



# **IMPORTANT UPDATES On Coronavirus and the Workplace**

March 27, 2020

Presented by AHT Insurance



# INTRODUCTION

---



# AGENDA

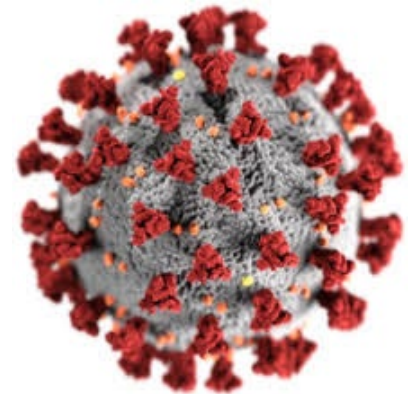
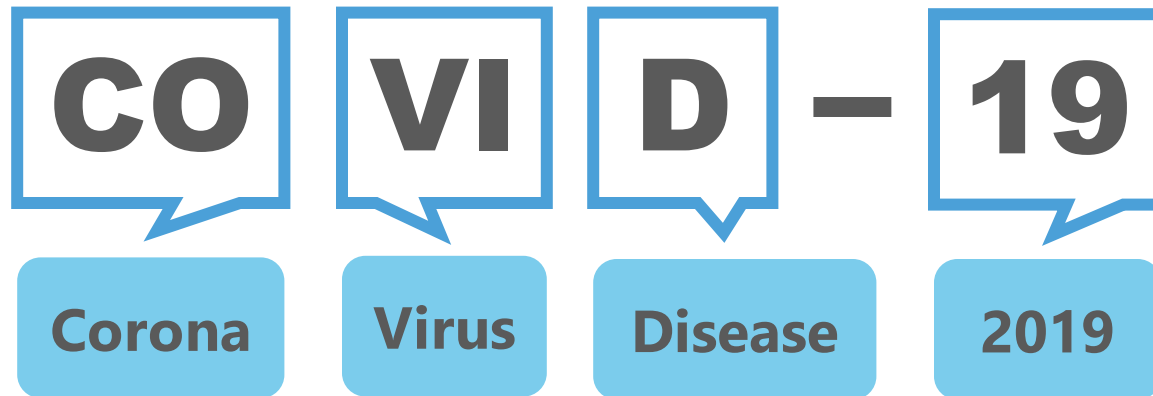
- Coronavirus Basics
- Best Practices for Addressing Risks
- Families First Coronavirus Response Act
- Agency Guidance on Existing Workplace Laws
- Questions

# CORONAVIRUS BASICS

---

# COVID-19

- Illness caused by a novel coronavirus (a new coronavirus that has not been previously identified)
- Symptoms: fever, cough, shortness of breath



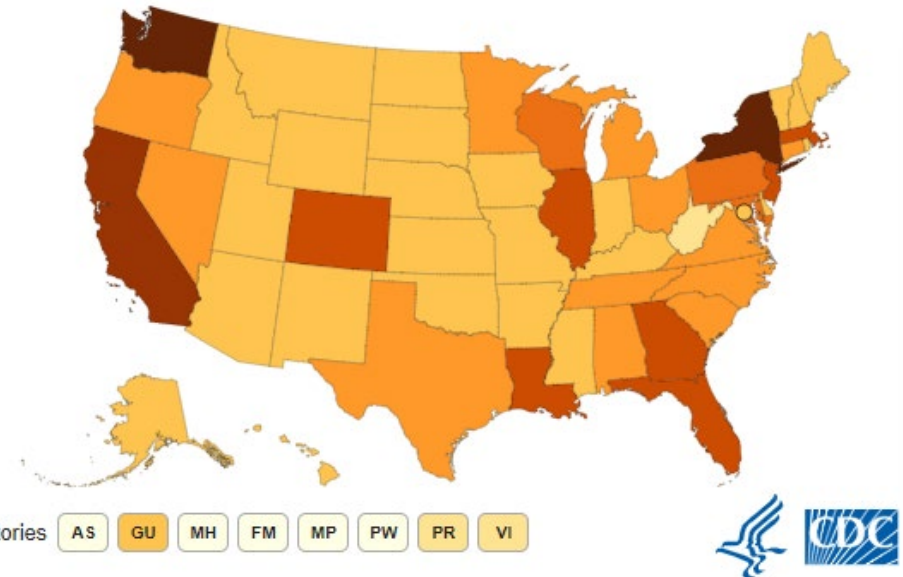
# SPREAD OF COVID-19\*

## United States

- Over 68,440 confirmed cases
- 994 deaths
- Cases in all 50 states and D.C.
- Community spread in multiple states

## “Community spread”

- People have been infected with the virus in a specific geographic area



# HOW IS COVID-19 DIAGNOSED?

## **Do you have symptoms?**

- Contact with sick person?
- Recent travel to area with known cases?

## **Contact healthcare provider if you have symptoms**

- Doctor determines symptoms of COVID-19 and whether testing is required
- Higher risk individuals should contact their healthcare providers early

## **Current Treatment**

- No vaccine or specific treatment yet
- Supportive care





# BEST PRACTICES FOR ADDRESSING RISKS

---





# EFFECTS ON THE WORKPLACE

Absenteeism



Change in  
patterns of  
commerce



Supply chain  
disruption



## **Recommended Strategies you can use NOW**

- Actively encourage sick employees to stay home
- Separate sick employees
- Emphasize good etiquette
  - Stay home if sick
  - Hand hygiene
  - Cough/sneeze into tissue or elbow
- Perform routine environmental cleaning
- Advise employees before traveling



## Planning Considerations

### Objectives:

- Reduce transmission
- Protect people at higher risk
- Maintain business operations
- Minimize adverse effects in supply chain

### Key Considerations:

- Disease severity
- Disease impact
- Prepare for possible increased absenteeism
- Local control for satellite offices and branches
- Coordination with state and local health officials

# **FAMILIES FIRST CORONAVIRUS RESPONSE ACT**



# CORONAVIRUS RELIEF BILL

- Signed into law on March 18
- Contains several provisions to provide relief for effects of coronavirus situation
- Includes:
  - Funding for federal programs and unemployment compensation
  - Emergency paid sick leave
  - Expanded FMLA rights
  - Coverage for COVID-19 testing
  - Tax credits for employers that provide required leave (including self-employed individuals)

# EMERGENCY PAID SICK LEAVE

- Two weeks (up to 80 hours) of *paid sick leave* at the employee's regular rate of pay (max \$511/day, \$5,110 aggregate) where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of *paid sick leave* at two-thirds the employee's regular rate of pay (max \$200/day, \$2,000 aggregate) because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor

# DEFINITIONS

**Covered employer:** government agency of any size or person engaged in/affecting commerce who employs fewer than 500 employees

**Employee:** government employee or as defined by FLSA

- Regardless of length of employment

## **Exemptions:**

- Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
- Employers can choose to exempt medical provider and emergency responder employees



# OTHER PAID SICK LEAVE RULES

- **Employer may not:**

- Require EE to search for/find a replacement EE for leave period
- Require EE to use other paid leave first
- Retaliate against EE for using leave

- **Employer may:**

- Require EE to follow reasonable notice procedures after first day of leave

# OTHER PAID SICK LEAVE RULES

- Employer must post and keep posted a notice of the paid sick leave requirements
  - In conspicuous places on the premises of the employer where notices to employees are customarily posted
  - DOL will issue a model notice
- Special rules apply to collectively bargained employees
- Unused paid sick leave does not have to be paid out at termination

# EXPANDED FMLA

- Requires partially paid FMLA leave for eligible employees who cannot work due to closure of school or childcare
- Expands definitions of eligible employee and covered employer
- Effective April 1 through Dec. 31, 2020



# EXPANDED FMLA - DEFINITIONS

- **Eligible employee:** an employee who has been employed for 30+ calendar days
- **Covered employer:** person engaged in/affecting commerce who employs fewer than 500 employees
- **Exemptions:**
  - Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
  - Employers can choose to exempt medical provider and emergency responder employees
  - Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

# EXPANDED FMLA - DEFINITIONS

- **Qualifying need related to a public health emergency:** employee is unable to work (or telework) due to a need to care for his or her minor child (up to age 18) if the school or childcare provider is unavailable due to a public health emergency
- **Public health emergency:** an emergency with respect to COVID-19 declared by a Federal, State, or local authority

# EXPANDED FMLA – PAID LEAVE

- The first 10 days of expanded FMLA leave may be unpaid
  - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave
- Paid leave must be provided after 10 days
  - At least 2/3 of the employee's regular rate based on normally scheduled hours
  - Pay capped at \$200/day and \$10,000 overall

# EXPANDED FMLA – OTHER PROVISIONS

- Employee must provide notice of leave “as is practicable”
- FMLA restoration rights do not apply to employers with fewer than 25 employees if conditions are met
- Special rules for collectively bargained employees



# COVID-19 TESTING

- Group health plans and health insurance issuers must cover COVID-19 testing
- Plans and issuers may not impose:
  - Cost sharing (such as deductibles, copayments or coinsurance)
  - Prior authorization or other medical management requirements
- Applies to all group and individual plans or policies
- Testing also covered under government health programs



# **AGENCY GUIDANCE ON EXISTING WORKPLACE LAWS**

---

## REMOTE WORK – WAGES (DOL)

- FLSA generally applies to hours actually worked
  - Exempt salaried employees must receive their salary each week
- Employers can require/encourage employees to telework
  - Do not single out employees for working at/away from office
  - Salary/compensation remains the same
  - Beware of overtime work caused by remote access

When not all employees can work from home, the DOL encourages social distancing (e.g., staggered work shifts)

# ADA: EEOC PANDEMIC PUBLICATION AND FAQs

- The ADA normally prohibits asking employees or applicants for medical information
- During a pandemic, different rules apply
  - Employers may ask employees and applicants for info on symptoms
  - Employers can require sick employees to stay home or provide fitness for duty information
  - Employers may delay start dates or withdraw offers if it needs an applicant to start immediately
- Must keep employee information private
- [https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_corona\\_virus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_corona_virus.cfm)



# DISCLOSURE OF PHI

- Permissible disclosures:
  - For treatment
  - Public health activities
  - To people involved in an individual's care and for notification
  - To prevent a serious and imminent threat
- Disclosures to the media or others not involved in the care of the patient or notification are generally prohibited
- Most disclosures must be "minimum necessary information"



# FEDERAL WARN ACT

- Covered employers must provide 60 days' advance notice of imminent covered plant closings and mass layoffs
- Applies to employers with 100 or more employees
- Some states have their own requirements
  - May apply to more employers
  - NJ will require severance pay (July 2020)

# HEALTH PLAN COVERAGE

- ERISA plans must be administered in accordance with their terms
- Maintenance of benefits during leave will depend on the situation
  - Health, life and disability insurance carriers are liberalizing eligibility for furloughed employees
  - Federal Government may offer COBRA subsidies in next phase of COVID-19 legislation
- COBRA or state continuation coverage may be available for employees who lose coverage due to job loss or reduction in hours of employment



# QUESTIONS?



# THANK YOU

Bill Freeman, CEBS  
Compliance Specialist  
[bfreeman@ehtins.com](mailto:bfreeman@ehtins.com)

