

## GENERAL INFORMATION

COVID-19 continues to evolve within the U.S. and globally. The spread of the virus and the diagnosis of the disease highly unpredictable. Treatment protocols are also evolving as we learn more about the virus. Federal and local governments and public health officials continue working to increase the number of labs that can perform tests, and the production of protective items for the medical community and first responders. We are likely to continue seeing more people diagnosed with COVID-19 in the coming weeks.

## HR POLICIES

***Disclaimer:*** Please note, this information is general HR related information. It is not intended to be legal advice and should not be treated as such, please seek your attorney for any legal advice.

There are going to be a multitude of HR related policies that employers will need to stay abreast of as employees work from home, are laid off from work and/or relieved of their duties. Because States, Cities and County Governments are taking actions based on their populations needs it is critical to stay informed. In addition to your State, City and County Government links consider making the following your favorites as a go to resource.

Seyfarth Shaw Law Firm - <https://www.seyfarth.com/covid-19-resource-center.html>

Fisher Phillips Law Firm - <https://www.fisherphillips.com/faqs>

CDC's guidelines for Employers: [https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html).

EEOC's Guidelines

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

## **Newly Enacted Coronavirus/COVID-19 Paid Leave Law**

March 18, 2020, the COVID-19 Paid Leave Law was enacted. It goes into effect April 2, 2020. The provisions apply only to employers with less than 500 hundred employees. Certain aspects of the new law also carve out some special treatment for an employer with fewer than 25 employees.

### *Highlights*

- The Department of Labor is authorized to establish regulations providing a method and opportunity for employers with less than 50 employees to obtain an exemption/waiver from the new law if compliance would jeopardize the viability of the business.
- The law authorizes the DOL to adopt regulations allowing employers who are health care providers or emergency responders to exclude their employees from these provisions.
- No later than March 25, 2020, the DOL is required to have available a poster informing employees of their rights. Employers will be required to conspicuously post it in the workplace.

- The law prohibits retaliation against anyone using leave (that means no firing someone for using it) or discriminating in any way in implementing the leave provisions.
- The availability of these benefits (and the requirement to provide them) expires on December 31, 2020.
- The law provides for tax credits for employers who provide the paid leave benefits. Please check with your CPA or tax advisor about taking advantage of these tax credits.

## 1. Public Health Emergency Leave

The first situation is where schools and/or day care providers are required to be closed by an emergency declaration issued at the federal, state, or local level (think declaration of mandatory closure). In that situation, an employee who has been employed for at least 30 days and who is unable to work (including telework) because of the need to care for a son or daughter (their own, not somebody else's) under the age of 18, is entitled to up to 12 weeks of leave under the following framework:

- For the first 10 days of such leave, it can be unpaid. The employee, however, may elect to substitute any accrued paid leave that the employee may already have, e.g., vacation, sick leave, and PTO.
- After the first 10 days of such leave, the employer is required to pay the employee two-thirds of his/her regular rate of pay with a cap of no more than \$200 per day. Under the law, the employee will be entitled to this payment for an additional 10 weeks, that is 50 workdays.
- Please note that because these specific provisions are amendments to the existing Family and Medical Leave Act, the assumption is that if the need for the leave disappears, so does the right to this form of paid leave. So, if the declaration is lifted and schools/day care providers are able to resume operation, then the right to this form of paid leave most likely ends. At that point (or otherwise at the end of this 10-week period), job restoration rights come into play.

### *Job restoration rights:*

- The employer would be required to return the employee to his/her job or to an equivalent position. If the employer has less than 25 employees, however, an exception is made to this requirement for job restoration.
- Employers with fewer than 25 employees do not have to return the employee to work if:
- The position has been eliminated due to changes in the employer's economic or operating condition caused by the coronavirus emergency; or
- The employer makes a reasonable effort to restore the employee to an equivalent position that nonetheless fails to so restore the employee and the employee makes a reasonable effort during the ensuing 12 months to contact the employer and offer any equivalent position that becomes available (think of this as a kind of right to recall or right of first refusal).

## 2. Emergency Paid Sick Leave

The second situation actually addresses a host of circumstances. It generally requires that a full-time employee be provided 80 hours of paid sick leave and that a part-time employee be provided paid sick leave equal to the number of hours the part-time employee generally works in a 2-week period if the employee is unable to work (including telework) because:

1. The employee is under a federal, state, or local coronavirus quarantine/isolation order.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to coronavirus (e.g., may have been exposed);
3. The employee is experiencing coronavirus symptoms and is seeking a medical diagnosis (think, “I’ve got a fever and cough and I am going to the doctor”);
4. The employee is caring for a person who falls into category 1 or 2 above;
5. The employee is caring for a son or daughter (their own, not someone else’s) whose school or day care provider is closed or unavailable due to coronavirus precautions (not closed as a result of a federal, state, or local emergency declaration); or
6. The employee is experiencing any other condition substantially similar to the coronavirus (think fever, cough, etc. even though it may not be coronavirus).

For categories 1 through 3 above, the leave pay is capped at no more than \$511 per day. For categories 4 through 6 above, the paid leave is capped at no more than \$200 per day.

After the first such paid absence the employer can require compliance with “reasonable notice procedures” in order to continue to receive paid sick time.

The right to this paid leave ends when the circumstances resulting in the leave end or the entire allotment of leave is exhausted. If the employee does not exhaust all of the leave provided by this provision, the employee does not have a right to carry it over to another year or to use for any other basis.

**The employer cannot require the use and exhaustion of other types of accrued paid leave before permitting use of this leave.**

## **Georgia Department of Labor Emergency Rule**

In response to the COVID-19, the Georgia Department of Labor has issued a temporary emergency rule. Effective as of March 15, 2020, GA employers are required to file such claims for unemployment online for full-time employees who work less than full-time because of a lack of work resulting from the COVID-19 public health emergency declared by Governor Kemp.

It is not required that the employee be laid off from all work. Required is only that the hours worked be less than 30 hours for the workweek. The employer is required to file the claim on behalf of the employee for each week during which the employee works less than 30 hours. This rule will be effective until the earlier of 120 days from March 15 or the suspension of the emergency declaration by the Governor and, of course, unless the GA Department of Labor extends this temporary rule.

An employer who fails to comply will be held responsible for reimbursing the GA Department of Labor all unemployment funds paid to qualifying employees who pursue unemployment benefits on their own. That is different from the usual scenario where funds are paid from the insurance fund maintained by the Department of Labor to which employers contribute based on their unemployment insurance rating.

## **TELEWORKING**

The term 'telework' or 'teleworking' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work." Consider the following steps when implementing telework.

- Define your objectives.
- Rethink how you look at work.
- Leverage technology to facilitate better communication and collaboration.
- Establish consistent video and conferencing.

## **COMMUNICATE WITH COMPASSION**

From a Human Resources standpoint, it is imperative that Employers show appropriate care and concern for their staff, **without violating ADA, HIPAA, FMLA, and/or other State-specific regulations regarding protected health information**. Please be aware that your employees may be exposed to a lot of misinformation, from unreliable sources, which may increase gossip, panic, and anxiety and decrease productivity.

### **Key Things to Remember**

- Communicate openly and often.
- Be available and allow people to express concerns, anxiety, fears, etc. They may be concerned for themselves and/or for their loved ones. If you have an EAP (employee assistance program), please make the staff aware and share how they may access the service.
- Share the CDC's web site that provides ongoing updates and information to the public, such as common symptoms of the virus as well as locations of emerging COVID-19 cases. <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.
- Most States, Cities and Counties are under some form of a Stay at Home Order. If your company is considered to be essential related to supporting first responders to COVID-19, seek legal counsel to provide employees essential workers supporting documents
  - Sample language: *This employee he is considered to be an 'essential worker' because he/she manages employees at XYZ company and is deemed to be an 'essential, critical and a life-sustaining business' under all state and federal standards'.*
- Determine what your protocol will be if an employee feels ill. I strongly recommend that you send a message clearly stating that they should not come to work if they feel sick or have flu-like symptoms. Encourage them to see a physician. Do not try to diagnose them or, in any way, suggest that they have COVID-19 or any other illness.
- If an employee is diagnosed with COVID-19, or believe they have been exposed to (or, in contact with) someone who has it, request that they provide a medical release form, from a bonafide medical professional, before returning to work. While you may notify the staff of potential exposure, you must protect the identity of the person. Consider the following practices:
  - Seek assistance on communication protocols ASAP.
  - Do NOT disclose the person's medical condition to the staff without direct guidance from an attorney or the government.
  - Keep all medical and health-related information in a secured location, separate from their personnel file. Limit access to this information to the top Executive and Human Resources.
- Share any messaging you've received from your healthcare provider. Most, if not all medical insurance providers, have provided updates on medical plan coverage (such as COVID-19 testing as well as co-pays and deductible waivers). If you offer STD (short-term disability), please also check regarding eligibility and coverage. You may receive ongoing messaging from providers so be sure to update the staff often (or provide a link to the providers' websites).
- Make alcohol-based hand sanitizer, tissue and antibacterial wipes available for everyone to use. Place them in public, highly used areas throughout the office. Keep the surplus of supplies in a secured location.
- Several times per day, wipe down keypads, door handles, refrigerator and microwave handles, coffee pots, and other commonly touched items.
- Share recommendations for common preventive actions to help prevent the spread of respiratory viruses. Consider creating and posting signs in the restrooms and breakrooms.

- Stay home when you are sick.
- Wash your hands for 20 seconds with soap and warm water frequently.
- Use hand sanitizer (at least 60% of alcohol) when soap and water are not readily available.
- Practice social distancing.
- Request that everyone refrains from engaging in behaviors (in person or via other modes of communication) which are derogatory to any racial, ethnic, religious or similar group relating to the origin or spread of this virus. You must be vigilant in responding to all complaints or concerns in this regard.

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