

# An Employer's Guide to COVID-19 Compliance

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## What is the Coronavirus Disease (COVID-19)?

It is in the Coronavirus line of viruses. Common symptoms are:

- Fever
- Tiredness
- Dry cough
- Difficulty breathing

Some patients may experience aches and pains; nasal congestion; running nose; sore throat or diarrhea.

The symptoms arise gradually-some complain of the "start of the flu."

The group of people of concern are older adults and people with medical conditions such as high blood pressure; heart problems or diabetes.

According to the CDC, symptoms may last 2-14 days after exposure

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## How does COVID-19 Spread?

- Human to Human contact
- Through respiratory droplets from coughs or exhales
- Surfaces (generally for 1-3 hours) where droplets have landed
- Introducing airborne or surface borne droplets into the eyes, nose or mouth.
- Disinfecting protocol and employee hygiene is key to control

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**With the outbreak, what are the aspects of my business that may be affected?**

- Production
- Operations
- Labor & Employment
- Benefits (HIPAA, Health Insurance (COBRA), STD, Sick Leave)
- Sales & Marketing
- Health & Safety

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**Pandemic Emergency Plan**

- Every pandemic policy needs:
  - A pandemic plan and response team
  - Instructions for personal hygiene & good health practices
  - Instruction on emergency closings
  - Contingency planning
  - Instructions on pay and leave practices during the crisis
  - Coordination with benefit providers on continuation of benefits
  - Emergency medical procedures

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**Labor & Employment Issues**

Issues to Consider Addressing in a Policy:

- ✓ Best practices to avoid transmission
- ✓ Duty to report travel, exposure or symptoms
- ✓ Asking/requiring employees to stay home who are ill or under a facility access issue
- ✓ Offering alternative work environment
- ✓ Deviations to Attendance Policy
- ✓ Deviations to Leave (paid and unpaid) policies

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### Labor & Employment

#### Families First Coronavirus Response Act

- Generally applies to employers with less than 500 employees.
- Generally effective for employment/labor purposes April 2, 2020
- Three Key Parts:
  - 1) Expansion of FMLA rights
  - 2) Emergency Paid Sick Leave
  - 3) Unemployment Eligibility

\*Also COVID-19 testing coverage under Group Health Plan
- DOL Notices due out March 25, 2020

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### Emergency FMLA Expansion Act

- Expands FMLA coverage to cover all government employers and private sector companies with less than 500 employees for child care during the public health emergency *only*.
- Employee must have been employed for 30 days to be eligible.
- Employees not meeting standard 1250 hours/12 months eligibility will be limited to only the Emergency FMLA.
- EFMLA coverage is job protected leave to provide *needed* care for a son or daughter under 18 because a school or a place of care (daycare) has been closed or the child care provider is not available.

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### Emergency FMLA Expansion Act

- No 50 employee threshold for applicability of Expanded FMLA Right
- DOL exception available for employers that would suffer jeopardy to the "viability of the business as a going concern."
- Allows opt-out for employers of health care workers and emergency responders.

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### FMLA - Paid or Unpaid

- First 10 workdays of leave - Unpaid (except for substitution of paid leave by employee)
- Remainder of FMLA for emergency child care available at 2/3rds of the regular hourly rate of pay the employee for normally scheduled work hours
- Wages are capped at \$200 per day (\$10,000 total) (per employee)

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### Verification of Need

- Certification requirements for FMLA remain as under current law. Key available questions appear to be:
  - 1) Is person son or daughter of employee under the age of 18?
  - 2) Was the employee unable to work or tele-work?
  - 3) Was the employee *needed to care* for the son or daughter?
- Notice of need for leave is to be provided as soon as practicable.

11

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### Emergency Paid Sick Leave Act

- Full-time employees - 80 hours
- Part-time employees - number of hours such employee normally works over a two (2) week period. If variable hours, average over last 6 months.
- Employee chooses what to use first-not the employer-no ordering requirement in taking Paid Sick Leave.
- Allows employer opt-out for health care workers and emergency responders.
- Provides DOL ability to issue regulations exempting small businesses (50 or less) if compliance would "jeopardize the viability of the business as a going concern."

12

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### What Can I Take Paid Sick Leave For?

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19-PAID at 100%;
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19-PAID at 100%;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis-PAID at 100%;
- 4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2)-PAID at 2/3 of regular rate of pay;

13

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### What Can I Take Paid Sick Leave For? (cont.)

- 5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions-PAID at 2/3 of regular rate of pay; and
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor-PAID at 2/3 of regular rate of pay.

\* Wages capped at \$511 per day (\$5,110 total) for 1,2, and 3 above, and capped at \$200 per day (\$2,000 total) for 4, 5 and 6 above.

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### HIPAA

- What restrictions are there on disclosing employee information with respect to a COVID-19 diagnosis?
- May employers disclose to other employees when an employee tests positive for COVID-19?
- May employers disclose to federal and state government officials when an employee tests positive for COVID-19?
- May employers disclose to medical professionals when an employee tests positive for COVID-19?

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### Common Questions

- Our employee is concerned he could catch the Coronavirus and wants to stay at home. And be paid.
- We want to send an employee home from work because he is exhibiting flu-like symptoms - similar to those we hear are Coronavirus symptoms.
  - Can I keep him out for 14 days? Do I need to provide him Paid Sick Leave? After April 2, 2020.
- We are going to reduce schedules and may be laying people off. Do they get unemployment?
- Does the Families First Coronavirus Response Act apply now?
  - What is going on ?
- Do I have to continue benefits while the employee is off of work?

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### Common Questions (cont.)

- My child, age 17, is at home because high school is closed - can I take Paid Sick Leave?
- My neighbor has been quarantined by an Order of the Health Department and I want to take Paid Sick Leave to care for him?
- I have directed an employee not to come into work and to self-quarantine because of his travel to Spain. Do I have to provide Paid Sick Leave?
- The pre-employment drug testing site is closed, can I make a conditional offer of employment with the employee getting the test in the next 6 months?

17

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### Thank You

		
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