourage employees to telecommute.
- Require employees to adopt good hygiene habits such as regular hand washing.
- Require employees to wear personal protective equipment such as face masks, gloves, or gowns.
- Ask employees why they have been absent from work, even if the employer suspects a medical reason.

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### During a Pandemic, an Employer MAY NOT:

- Compel all employees to obtain vaccinations, regardless of their medical conditions or their religious beliefs.
- Ask employees *who do not have coronavirus symptoms* to disclose whether they have an underlying medical condition that the CDC says could make them especially vulnerable to coronavirus complications.

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### Common Confidentiality Misconceptions

- While employers certainly have a duty to protect the medical information and health conditions of their employees, **HIPAA DOES NOT APPLY**.
- HIPAA only covers certain healthcare providers (hospitals, clinics, medical professionals), healthcare clearing houses, health plans, and third-party business associates.
- If you are aware of a coronavirus exposure, you can/should alert employees without identifying the infected or exposed employee.
- Consider obtaining a waiver from the employee to allow limited disclosure to co-workers.

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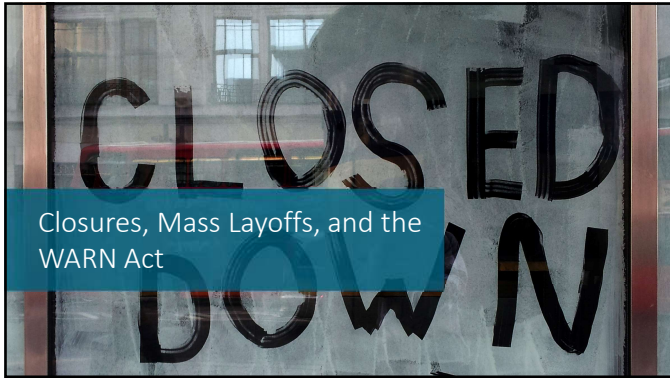
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**The WARN Act**

- Covers employers with 100 or more employees.
- Applies to plant closures (a shutdown of a facility or operating unit within a single site of employment with a layoff of 50 or more employees), and mass layoffs (500 or more employees or 50-499 employee if one-third of the workforce).
- Requires 60 days' advance written notice, or 60 days' pay in lieu of notice.
- **KEY EXCEPTION:** unforeseeable business circumstances before a shutdown.
- **KEY EXCEPTION:** layoffs of an expected duration of less than 6 months.
- Some states and municipalities have their own specialized WARN requirements.

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## OSHA – Helpful Guidance

- General Duty Clause (Section 5(a)(1)) - requires that employers provide a workplace “free of recognized hazards that are causing or are likely to cause death or serious physical harm.”
- Personal Protective Equipment standards may require using gloves, eye/face protection, a respiratory protection to protect workers. Fit testing issues may apply for certain respirators.
- Recordkeeping and Section 11(c) retaliation protection.



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Special Considerations for Unionized Employers

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## Do You Have a Union?

### If so, some things to consider:

- In addition to WARN, CBA provisions covering layoff, recall, bumping, seniority, and super-seniority issues should be considered.
- Sick leave, PTO, vacation, and severance provisions may also apply. Unilaterally changing terms and conditions of work without negotiating may be an unfair labor practice. Avoid grievances and NLRB charges whenever possible.
- Without CBA restrictions, management rights rule the day.
- Health & Welfare / Pension Plan issues.



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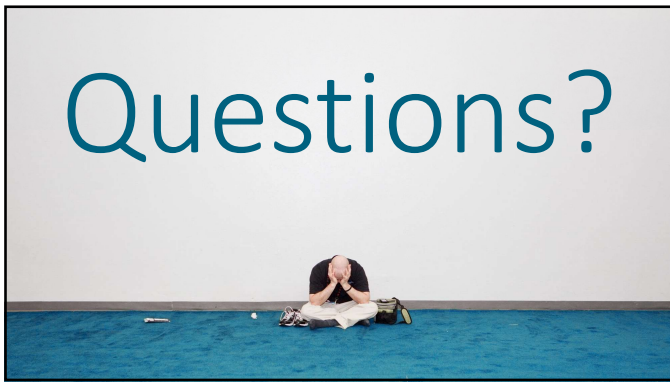
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