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WEBINAR #1
COV-19 SERIES
Wednesday 3/25
4-5 PM ET

WELCOME!

10 Things Employers Need To Know NOW

About Leave Law and Coronavirus

We'll begin shortly but first, a few reminders…

- **There is no dial-in number** for this webinar. Please use your computer or mobile device for audio.
- If you are experiencing audio or video difficulties, refresh your browser, or open a new session.
- Use **Google Chrome**, if possible, for a better overall experience.
- Use the **Q&A box** to ask questions anytime during today's webcast (lower left of your console).

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10 Things Employers Need to Know NOW

About Leave Law and Coronavirus

WEBINAR

4 – 5 PM ET

March 25, 2020

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Today's session qualifies for 1 professional development credit with SHRM and HRCI

IMPORTANT: We will provide you with the SHRM & HRCI codes at the end of today's session.

Our Speakers

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Today's Topics

1. New Federal Legislation (FFCRA)
2. Updates to State Legislation
3. Top Ten FAQs
4. Your Questions

New Federal Legislation (FFCRA)

Families First Coronavirus Response Act (FFCRA)

- Two components of the legislation
  1. Emergency Family and Medical Leave Expansion Act
  2. Emergency Paid Sick Leave Act
- Effective Date: April 1, 2020
- End Date: Sunset December 31, 2020

Emergency Family & Medical Leave Expansion Act

COVERED EMPLOYERS

- Public agency or other non-private entity with **at least 1 employee**;
- Private employers with **fewer than 500 employees**
- 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

ELIGIBILE 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

ADDITIONAL INFORMATION

Leave Reasons: Employee is unable to work (or telework) due to need for leave to care for son or daughter under 18 if a school or place of care has closed or care provide is unavailable due to public health emergency.

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

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.
  - Cap per employee is $200 per day and $10,000 in aggregate
  - Contains instructions for pay calculation for employees with "varying schedule"

Emergency Paid Sick Leave Act

COVERED EMPLOYERS

- Public agency or other non-private entity with **at least 1 employee**;
- Private employers with **fewer than 500 employees**
- 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

ELIGIBLE EMPLOYEES

- Full Time & Part Time employees no hours of service requirement

LEAVE REASON

- Subject to quarantine or isolation order
- Advised by a healthcare provider to self-quarantine
- Experiencing symptoms of COVID-19 and seeking medical diagnosis
- Caring for individual who is subject to a quarantine or isolation order or has been advised by healthcare provider to self-quarantine
- 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
- Experiencing other "substantially similar condition specified by the Secretary of HHS . . ."

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

- Capped at $511 per day/$5,110 aggregate or $200 per day/$2,000 aggregate depending on leave reason
- The first two weeks of pay can be unpaid; however, the remaining time must be paid at 2/3 the employee's regular rate.

KEY INFORMATION	
Job Protection	Yes, provides job protection
Notice Posting	Notices are required
Tax Credit	Allows employers to recoup paid leave wages through tax credits
Violation	Considered FLSA violation

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Updates to State Legislation

California: State Disability Insurance and Paid Family Leave

- 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 children 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 per year for school activities, which includes school emergencies such as closures
- Emergencies not limited to 8 hours/month

Colorado: CO HELP, CO Health Emergency Leave with Pay

- Effective Dates: March 11, 2020 for 30 days
- Covered Employers:
  - ✓ Employers in Leisure and hospitality, food services, childcare, 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 & Temporary Caregiver Insurance

- 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 temporary qualify via self-attestation that they were under quarantine due to COVID-19

- Link to RI COVID-19 Workplace Fact Sheet

New York: COVID-19 Bill Signed Into Law

For employees subject to mandatory or precautionary orders of quarantine or isolation, the legislation provides 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.
- 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.
- Waived one-week waiting period for disability benefits payable under this act.
- These provisions of the quarantine legislation are effective immediately.

New Jersey: Available Leaves

- Quarantines to be covered by NJ TDI and FLI
- Available on New Jersey DOL website

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)

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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.

CREATED: 3.16.2020

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Oregon: Available Leaves

- Oregon Family Leave Act (OFLA) (unpaid leave) expanded definition of "sick child leave" to include care of child whose school or place of care has been closed due to statewide public health emergency.
- Available on Oregon Government website

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

State of Oregon Employment Department
Oregon.gov/Employ

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.

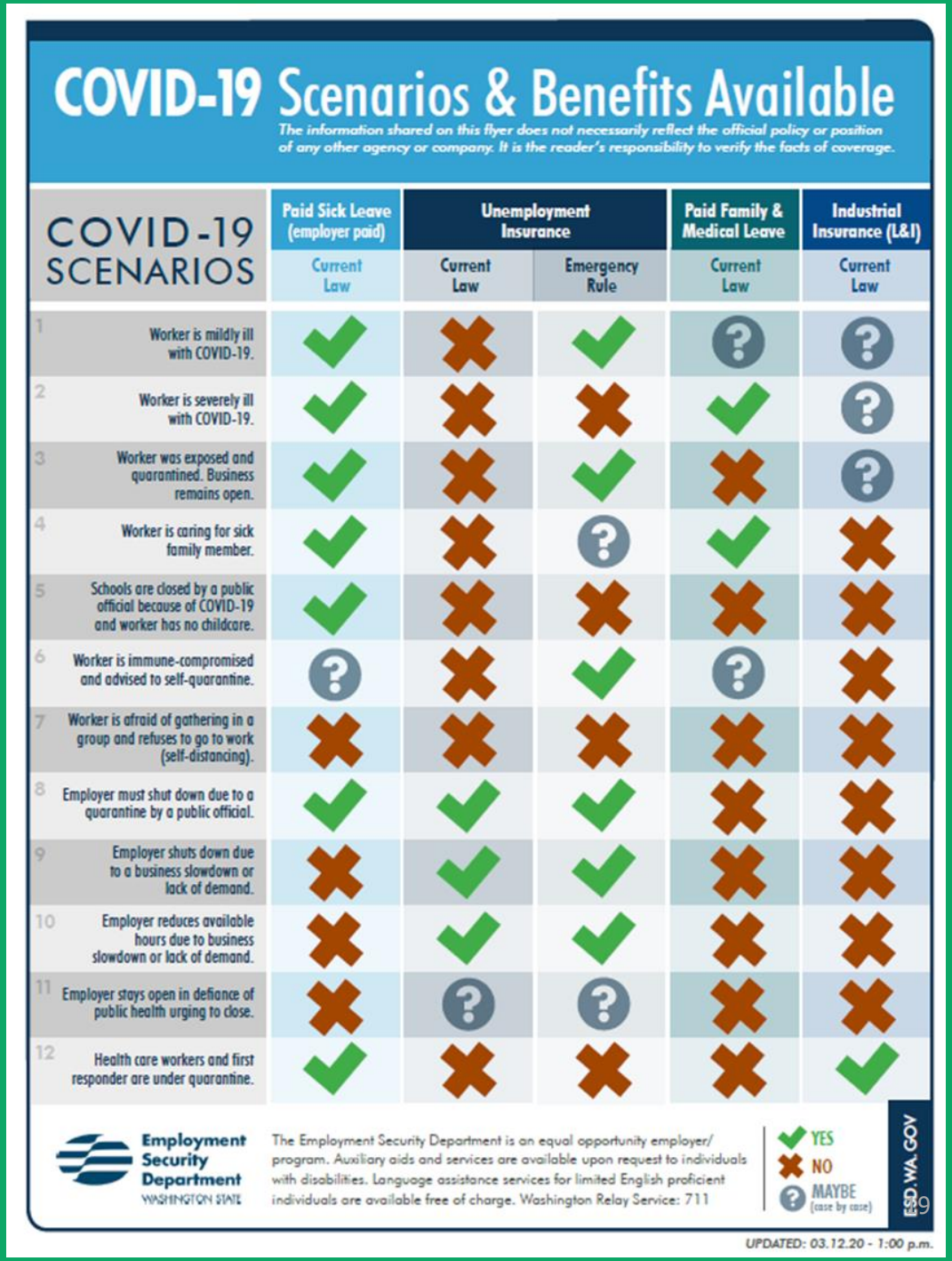
✔ Yes
✘ No
? Maybe

Oregon Employment Department | Oregon.gov.Employ | EDPUB190 (0320)

Washington: Available Leaves

- Available on Washington state Employment Security Department website

- 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 & Benefits Available

The information shared on this flyer does not necessarily reflect the official policy or position of any other agency or company. It is the reader's responsibility to verify the facts of coverage.

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

UPDATED: 03.12.20 - 1:00 p.m.

District of Columbia: Family and Medical Leave (unpaid) Changes

- Change to covered employers – Applies to employers of any size
- Added leave reason - "Declaration of Emergency Leave (DOE Leave)" – employers who are unable to work due to COVID-19 government-mandated quarantine or isolation, or if government or medical professional recommends an employee self-quarantine or self-isolate
- Change to employee eligibility – no length of service or hours-worked requirement
- Change in duration of DC FMLA leave – duration is for the period of public health emergency
- Effective for 90 days (unless extended)

States With Paid Sick Leave Covering School Closings

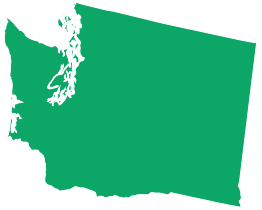
At least seven states have paid sick leave laws where absences due to a school closing due to a public health emergency is a qualifying reason, including:

Arizona

New Jersey

Michigan

Oregon



Washington

Vermont

Rhode Island

Local Paid Sick Leave Covering School Closings

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

Top 10 Frequently Asked Questions

FAQ #1: My employee has COVID-19, now what?

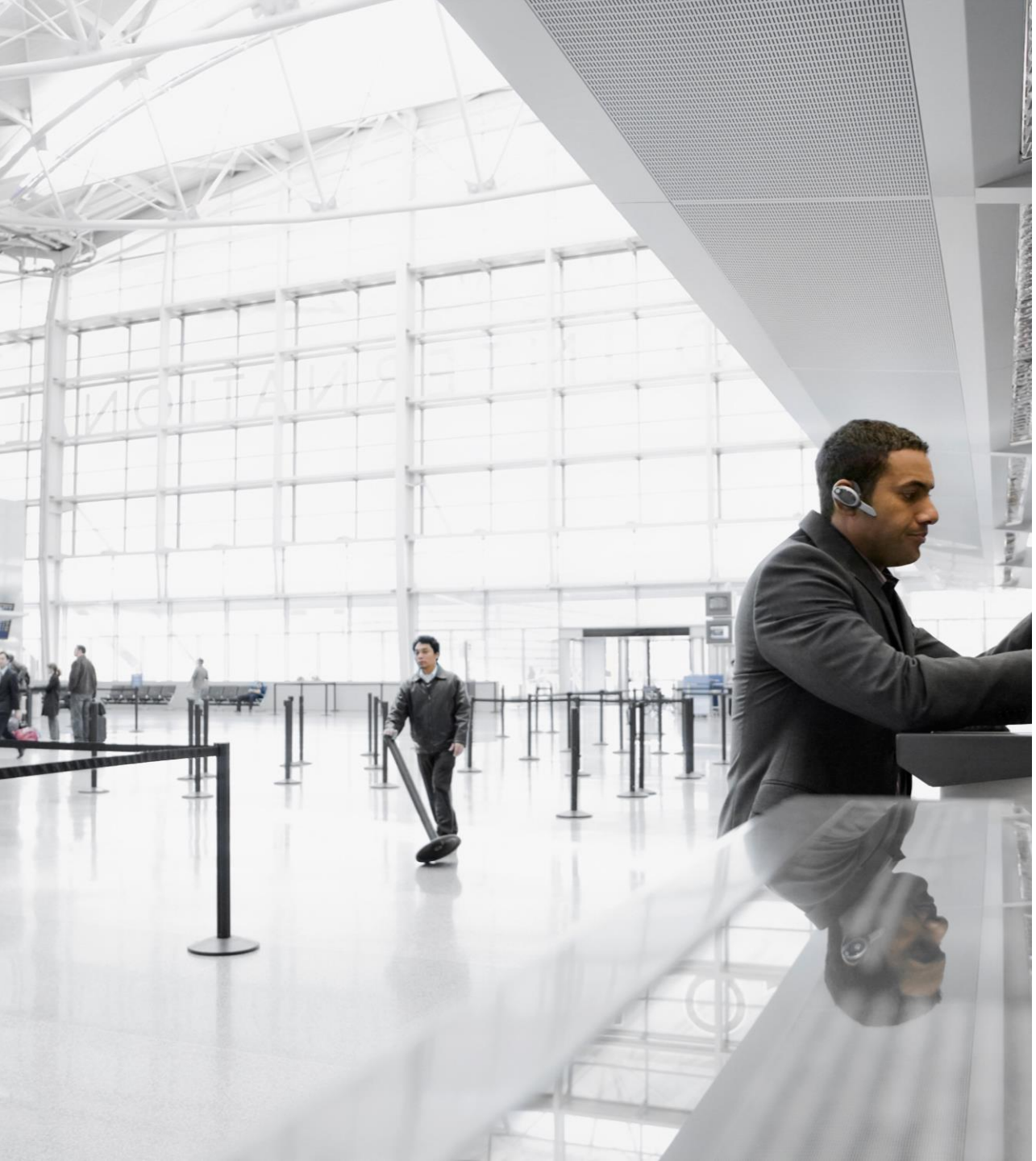
Confirmed Diagnosis

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

FAQ #2: My employee was exposed but has no symptoms. What are our options?

Best Practices

- Per CDC, mandatory 14-day quarantine period
- Determine exposure to others and impose self-quarantine period
- Leaves and pay during quarantine
  - ✓ "Regular" FMLA – Does employee have a serious health condition if asymptomatic?
  - ✓ Expanded FMLA under federal bill?
  - ✓ STD – Is the employee disabled per STD policy?
  - ✓ Paid Sick Leave or other company policies



FAQ #3: My employee traveled 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 their health
  - ✓ Take temperature
  - ✓ Watch for coughs and breathing issues
- Should we require negative test before employee returns to work?

FAQ #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 a serious health condition
  - ✓ Child doesn’t not have a serious health condition
- No STD
  - ✓ Without illness, probably won’t fall under paid sick time
  - ✓ Other company policies? Personal leaves?
  - ✓ New extended FMLA
  - ✓ Federal Emergency Sick Leave
  - ✓ State Paid Sick Leave and School Activities Leave, if applicable

FAQ #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?

FAQ #6: Will short-term disability benefits or other paid leaves apply during quarantine period?

- 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

FAQ #7: Should we require medical clearance before employees return to work after sickness?

- 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

FAQ #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.
- Unemployment benefits if unable to work

FAQ #9: Does the ADA apply to coronavirus situations (e.g., diagnosed employees, family member, etc.)?

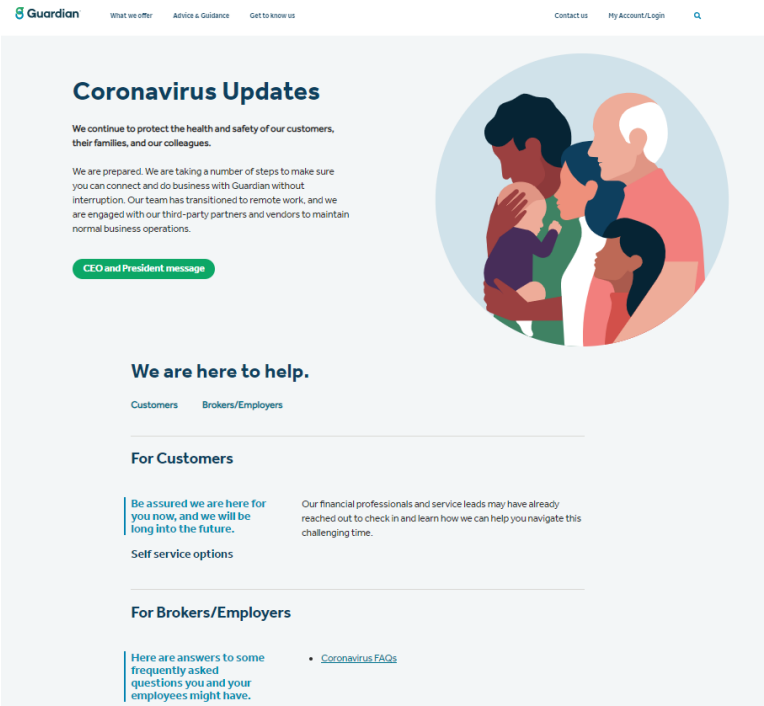
- If employee meets ADA definition of disability, ADA could apply, and reasonable accommodations could be necessary
- ADA also prohibits discrimination based on "regarded as" and association with a disabled person
- EEOC has guidance regarding pandemics
  - ✓ Avoid disability-based inquiries and exams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

FAQ #10: I want to take a leave to care for a family member who has been quarantined. What leaves are available to me?

- If the family member is not ill, you may not be entitled to any statutory or company leave programs.
- 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.

Questions?

Additional Resources



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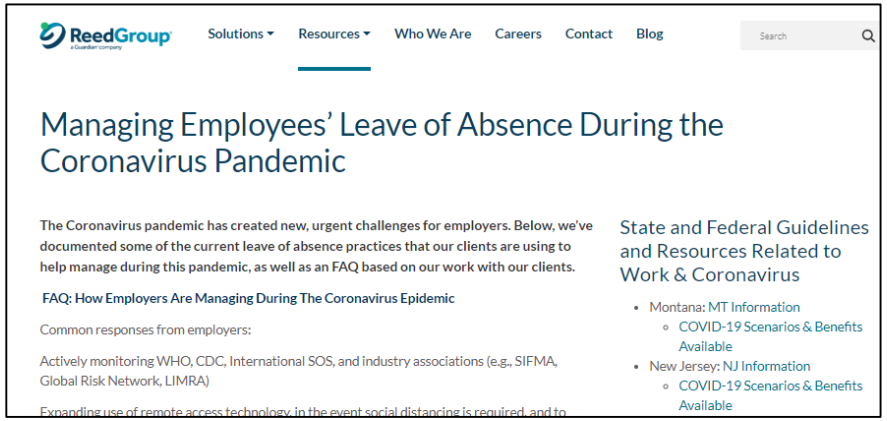
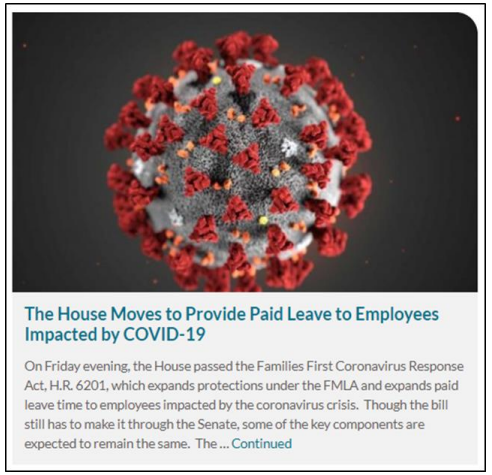
Coronavirus Resources Page

Coronavirus Resources Page





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