

The background of the entire page is a dark blue, semi-transparent image of a virus particle, likely a coronavirus, showing its characteristic spherical shape and surface spikes. The virus is centered and occupies most of the frame.

 Employers Council®

**AN EMPLOYER'S GUIDE
TO MANAGING PANDEMICS**

Overview

Crisis situations such as pandemics present unique challenges for employers and can make it difficult to decide on healthy short-term decisions while balancing long-term consequences.

In light of the business environment that COVID-19 is constantly shaping and re-shaping, Employers Council has consolidated its published resources to provide a single guide to help employers manage everything that comes with a crisis.

Here is a guide to navigating a pandemic, from the laws you need to keep in mind to the factors that can help you make the best decisions for your business – both now, and with the long-term in mind.

For the latest news and updates on COVID-19, [visit our Coronavirus resource page.](#)

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SECTION ONE

A Guide to All Things COVID-19

This section is a guide for employers to navigate the constantly shifting business environment resulting from the rise and spread of the Coronavirus.

This guide presents some of the early and fundamental considerations for employers. For the latest news on COVID-19 and access to our growing library of rapid response resources, [visit our resources page](#).

A Guide To All Things COVID-19

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ADDITIONAL RESOURCES

[COVID Leave Guidance](#)

Understand which employees impacted by a pandemic are eligible for paid sick time, paid FMLA leave, state or private disability insurance, unemployment insurance, or workers' compensation.

[A Guide to Emergency Preparedness](#)

How to develop an emergency preparedness plan, factoring in business realities and unique industry considerations.

[Emergency Preparedness Plan Survey](#)

Find out how many companies across different industries and states are prepared for a pandemic through Employers Council's unique survey data.

Employers Council Hot Topics Special Edition: Coronavirus (COVID-19) PAGE 1

*Published on 03/09/2020 by the Employers Council Staff

COVID-19, or coronavirus, is on everyone's mind. Employees are scared, and misinformation is everywhere. Employers can help by creating calm, preparing well for ill employees and employees who need to care for ill family members, and reacting well if the workplace is exposed. This special edition discusses several elements of what employers can do, including HR's role, technology and work at home options, and legal compliance. Employers Council has a [comprehensive Emergency Preparedness FYI](#) available for you to use.

What can Human Resources Do?

Human Resources and management will have a crucial role with regards to preventing panic, managing absences, and keeping employees healthy over the next weeks. COVID-19 is likely to remain in the news, and employees are scared. Employers can help maintain calm while also giving employees tools to stay healthy and take care of themselves or family should they fall ill.

Communication is the first order of business. Be sure you are communicating all the facts but not spreading misinformation. When speaking or writing about COVID-19, be sure to use official sources like the Centers for Disease Control and Prevention and the World Health Organization. Correct and complete information will help employees stay calm.

Another thing employers can do is make it easier for employees to stay home through increased work at home opportunities and additional paid leave. Some employers are looking at increasing paid leave banks like sick, vacation, or paid time off to help employees stay home. When doing this, be aware of state laws and payout requirements for any paid leave programs.

If you have employees who regularly travel for work, can they do some or all of their work remotely? Do they need to travel, or can they meet via video/online meeting platforms? Also, if you have employees traveling back from affected countries, do you have support in place if they are stopped or quarantined on reentering?

It's been said everywhere, but good hygiene is the best way to keep your workplace healthy. Make sure employees know the proper hand washing techniques, avoid touching their faces, learn to cough and sneeze in their arm or in a tissue they can throw away, avoid close quarters with other employees if possible, and stop shaking hands. Ensure employees are using antiseptic wipes to clean their cell phones, desk phones, tablets, laptops, keyboards, mice, and any other objects that are in constant contact with hands or faces.

Employers Council Hot Topics Special Edition: Coronavirus (COVID-19) CONTINUED (PAGE 2)

In the event you have an employee who tests positive, HR or company management should work closely with local health officials as to the next course of action. They will help you with closures and cleaning. Also, check with your cleaning services, building/facilities crew to be sure their cleaning supplies are effective against COVID-19, as well as other viruses and bacteria. Find out what the building management's closure and cleaning plans are.

If you are considering furloughs or layoffs, please contact Employers Council to discuss administrative and legal considerations.

A final thought is to allow for flexibility with required doctors' notes and forms. Doctors' offices are likely to be busy, and filling out an excuse note or other forms will probably be last on their list. Be patient.

How to Leverage Technology During Outbreaks

With confirmed cases and deaths in multiple countries around the world, organizations are beginning to assess all tools at their disposal to limit operational disruption while simultaneously taking steps to ensure the wellbeing of their workforces. Many of these solutions are technology-based and are applicable across industries.

According to guidance from the Centers for Disease Control (CDC), individuals showing signs of infection should be separated from healthy populations until symptoms subside. In light of this, companies such as Google, LinkedIn, and Microsoft have encouraged employees who can work remotely to do so. Others, such as Twitter, have directed all staff to work remotely, while Apple, Inc. went as far as to close all of their China-based retail locations temporarily. Many industries do not have the luxury of allowing employees to work at home, there are options for limiting face to face interaction, and therefore the spread of the virus.

- Virtual Meetings – Many organizations already use some sort of virtual conferencing software to hold meetings and engage with clients; this technology can be applied to other processes as well.
- Interviews – From phone screenings to virtual interviews, virtual conference technology can be leveraged to reduce face to face contact.
- Onboarding – Although onboarding has traditionally been done in person, some organizations may be able to convert parts, or all, of these processes to a virtual platform. Employers can send digital copies of new hire forms and policies ahead of time to supplement the virtual training.

Employers Council Hot Topics Special Edition: Coronavirus (COVID-19) CONTINUED (PAGE 3)

- All Employee Meetings – Rather than having all employees gather in the same room, consider holding your large meetings virtually to reduce face to face interaction and the spread of any illnesses.
- Digital/Over-the-Phone Health Assistants – According to the Wall Street Journal, major hospital systems and insurance carriers are rolling out their own digital health assistants and nurse hotlines to reduce the need for in-person care. These technologies can be leveraged by employers and employees to minimize operational disruptions and contact with co-workers and the general public.
- IT Support for Remote Workers – Remote workers, especially those who are not accustomed to it, can struggle with some basic logistic considerations, and there are ways an organization's IT department can help.
- Electronic Signing Technology – Some individuals may not have printers or scanners at home, disrupting their ability to sign and send documents. Electronic signing software can help alleviate that.
- Expense Reimbursement – Electronic expense platforms can assist in facilitating the capturing and reimbursement of expenses, preventing employees from having to be at the office physically.
- Open Line to IT – Encourage employees to contact IT with any questions or concerns they may have. This contact may cause a strain on your IT team but will help limit operational disruptions for your work at home staff.

Legal Considerations

The Fair Labor Standards Act (FLSA):

- In the event your business closes, consider the FLSA. Under the Fair Labor Standards Act, exempt employees who are ready, willing, and able to work should be paid a full salary when the employer closes the business for emergencies or operating requirements. When business operations are closed for a day or two, there is no way of knowing who would have been able to make it to work had the business been open. In this case, you should assume that all exempt staff were ready, willing, and able to come to work, and should pay them for any week in which work was performed or risk losing the employees' exempt status.

Employers Council Hot Topics Special Edition: Coronavirus (COVID-19) CONTINUED (PAGE 4)

- While employers are only required to pay non-exempt employees for time actually worked, employers should look at time off or work at home options when available. Also, employers may want to waive or relax usual attendance and punctuality requirements when conditions affect the employees' ability to report to work as scheduled.
- Employers should also be familiar with state wage laws, as there may be additional provisions for business closures and absences.

Family Medical Leave Act (FMLA):

- FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid leave for an employee's serious health condition or caring for the serious health condition of an employee's spouse, parent, or child under 18. It is imperative to remember that COVID-19 will not result in a serious health condition for the majority of the population that contracts it. In the case it does, employers should follow their standard FMLA procedures, with a reminder that doctors may be busy, so patience with forms is important.
- Individual employers should determine if there is an applicable state leave law in each state in which they operate. Currently, Arizona, Colorado, Utah, and Wyoming have no state equivalent to FMLA.

The Americans With Disabilities Act (ADA):

- Update as of 3/13/2020: On Wednesday, March 11, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a global pandemic. Pragmatically, this means that the virus has spread to every country in the world. For employers in the United States, it affects how we can interact with our ill employees under the Americans With Disabilities Act (ADA).
- This guidance from the Equal Employment Opportunity Commission (EEOC) establishes ADA principles that are relevant to questions frequently asked about workplace pandemic planning.
- Additionally, The EEOC advises employers against basing their assessments of whether an employee poses a direct threat on subjective perceptions or irrational fears. Employers' actions should instead be based on objective and factual information, which the EEOC says can be in the form of assessments from the CDC or state/local public health agencies.

Employers Council Hot Topics Special Edition: Coronavirus (COVID-19) CONTINUED (PAGE 5)

The Americans With Disabilities Act (ADA):

- Under OSHA, an employer must provide a safe work environment for employees. If an employee has concerns about being asked to do something or go somewhere because they are worried about the risks of being exposed to COVID-19, the employer should treat it as an OSHA matter and investigate to make sure that they're not violating the employee's rights.

Workers' Compensation

- If an employee contracts the virus in the course of performing their work duties (example: a nurse treating a COVID-19 patient), then that may fall under workers' compensation. Employers should check the plan documents for further clarification.

Resources for Employers

- [Emergency Preparedness FYI](#)
- [CDC's Checklist for Employers](#)
- [CDC's Brief Guideline for Employers](#)
- [CDC's Detailed Guidelines for Employers](#)
- [CDC Posters advising employees to stay home if they're sick](#)
 - [Do Your Part to Slow the Spread of Flu](#)
 - [Stay Home If You're Sick](#)
 - [Don't Spread Germs at Work](#)

We're here to help! For guidance on how to navigate COVID-19 and the workplace as conditions arise and change, reach out to your Employers Council member representative.

Covid-19 is Destroying My Business

– What Are My Options? PAGE 1

*Published on 03/18/2020 by James McDonough, HR Research Consultant

Questions like this are flooding the phones here at Employers Council. In extreme times like these, business leaders must take action to both manage the immediate crisis and plan for the longer-term. Avoiding panic is crucial to sound decision making. COVID-19 is a temporary crisis of severe concern; it will pass and business leaders should seek counsel and take action carefully. Here are some factors to consider.

Employees

- Labor costs are typically the highest expense item for a business. As such, cutting employee costs is often the first move.
- Despite the current situation, the underlying demographics still point toward a long-term shortage of talented employees. As such, move cautiously and strategically to assess current and future needs. When the economy improves, eroded bench strength puts businesses at a competitive disadvantage.
- Conducting an open and transparent conversation with employees about the current challenges may open up ideas to help the organization stay solvent. Employees are fully aware of what is happening and many will appreciate the chance to problem-solve.
- Options for reducing labor costs include:
 - Furloughs
 - Lay-offs
 - Reduced hours
 - Pay reductions
 - Voluntary early retirements

Unemployment Insurance

The federal government is encouraging state agencies to approve unemployment claims for a wide array of employees impacted by COVID-19, including:

- Those who are sick and need time to recover
- Those who must care for an ill family member
- Those who must self-isolate or are under quarantine
- Those sent home due to lack of business, or reduced hours

A spike in unemployment insurance claims will increase the future premiums paid by the employer.

Covid-19 is Destroying My Business

– What Are My Options? CONTINUED (PAGE 2)

Employment Laws

Even in extreme times, there are laws that require careful attention to avoid running afoul of them and long-term penalties.

- WARN Act: COVID-19's impact on many businesses likely qualifies as an "extreme business situation". For mass lay-offs, follow posting requirements even if it is after the lay-off.
- Title VII and ADEA: Choose carefully who is laid off to ensure there is not a disparate impact on those of a protected class.
- FMLA: Employees still have FMLA rights.
- ADA: Some employees may request an accommodation to consider.

Pivot and Partner

Already there are stories in the news of companies who are pivoting their business model to address the challenges and opportunities presented by COVID-19.

- Employees are often a rich source of innovation – when asked.
- Businesses may seek out new partners to leverage their resources and business models. Example: Excess restaurant kitchen facilities may be used for a meal delivery service.

Cut Costs and Invest

If sales are slumping or projected to drop, now is the time to cut costs on budget items that do not support your business strategy, provide essential value or leverage resources that would be too costly on their own. "Across the board" cuts are easiest to impose, yet may have devastating consequences to long-term strategies. Even as the economy may be on the verge of a slowdown, interest rates are at record lows. This may be a time for bold action to seek financing to invest in expansion, new equipment or business transformation.

Monitor and Measure

As employees are sent home to telecommute or other flexible work arrangements are created, stay aware. Are these new ways of doing business successful and provide unforeseen beneficial outcomes? Are surprising new opportunities generated? Are employees happier with the new arrangement? If so, consider adding this as a permanent option.

Covid-19 is Destroying My Business

– What Are My Options? CONTINUED (PAGE 3)

Patience

Federal and state legislation is in the works to assist businesses and impacted employees. Consider not taking extreme action until the week is over to see what relief legislation passes.

Employers Council staff are monitoring emerging business conditions and working hard to assist our members through these difficult times. Reach out to your member representative with any questions or for guidance on your unique circumstances.

The CARES Act for COVID-19 relief: What Employers Need to Know

PAGE 1

*Published on 03/30/2020 by the Employers Council Staff

[The Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#) contains \$2 trillion in financial relief for both individuals and businesses. President Trump signed it into law on March 27, 2020. Major provisions affecting employers are summarized below.

The first section of the Act is called the Keeping Workers Paid and Employed Act and includes the Paycheck Protection Program.

Paycheck Protection Program

The CARES Act creates a \$349 billion Paycheck Protection Program (PPP), through which the Small Business Administration (SBA) will make or guarantee loans of up to \$10 million per eligible employers for payroll costs. The provisions in the PPP are retroactive to February 15, 2020, and cover loans taken through June 30, 2020. The retroactivity is intended to encourage rehiring employees who were laid off.

Eligible employers include:

- Small employers with 500 employees or fewer, as well as those that meet the current Small Business Administration (SBA) size standards
- Self-employed individuals and “gig economy” individuals
- Certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees.
- There are some exceptions to the 500 employee threshold for businesses classified as accommodations and food service.

Payroll Costs include:

- Salary, wage, commission, or similar compensation
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees

The CARES Act for COVID-19 relief: What Employers Need to Know

CONTINUED (PAGE 2)

Payroll costs do not include:

- The compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period
- Any compensation of an employee whose principal place of residence is outside of the United States
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (FFCRA)
- Qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA

In addition to payroll costs, borrowers can use the loan for:

- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period.

The size of the loans can equal 250 percent of an employer's average monthly payroll for the year prior to applying for the loan, up to a maximum amount of \$10 million. The cost of participation in the program will be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for six months to one year, and no prepayment penalties. Any portion of that loan used to maintain payroll, keep workers on the books or pay for rent, mortgage and existing debt is eligible to be forgiven. However the amount eligible for forgiveness may be reduced if the employer receiving the loan lays off employees or reduces staff salaries before June 30, 2020.

In addition to PPP, the Act:

- Provides grants to SBA resource partners, including Small Business Development Centers and Women's Business Centers, to offer counseling, training, and related assistance to small businesses affected by COVID-19.
- Expands eligibility for Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans.

The CARES Act for COVID-19 relief: What Employers Need to Know

CONTINUED (PAGE 3)

The second section, “Relief for Workers Affected by Coronavirus Act” covers unemployment and payroll taxes. Our article, [“COVID-19 CARES Act Expands Unemployment Benefits”](#), goes into the details.

Benefits

The CARES act also:

- Clarifies the provision of the Families First Coronavirus Response Act (FFCRA) that all testing for coronavirus (COVID-19) is to be covered by private insurance plans by adding that that coverage also includes any services or items provided during a medical visit—including an in-person or telehealth visit to a doctor’s office, an urgent care center, or an emergency room—that results in coronavirus testing or screening.
- Allows a high-deductible health plan (HDHP) with a Health Savings Account (HSA) to cover telehealth services prior to a patient reaching the deductible. This provision is temporary and will expire December 31, 2021.
- Allows for hardship withdrawals or larger loans against a 401(k) for an individual who:
 - is diagnosed with the virus SARS–CoV–2 or with coronavirus disease 2019 (COVID–19) by a test approved by the Centers for Disease Control and Prevention,
 - whose spouse or dependent is diagnosed with such virus or disease by such a test, or
 - who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary’s delegate).
- Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. The Employee would have had to work for the employer at least 30 days prior to being laid off.
- Ensures that federal contractors who cannot perform work at their duty-station or telework because of the nature of their jobs due to COVID-19, continue to get paid.

The CARES Act for COVID-19 relief: What Employers Need to Know

CONTINUED (PAGE 4)

We expect there will be guidance documents issued soon, similar to those released for the FFCRA, and Employers Council will send alerts as we see those. Additionally, please [utilize the Employers Council Corona \(COVID-19\) Resources page for information, samples, and links](#).

Employers Council staff are dedicated to providing our members with the most up-to-date information on changes to employment laws and how they affect your workplace. [Visit our Coronavirus resources page for news and updates](#), and contact your member representative with any questions.

The EEOC Issues Coronavirus Guidance for the Workplace

PAGE 1

*Published on 03/23/2020 by Jennifer Ellerkamp, Esq.

The Equal Employment Opportunity Commission (EEOC) has updated its guidance for the Pandemic Preparedness in the Workplace and the Americans with Disabilities Act to address the coronavirus disease 2019 (COVID-19). On March 11, 2020, the World Health Organization (WHO) officially declared COVID-19 a pandemic. During this uncertain time, employers are still required to comply with the ADA, while doing what they can to protect their employees from the spread of the virus.

The ADA allows medical inquiries when they are job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that an employee will pose a direct threat due to a medical condition. At this time, based on CDC and public health authorities' guidance, the EEOC acknowledges that the COVID-19 pandemic meets the direct threat standard. Given this determination, employers may:

- Send employees home who have COVID-19, or symptoms associated with it.
- Ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Currently, these symptoms include, for example, fever, chills, cough, shortness of breath, or sore throat.
- Measure employees' body temperature. However, be aware that some people with COVID-19 do not have a fever. As with all medical information, the fact that an employee has a fever or other symptoms would be subject to ADA confidentiality requirements.
- Follow the advice of the CDC and state/local public health authorities regarding the information needed to permit an employee's return to the workplace after traveling to specified locations – whether for business or personal travel. This includes employees staying home for a certain number of days until it is clear they do not have COVID-19.
- Allow and encourage employees to telework when possible.
- Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal.
- Ask an employee why they have not come to work.

The EEOC Issues Coronavirus Guidance for the Workplace

CONTINUED (PAGE 2)

However, employers may not ask employees who do not have COVID-19 symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to COVID-19 complications, as this would be an improper medical inquiry.

Employers who wish to hire employees at this time may:

- Screen applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.
- Take an applicant's temperature as part of a post-offer, pre-employment medical exam. However, be aware that some people with COVID-19 do not have a fever.
- Delay the start date of an applicant who has COVID-19 or symptoms associated with it. CDC has issued further guidance for various industries, which is likely to evolve as situations change. Please consult the CDC or public health authorities directly for more information.
- Withdraw job offers if it needs an applicant to start immediately, but the individual has COVID-19 or symptoms of it, as the CDC has determined the person cannot safely enter the workplace at this time.

Remember to be mindful of your employees who have disabilities unrelated to the current pandemic, who also need assistance. While it may be difficult during this time to sit down with all employees to address reasonable accommodations, employers must do their best to engage in the interactive process. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.

Please note that the EEOC guidance acknowledges that direction from the public health authorities will change as the COVID-19 situation evolves. Please follow all procedures from the CDC and state/local governments while the situation develops.

Employers Council can help you stay updated and navigate the workplace as new conditions develop and new legislation gets passed.

[Visit our Coronavirus Resources page for the latest news and guidance.](#)

Public Sector Employer Challenges During a Pandemic

PAGE 1

*Published on 04/1/2020 by Lorrie Ray, Esq., SPHR, Director of Membership Development

I have been talking to libraries, fire departments, municipalities, and counties. Most have challenges that run the gamut from laying off or furloughing employees to making sure they have sufficient first responders to handle the emergent issues that arise each day. Also, they must respond to the ever-growing needs of their communities during this time. I see heroic efforts every day, and I am humbled.

Lean on Employers Council

It is important, now more than ever, that our public sector members get the help they need from Employers Council. [We have COVID-19 resources](#) on our member home page, and we have staff well acquainted with your needs, which can answer the many questions that you have. We have some understanding of what you are faced with, and we are here to help.

Furloughs and Layoffs

When it comes to furloughs, remember that the Fair Labor Standards Act regulations have specific sections applying to the public sector. Under these rules, if exempt employees have wages cut during certain workweeks, the employer will need to pay overtime if the employee works more than 40 hours a week.

Right now, for those cutting hours or positions, employees are entitled to unemployment benefits, and those are likely to be more robust than in the past. It is important to notify employees that they are entitled to unemployment benefits so that they can count on an income stream.

Employees who cannot work due to COVID-19

Public sector employers are subject to the provisions of the Family First Coronavirus Response Act, even though they do not receive tax subsidies like private-sector employers. It is also true that public sector employers are covered if they have one employee. This would mean that the employer must follow the law if it has 500 employees or more, unlike the limit in the private sector.

First Responders

First responders are likely to be working more, rather than less, during the pandemic. While job security may not be an issue, other issues may arise. The CDC has specific information for first responders and states:

Public Sector Employer Challenges During a Pandemic

CONTINUED (PAGE 2)

Responders experience stress during a crisis. When stress builds up, it can cause:

- Burnout– feelings of extreme exhaustion and being overwhelmed.
- Secondary traumatic stress– stress reactions and symptoms resulting from exposure to another individual’s traumatic experiences, rather than from exposure directly to a traumatic event.

Coping techniques, like taking breaks, eating healthy foods, exercising, and using the buddy system, can help prevent and reduce burnout and secondary traumatic stress. Recognize the signs of both of these conditions in yourself and other responders to be sure those who need a break or need help can address these needs.

Reminding those who manage first responders of what needs to be done to prevent burnout and trauma might be helpful when the crisis becomes more acute.

Employers Council is learning alongside you during this very difficult time. We know you are on the front lines, and we know you need support. If there are actions we can do to help, please let us know.

Employers Council is committed to helping those in the public sector during these challenging times. Contact your member representative for support navigating the difficult public employer landscape.

COVID-19: Steps Employers Should Consider Now

PAGE 1

*Published on 04/1/2020 by James McDonough, HR Research Consultant

State and local protective orders are multiplying. Most are requiring social distancing when employees are at work. If your workplace is still open, consider what actions you might take:

- Post multiple notices in work spaces to remind employees of safety and hygiene protocols.
- Close communal areas like break rooms, and advise employees to leave the building to sit outside or in their cars,
- Prohibit the use of microwaves, refrigerators, water coolers where possible to reduce the handling of common objects.
- Bathrooms: allow one user at a time; consider providing a sign or flag of some sort to indicate when the bathroom is occupied. Encourage employees to use paper towels to protect clean hands when opening restroom doors to exit.
- Relocate work stations and adjust workflows to avoid social contacts that violate the six-foot separation radius between employees.
- Urge employees to communicate anything of concern in their work areas or activities.
- Smoking areas: post-social distancing notices.
- Email mandated COVID-19 hygiene and safety protocols to employees.
- Remove or separate chairs in public seating areas.
- Provide hygiene products: like hand sanitizer and soap.
- Daily regimen to disinfect working areas and communal spaces.
- Provide paper tissues for employees to use when opening doors to limit contamination. Photograph work spaces after social distancing measures have been taken to document your actions taken.
- Document all actions and responses to employee concerns in narrative notes, including specific actions and dates/ times of action.

COVID-19: Steps Employers Should Consider Now

CONTINUED (PAGE 2)

In the rush to send employees home to work remotely, Cybersecurity must not be overlooked; indeed, cybercriminals are likely stepping up efforts to take advantage to exploit gaps in security protocols in the current crisis. Seek IT Security expertise; here are some HR considerations to defend your organization:

- Provide employees with [Cybersecurity guidance and training](#).
- Advise employees to take extra caution with emails from unknown senders or handling emails with unusual requests.
- Define protocols for employees to follow when they need assistance with questionable emails or phone calls when working remotely.

Every work space is different and poses unique challenges. To discuss your needs and questions, contact your Employers Council member representative.

SECTION TWO

Workplace laws to consider during a pandemic

This section is a guide to some of the most important laws employers should keep in mind during any kind of crisis situation.

Crisis-specific legislation will continue to develop in a rapid fashion, typically in the form of relief packages and support for employers. For the latest news on the current COVID-19 crisis and access to our growing library of rapid response resources, [visit our resources page](#).



Workplace laws to consider during a pandemic

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[WARN Act Q&A](#)26

In an emergency, the impact of a crisis on many businesses likely qualifies as an “extreme business situation.” This Q&A will teach you what you need to comply with if you’re considering mass lay offs.

[Title VII & ADEA](#)27

Title VII & ADEA are both laws to consider in a time of crisis. Choose carefully who is laid off to ensure there is not a disparate impact on those of a protected class.

[FMLA](#)28

Eligible employees still have FMLA rights during extreme times and may leave in situations like the birth and care of a child or for a serious health condition.

[ADA](#)29

Some employees may request an accommodation to consider, especially with any temporary changes like a remote work policy. ADA can help you understand what you need to accommodate.

ADDITIONAL RESOURCES

[WARN Act: An Overview](#)

A summary of the Worker Adjustment and Retraining Notification Act (the WARN Act), which offers protection to workers by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs.

[Fair Wages and Healthy Families Act \(Paid Sick Leave\) *Arizona only](#)

An overview of how to stay compliant with the paid sick time requirements of Arizona’s Fair Wages and Healthy Families Act, which went into effect in July of 2017.

[Furlough – Pay Consideration](#)

A run-through of considerations that employers need to have before implementing furloughs and shortened work weeks for exempt employees, including whether the plan can lead to violations of the Fair Labor Standards Act (FLSA) and comparable state laws.

[Layoffs](#)

Summary information on planned job eliminations and the implications they can have for employers and their businesses, along with information on staying compliant with federal and state laws.

[Telecommuting](#)

Telecommuting can also expose an employer to potential legal liability, especially if done improperly. This material explains some of the risks and offers suggestions on how to conduct a successful telecommuting relationship with employees.

WARN Act: Q&A

(The Worker Adjustment and Retraining Notification Act)

*Published on 05/17/2016 by Employers Council Legal Staff

Q: What is the WARN ACT?

A: The Worker Adjustment and Retraining Notification Act (WARN) applies to private businesses, non-profit organizations and public or quasi-public entities separately organized from the regular government with their own governing bodies and independent authority. WARN applies to employers with at least 100 full-time employee or 100 or more employees, including part-time employees, who work at least 4,000 hours per week, exclusive of overtime.

The purpose of WARN is to provide workers and their communities with advance notice of their loss of employment so that they may begin to search for employment or obtain training for another occupation. The act generally requires employers to give 60 days-notice prior to a “plant closing” or “mass lay off.” The regulations under WARN are complex and fact intensive; for further information, refer to our [Q&A with employment law expert Curtis Graves](#) on The WARN Act.

Employers Council can help you navigate regulations like the WARN Act, making sure you're informed to make the best decisions for your business. Contact your member representative for guidance on any laws you should be considering or with questions on how to navigate new legislation.

Title VII & ADEA (Age Discrimination in Employment Act)

*Published on 07/29/2019 by Alexander Sediva, Esq.

Unfavorable Job Assignments May be a Form of Discrimination Under Title VII

Title VII demands that job assignments be based on qualifications and merit, not national origin or skin color, as was reflected in a recent settlement between the EEOC and a Denver-based plumbing and mechanical contractor.

In its lawsuit filed in the U.S. District Court of Colorado, the EEOC alleged that the offending employer had systematically assigned Hispanic plumbers to sewer duties in a confined space containing human waste and dangerous gas levels, despite the fact that Caucasian plumbers with similar abilities and experience were not relegated to these less-than-desirable job duties. EEOC v. AMI Mechanical (D. Colo. 2018). Among other claims, it was also alleged that when a Hispanic employee complained, he was told by his supervisor to return to the sewer or otherwise the company would “hire a bunch more ... Mexicans” to replace him. The employer also allegedly failed to preserve and/or destroyed work-related reports that were relevant to the EEOC’s discrimination claims.

As evidenced by the settlement wherein the employer agreed to pay \$82,500 to the complainant employees and revise its policies, it is vital that employers are actively engaged in rooting out policies that potentially subject a protected class to disparate treatment. Disparate treatment is when “an employer intentionally treat[s] a complainant less favorably than employees with the ‘complainant’s qualifications’ but outside the complainant’s protected class.” Young v. United Parcel Serv., Inc. (U.S. 2015). This settlement also reinforces the fact that employers may not retaliate against an employee who has made a complaint sounding in national origin discrimination, but instead must take the necessary steps to thoroughly investigate the matter and preserve all relevant evidence in connection with same.

During a crisis, choose carefully who is laid off to ensure there is not a disparate impact on those of a protected class. For support with layoff decisions, contact your member representative.

FMLA (Family Medical Leave Act)

*Published on 03/18/2019 by Christina Husman, Esq.

Paid Family and Medical Leave

The Family and Medical Leave Act of 1993 (FMLA) is a federal law that provides unpaid, job-protected leave for eligible employees working for covered employers. FMLA provides leave for up to 12 weeks in a 12-month period (26 weeks for a covered service member) and may be taken for the birth and care of a child, placement of a child in adoption or foster care, or for a serious health condition of the employee (or service member) or their immediate family member.

Several states, including California, New Jersey, and Rhode Island, have enacted laws providing for paid leave for family or medical needs. These programs are typically funded through payroll taxes. States have been able to set specific eligibility requirements for employees and specify which employers are covered. Further, states that have enacted such laws are able to set limits on the amount of pay the employee receives, the length of the leave, and qualifying reasons for such leave. The trend has continued, and more states will see similar laws debated in the upcoming years.

Keep in mind that eligible employees still have FMLA rights during extreme times and may leave in situations like the birth and care of a child or for a serious health condition.

For support with FMLA-related concerns or decisions, contact your member representative.

ADA (Americans with Disabilities Act)

*Published on 11/19/2019 by Lorrie Ray, Esq., SPHR, Director of Membership Development

Recent ADA Cases Create Questions for Employers

The ADA's definition of disability contains three parts. An individual with a disability is someone who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record or history of such physical or mental impairment; or
- Is regarded as having an impairment

Historically, courts have upheld cases that view this definition broadly.

There is a growing exception. Several courts have ruled that a future disability is not covered. This line of reasoning was used to protect employers in a recent pair of decisions. In the one decision, *Shell v. Burlington Northern Santa Fe Railway Co.* (7th Cir. 2019), the Seventh Circuit ruled a railroad did not violate this law when it refused to hire an obese applicant because of the risk of possible health issues. In the second decision, *Lowe v. STME, LLC.* (11th Cir., 2019), the Eleventh Circuit favored the employer, and found it could fire a worker before a trip to Africa where she potentially could catch Ebola.

Employers should be cautious when following this precedent. The EEOC does not agree with the courts' approach and may find a case to prosecute that will turn the tide. Moreover, how the ruling in these cases does or does not conflict with the definition could be confusing. If you don't want your employer to be the test case in this area, be circumspect in following case law and call an attorney at Employers Council if you have questions about how current rulings compare with the facts at your workplace.

Some employees may request an accommodation to consider, especially with a newly introduced remote work policy. For support with ADA-related concerns or decisions, contact your member representative.

SECTION THREE

CRISIS RESOURCES

This section is a summary of the resources linked to and listed in the articles above.

For the latest news on the current COVID-19 crisis and access to our growing library of rapid response resources, [visit our resources page](#).



SECTION THREE

Crisis Resources

[COVID Leave Guidance](#)

Understand which employees impacted by a pandemic are eligible for paid sick time, paid FMLA leave, state or private disability insurance, unemployment insurance, or workers' compensation..

[A Guide to Emergency Preparedness](#)

How to develop an emergency preparedness plan, factoring in business realities and unique industry considerations.

[Emergency Preparedness Plan Survey](#)

Find out how many companies across different industries and states are prepared in the face of a crisis like a pandemic through Employers Council's unique survey data.

[The Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#)

A link to the actual law on Congress' website.

[CDC's Checklist for Employers](#)

A downloadable and printable checklist from the CDC for employers and workplace administrators during a pandemic flu.

[CDC's Brief Guideline for Employers](#)

A quick overview of the CDC's guidelines for employers in response to COVID-19.

[CDC's Detailed Guidelines for Employers](#)

The CDC's more detailed guidelines for employers in response to COVID-19, which includes ways keep your workplace healthy and productive, and how to make plans both before and after the pandemic.

[CDC Posters advising employees to stay home if they're sick](#)

- [Do Your Part to Slow the Spread of Flu](#)
- [Stay Home If You're Sick](#)
- [Don't Spread Germs at Work](#)

[Employee Absence Form](#)

A form for employees to fill out in the case of absence to help justify and document why.

[FFCRA Leave of Absence Request](#)

A form for employees to fill out when requesting a paid leave of absence under the Emergency Paid Sick Leave Act.

[Stay at Home Exception Letter](#)

A letter for employers to give employees if they need to explain that they are an essential business, that employees should continue to come to work, and what the rules are around distance and hygiene while at work.

Crisis Resources CONTINUED (PAGE 2)

[Career Transition Services](#)

A guide to Employers Council's Career Transition Services, which help your former employees move forward as you maintain your organization's productivity and protect your reputation and bottom line. The more quickly employees have new opportunities, the less risk you have in unemployment and other claims.

[Tips for Supporting Parents Working at Home During School Closures](#)

Schools all over the country are closing their doors. At the same time, employers are encouraging or mandating that employees stay home to enable social distancing and flatten the curve of the virus in the community. This is a guide on helping employees navigate work while having kids at home.

THANK YOU

We're here to help you navigate the workplace and make the best decisions for your business in challenging times.

Talk to your member representative today.