

1st Quarter Compliance Webinar: Coronavirus Takes Center Stage

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Our Speakers



James Venable

Vice President of Employment Law,
Absence and Accommodation Compliance

720.440.6984

james.venable@reedgroup.com



Sue Woods

Senior Compliance Counsel,
Absence and Accommodation Compliance

303.464.2445

susan.woods@reedgroup.com



Ashlee Brennan

Senior Compliance Counsel,
Absence and Accommodation Compliance

303.464.2445

ashlee.brennan@reedgroup.com

Legal Disclaimer

Not Legal Advice

This presentation is designed to provide accurate information in regard to the subject matter covered. It is provided with the understanding that ReedGroup is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent attorney or other professional person should be sought. Due to the numerous factual issues which arise in any human resource, leave of absence, or employment question, each specific matter should be discussed with your attorney.

AGENDA

CORONAVIRUS (COVID-19)

Emergency Federal Bill: Paid Sick Leave and Expansion of FMLA

State Agency Actions

Top Ten COVID-19 Employer Questions

Federal COVID-19 Legislation

Families First Coronavirus Response Act

Overview

- Two components of the legislation:
 - 1) Emergency Family and Medical Leave Act
 - 2) Emergency Paid Sick Leave Act
- Effective Date : “not later than 15 days after the date of enactment”
- End Date: Sunsets December 31, 2020

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act – Covered Employers

- Covered Employers:
 - Employers with fewer than 500 employees
 - Public agency or other non-private entity that employs at least 1 employee
- Employers of health care providers and emergency responders may choose to exclude those individuals
- Special provisions for employers/employees covered by multi-employer bargaining agreements

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act – Eligible Employees

- Eligible Employees:
 - Length of service requirement reduced to 30 calendar days
 - No hours of service requirement
 - No requirement that employee be employed at a worksite with 50 employees in 75-mile radius

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act – Leave Reason

- Leave Reason: If an employee is unable to work (or telework) due to need for leave to care for son or daughter under 18 if:
 - school or place of care has been closed, or
 - care provider is unavailable due to public health emergency

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act – Paid Component

- Paid Component:
 - First 10 days: Unpaid
 - After 10 Days: Paid
 - Paid leave rate must equal or exceed two-thirds of employee’s regular rate of pay based on normal work schedule, subject to cap
 - Contains instructions for pay calculation for employees with “varying schedule”
 - Cap per employee is \$200 per day and \$10,000 in the aggregate

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act – Notice Requirements

- Notice Requirements:
 - When need for leave is foreseeable, employee must provide such notice to employer as is practicable

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- Covered Employers:
 - Employers with FEWER than 500 employees
 - Public agency or other non-private entity that employs at least 1 employee
 - Special provisions for employers/employees covered by multi-employer bargaining agreements
- Covered Employees:
 - All employees (full and part time) - no length of service requirement for eligibility
 - Employers of health care providers and emergency responders may choose to exclude those individuals
- Leave Reasons: Employees who cannot work or telework because the employee:
 - Is subject to quarantine or isolation order
 - Has been advised by a healthcare provider to self-quarantine
 - Is experiencing symptoms of COVID-19 and seeking medical diagnosis
 - Is caring for individual who is subject to a quarantine or isolation order or has been advised by healthcare provider to self-quarantine
 - Is caring for minor son or daughter if school or place of care has been closed or child’s care provider is unavailable due to COVID-19 precautions
 - Is experiencing any other “substantially similar condition specified by the Secretary of Health and Human Services . . .”

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- Leave Period:
 - Full Time Employees: 80 hours
 - Part Time Employees: Number of hours employee works on average over 2-week period
- Compensation:
 - Compensation capped at \$511 per day/\$5,110 aggregate or \$200 per day/\$2,000 aggregate depending on leave reason
- Other Terms:
 - Provides job protection
 - Requires notice posting
 - Allows employers to recoup portion of paid leave wages through tax credits
 - Violation is considered FLSA violation

What State Agencies Are Doing

California

SDI and PFL

- CA statutory disability benefits available to workers who contract or were exposed to COVID-19, with proper medical documentation
- **One-week waiting period waived**
- CA Paid Family Leave may be available when employees must take care of a family member with or quarantined by COVID-19, with medical documentation
- Unemployment insurance may kick in when employees need to care for kids due to school closures



California

School Activities Leave - Emergencies

- Existing school activities law
- Applies to employers with 25 or more employees
- Up to 40 hours/yr for school activities, which includes school emergencies such as closures
- Emergencies not limited to 8 hours/month



Colorado

CO Health Emergency Leave with Pay (CO HELP)

- Effective Dates: March 11, 2020 for 30 days
- Covered Employers:
 - Employers in Leisure and hospitality, food services, child care, education, home health of high-risk individuals, nursing homes, and community living facilities
 - Employers who already provide at least four days of paid sick leave do not have to provide additional paid days unless a sick employee has already exhausted other paid sick time
- Eligible Employees: Employees with flu-like symptoms who are being tested for coronavirus COVID-19
- Benefit: Up to four calendar days of paid sick leave (If the employee receives a negative test result before the end of four days, the paid leave ends)

Rhode Island

Changes to Temporary Disability Insurance (TDI) and Temporary Caregiver Insurance (TCI)

- For COVID-19 related claims, Rhode Island will waive the seven-day minimum amount of time that claimants must be out of work to qualify for TDI/TCI benefits
- For individuals under quarantine, Rhode Island will waive the required medical certification, and instead will allow them to temporarily qualify via self-attestation that they were under quarantine due to COVID-19
- Link to RI COVID-19 Workplace Fact Sheet:
<http://www.dlt.state.ri.us/pdfs/COVID-19%20Workplace%20Fact%20Sheet.pdf>

New York

“Agreement” for bill between NY Governor and NY Legislature

For employees subject to mandatory or precautionary orders of quarantine or isolation, the Governor’s proposed legislation would provide the following:

- Employers with 10 or fewer employees and a net income less than \$1 million: job protection for the duration of the quarantine order and Paid Family Leave and short-term disability benefits for salaries up to \$150,000.
- Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million, at least 5 days of paid sick leave, job protection and Paid Family Leave and short-term disability benefits for salaries up to \$150,000.
- Employers with 100 or more employees, as well as all public employers (regardless of number of employees), at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.
- These provisions of the quarantine legislation would take effect immediately upon passage

New Jersey

Chart of Available Leaves

Quarantines to be covered by NJ TDI and FLI

Available on NJ DOL website:
<https://www.nj.gov/labor/assets/PDFs/COVID-19%20SCENARIOS.pdf>

COVID-19 SCENARIOS & BENEFITS AVAILABLE				
COVID-19 SCENARIOS	EARNED SICK LEAVE	UNEMPLOYMENT INSURANCE	TEMPORARY DISABILITY/FAMILY LEAVE INSURANCE	WORKERS' COMPENSATION
1 A person who has COVID-19, or symptoms of COVID-19	✓	✗	✓	?
2 Worker was unable to work because of school or daycare closed for a public health reason	✓	✗	✗	✗
3 Worker was exposed and quarantined. Business remains open.	✓	✗	✓	?
4 A person who is out of work because employer voluntarily closed	✗	✓	✗	✗
5 A person who is out of work because employer was ordered closed	✓	✓	✗	✗
6 Worker has less hours available due to business slow down or lack of demand	✗	✓	✗	✗
7 Employer stays open in defiance of public health urging to close, and worker refuses to work	✓	?	✗	✗
8 Worker is afraid of gathering in a group and refuses to go to work (self-distancing)	✓	✗	?	✗
9 Worker is immune-compromised and advised by healthcare provider to self-quarantine	✓	✗	✓	✗
10 Health care worker exposed at work and self-quarantined	✓	✗	✓	✓
11 Worker is caring for a sick family member	✓	✗	✓	✗

✓ YES | ✗ NO | ? MAYBE (CASE BY CASE)

The information on this flier is meant to give a general picture of benefits and rights available in certain COVID-19 work-related situations. Documentation may be required.

Oregon


Chart of Available Leaves

Available on OR Government website:

https://www.oregon.gov/employ/Documents/EDPUB190_0320.pdf

COVID-19 Scenarios & Benefits Available			
COVID-19 SCENARIOS	Employer Paid Sick Leave (check with your employer) www.oregon.gov/BOLI	Unemployment Insurance	Paid Family and Medical Leave
Worker is mildly ill with COVID-19	✓	?	The paid family and medical leave insurance program is still being developed. Benefits are expected to be available in January 2023.
Worker is severely ill with COVID-19	✓	✗	
Worker was exposed and quarantined, Business remains open	✓	?	
Worker is caring for sick family member	✓	?	
Schools are closed because of COVID-19 and worker has no childcare	✓	?	
Worker is immune-compromised and advised to self-quarantine	?	?	
Worker is afraid of gathering in a group and does not to go to work (self-distancing)	✗	?	
Employer must shut down due to quarantine	✓	✓	
Employer shuts down due to a business slowdown or lack of demand	?	✓	
Employer reduces available hours due to business slowdown or lack of demand	✗	✓	
Employer stays open when urged to close for public health	✓	?	
First responder is under quarantine	✓	?	

For more information, go to: www.oregon.gov/employ/Pages/COVID-19.aspx

 The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.

✓ Yes
✗ No
? Maybe

Washington


Chart of Available Leaves

Available on WA Employment Security Department website:

<https://esd.wa.gov/newsroom/covid-19>

Washington also implemented emergency rules regarding unemployment insurance for those affected by COVID-19, including relaxing requirements to look for work while quarantined, and backdating claims

COVID-19 SCENARIOS		Paid Sick Leave (employer paid)	Unemployment Insurance		Paid Family & Medical Leave	Industrial Insurance (L&I)
		Current Law	Current Law	Emergency Rule	Current Law	Current Law
1	Worker is mildly ill with COVID-19.	✓	✗	✓	?	?
2	Worker is severely ill with COVID-19.	✓	✗	✗	✓	?
3	Worker was exposed and quarantined. Business remains open.	✓	✗	✓	✗	?
4	Worker is caring for sick family member.	✓	✗	?	✓	✗
5	Schools are closed by a public official because of COVID-19 and worker has no childcare.	✓	✗	✗	✗	✗
6	Worker is immune-compromised and advised to self-quarantine.	?	✗	✓	?	✗
7	Worker is afraid of gathering in a group and refuses to go to work (self-distancing).	✗	✗	✗	✗	✗
8	Employer must shut down due to a quarantine by a public official.	✓	✓	✓	✗	✗
9	Employer shuts down due to a business slowdown or lack of demand.	✗	✓	✓	✗	✗
10	Employer reduces available hours due to business slowdown or lack of demand.	✗	✓	✓	✗	✗
11	Employer stays open in defiance of public health urging to close.	✗	?	?	✗	✗
12	Health care workers and first responder are under quarantine.	✓	✗	✗	✗	✓



Employment Security Department
WASHINGTON STATE

The Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711

✓ YES
✗ NO
? MAYBE (case by case)

ESD.WA.GOV

States with Paid Sick Leave Laws Covering School Closings

School closings caused by public health emergencies

At least seven states have paid sick leave laws where absences due to a school closing due to a public health emergency is a qualifying reason, including:

- Arizona
- Michigan
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington

Local Paid Sick Leave Laws Covering School Closings

School closings caused by public health emergencies

Certain municipalities and counties also have paid sick leave laws where absences due to a school closing due to a public health emergency is a qualifying reason, including:

- San Diego, CA
- Chicago, IL
- Cook County, IL
- Montgomery County, MD
- Minneapolis and St. Paul, MN
- New York City
- Westchester County, NY
- Pittsburgh, PA
- Philadelphia, PA

Top Ten Coronavirus Questions

#1: My Employee Has COVID-19. Now what?

Confirmed Diagnosis

- Follow CDC guidance
 - Employee should isolate at home, except necessary medical care
 - Restrict employee travel and implement social distancing (e.g., telework, staggered shifts)
 - Disinfect workplace
- Determine exposure to others
 - Other employees exposed? Vendors? Third-party visitors?
- Managing absences and pay for diagnosed employee
 - Short-term disability (STD) policy
 - FMLA
 - Paid Sick leave or other company policies

#2: My Employee Was Exposed But Has No Symptoms. What Are Our Options?

Best Practices

- Per CDC watch list, mandatory 14-day quarantine period
- Determine exposure to others and impose self-quarantine
- Leaves and pay during quarantine
 - “Regular” FMLA - does employee have a serious health condition if asymptomatic?
 - Expanded FMLA under federal bill?
 - STD – is employee disabled per STD policy?
 - Paid sick leave or other company policies

#3: My Employee Travelled to a Hot Zone But No Known Exposure. Should We Do Anything?

Follow CDC Guidance

- Quarantine for 14 days from time employee left area with widespread COVID-19
- Employee should monitor health – take temperature, watch for coughs and breathing issues
- Should we require negative test before employee returns to work?

#4: Schools and Day Care Facilities Are Closed. What Leaves Are Available to Employees Who Must Take Care of Their Kids?

- No “regular” FMLA
 - Employee does not have serious health condition
 - Child does not have serious health condition
- No STD
- Without illness, probably won’t fall under paid sick time
- Other company policies? Personal leaves?
- New extended FMLA?
- State Paid Sick Leave and School Activities Leave, if applicable

#5: Employees Are Afraid to Come to Work Despite No Known Cases. Must We Accommodate Them In Any Way?

- Unless employee is ill or been exposed, they most likely do not qualify for FMLA, statutory leave, or sick leaves.
- The employee could be eligible for an ADA accommodation if they have a preexisting medical condition.
- Could there be a mental health component?
- Other company leave programs?

#6: Will Short-Term Disability or Other Paid Leaves Apply During Quarantine?

- STD, statutory disability, and sick leaves generally will not apply when the employee is not disabled or sick
- PTO may be available
- Other company leaves may be available
- New extended FMLA may apply

#7: Should We Require Medical Clearance Before Employees Return to Work?

- Depends on company policies – if and when do you require medical clearance from returning employees?
- If employee was not sick and had no known exposure, requiring medical certification to return from a 14-day quarantine may be unnecessary and put further strain on medical providers and employees
- If employee was symptomatic or exposed, they should still wait 14-days after recovery or exposure before returning to work

#8: My city has ordered me “to shelter in place.” What Leaves are available to me?

- You may be eligible for personal leave time which may include pay during this period. This will be dependent on your company’s personal leave policies or the relevant statutory leave programs in your state.

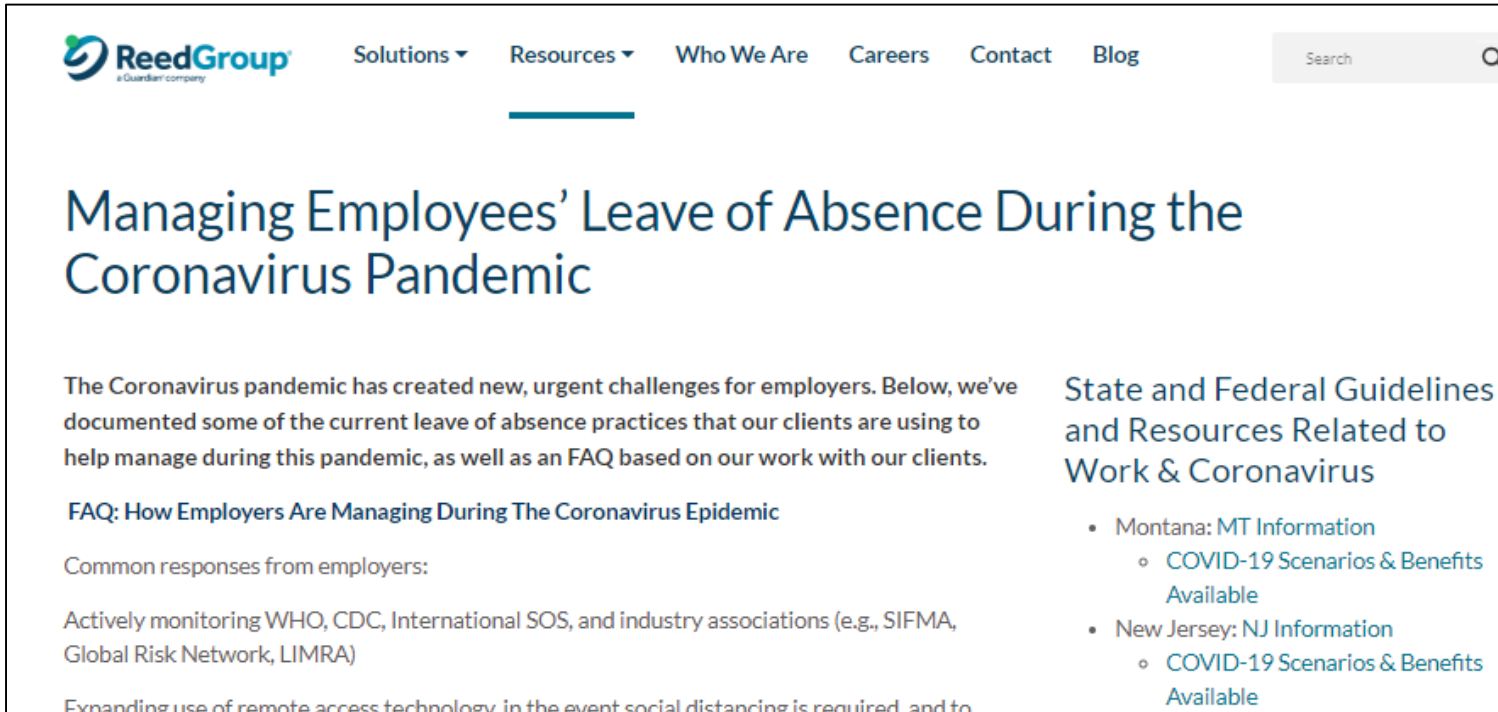
#9: Does the ADA Apply to Coronavirus Situations (e.g., diagnosed employees? Family member? Etc.)

- If employee meets ADA definition of disability, ADA could apply and reasonable accommodations could be necessary
- ADA also prohibits discrimination based on “regarded as” and association with a disabled person
- EEOC has guidance regarding pandemics
 - Avoid disability-based inquiries and exams
 - May inquire about travel to hot zones and COVID-19 symptoms
 - Direct threat defense could overcome duty to reasonably accommodate

#10: I want to take a leave because a family member has been quarantined? What Leaves are available to me in order to take care of them?

- If the family member is not ill, you may not be entitled to any statutory or company leave programs. However, your company may offer personal leave time to cover the quarantine period. If the family member is subsequently diagnosed with the virus, you may be entitled to either a statutory or company leave program.

Additional Resources



The screenshot shows the top navigation bar of the ReedGroup website with links for Solutions, Resources, Who We Are, Careers, Contact, and Blog. A search bar is located on the right. The main heading of the article is "Managing Employees' Leave of Absence During the Coronavirus Pandemic". The introductory text states: "The Coronavirus pandemic has created new, urgent challenges for employers. Below, we've documented some of the current leave of absence practices that our clients are using to help manage during this pandemic, as well as an FAQ based on our work with our clients." Below this, there are two columns of content. The left column includes a sub-heading "FAQ: How Employers Are Managing During The Coronavirus Epidemic" and the text "Common responses from employers: Actively monitoring WHO, CDC, International SOS, and industry associations (e.g., SIFMA, Global Risk Network, LIMRA)". The right column has a sub-heading "State and Federal Guidelines and Resources Related to Work & Coronavirus" followed by a bulleted list: "Montana: MT Information" with a sub-item "COVID-19 Scenarios & Benefits Available", and "New Jersey: NJ Information" with a sub-item "COVID-19 Scenarios & Benefits Available".

<https://www.reedgroup.com/managing-employees-during-the-coronavirus-pandemic/>

Blog



The House Moves to Provide Paid Leave to Employees Impacted by COVID-19

On Friday evening, the House passed the Families First Coronavirus Response Act, H.R. 6201, which expands protections under the FMLA and expands paid leave time to employees impacted by the coronavirus crisis. Though the bill still has to make it through the Senate, some of the key components are expected to remain the same. The ... Continued

Our Bios



James Venable, JD, SPHR

James Venable provides expertise in the areas of absence management compliance and employee relations counseling. Mr. Venable has more than 20 years of experience across senior roles in Legal, Human Resources, and Compliance from several Fortune 500 companies. Mr. Venable joined ReedGroup in April 2018 after serving as Vice President of Human Resources, Employee Relations, Labor Relations, Compliance and Environmental Health and Safety for Comcast, where he was responsible for engagement and labor relations activities for the company's West Division Business Unit.



Sue Woods, Senior Compliance Counsel

Sue Woods, Esq. is Senior Compliance Counsel at ReedGroup where she focuses on product and operational compliance in leave and absence management solutions. Sue brings years of experience practicing labor and employment law, including advising employers on the intricacies of the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), Title VII, and state and local leave laws. By writing timely articles and speaking at seminars and events, Sue strives to break down tricky leave compliance issues into actionable, practical employment solutions.



Ashlee Brennan, Senior Compliance Counsel

Ashlee Brennan, Esq., Senior Compliance Counsel has a strong background in leave of absence management compliance, conflict resolution, and cross-departmental problem solving. She has worked for several non-profit organizations assisting individuals with disabilities in a variety of roles prior to joining ReedGroup. Her work in the industry has specialized in statutory disability and paid family leave compliance while also providing solutions for FMLA, ADA, and ERISA concerns. Ms. Brennan graduated from Michigan State University College of Law in 2015, and is admitted to the Colorado Bar.

Thank you.