



## Now What?

Answers for Business Owners  
and Leaders During COVID-19

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### Presenters:

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Anything is subject to change with legislation.  
Check state laws. Check your policies. Consider the circumstances...

### Agenda:

What To Do  
Families First Act  
Quarantine Qs  
Time and Money  
Your Questions



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## What To Do



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### What should we be doing?

- Following CDC and other Guidance
- Contingency Planning
- Establishing work from home systems and policies
- Determining who is eligible for Emergency Paid Leave
- Communicating Every Day
- Consulting HR and Legal



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### What impacts will the virus have?

LOSS OF REVENUE	LOSS OF PRODUCTIVITY	BUSINESS INTERRUPTION	SPIKES IN ILLNESS	LIABILITY & EXPOSURE	TRAVEL ABILITIES
					

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### What if we can't afford to pay our people?

- Talk to your attorney about the best course of action in your state
- Notify your payroll partner
- SBA Economic Injury Disaster Loan Program provides working capital loans up to \$2 million
- Small Business Administration is working with Governors to provide low interest loans to small businesses and non-profits severely impacted by the Coronavirus
- Visit [SBA.gov/Disaster](https://www.sba.gov/disaster)



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## Families First Coronavirus Response Act



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### What is the Families First Coronavirus Response Act (HR 6201) ?

- Designed to require employers under 500 employees to provide emergency PAID sick leave and job protected family leave to certain employees.
- Caps the amounts to be paid and makes them 100% reimbursable via tax credits
- No obligations for employers over 500 employees



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### What are the FMLA expansion requirements ?

- Only for employees in a business under 500 employees who are unable to work due to child care (under 18) responsibilities (schools and/or daycare facilities are closed) due to public health emergency who have worked for the employer for at least 30 calendar days
- Exemptions: Employers under 50 employees who can claim hardship, healthcare providers/emergency responders (not defined)
- Takes effect April 2, 2020 and expires December 31, 2020



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## What are the FMLA expansion requirements ?

- Pay Obligations: (only if employee cannot work from home due to above...)
  - First 10 days are not paid under the FMLA expansion
  - Use Emergency Sick Leave if applicable. If not, use existing PTO first 10 days
  - After 10 days, pay at 2/3 of regular rate for hours normally scheduled to work up to a max of \$200 per day and \$10,000 total for up to 12 total weeks of job protected leave
- Job Restoration required unless fewer than 25 employees when job no longer exists bcz of public health emergency, efforts to find equivalent position failed, and employees are contacted w/in one year if a position opens up
- Tax Credits: quarterly credit = 100% of qualified paid FMLA wages under the Act



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## Emergency Paid Sick Leave

- For private employers under 500 employees and all employees who meet definitions below, regardless of length of employment, effective 4/2/20 and ending 12/31/20.
- Who is entitled to this paid sick leave? Employees who can't work due to:
  1. Subject to government quarantine or isolation order
  2. Have been advised by health provider to self-quarantine
  3. For seeking medical diagnosis for symptoms of COVID-19
  4. Caring for an individual subject to quarantine order or self-quarantine (2/3 pay)
  5. Caring for children if schools closed or caregiver is unavailable (2/3 pay)
  6. Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services (whatever this is, 2/3 pay)



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## What are the emergency Paid Sick Leave requirements for pay rates?

- Full time employees get 80 hours (2/3 pay for #4, 5, 6)
- Part time employees get the number of hours worked on average over a 2-week period (2/3 pay for #4, 5, 6)
- Payments capped at \$511 per day and \$5,110 total for #1, 2, 3
- Payments capped at \$200/day and \$2,000 total for #4, 5, 6
- This paid leave is in addition to whatever sick leave is already offered by employer
  - Cannot require employees to use other paid leave before employee uses this
  - Employers may change their leave programs/policies after bill is enacted



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## What about tax credits and exemptions?

- Tax credits quarterly for 100% of paid sick leave wages under the Act
- DOL is empowered to exempt small businesses under 50 employees in certain circumstances and healthcare providers and emergency responders

## What about coverage for TESTING?

Requires Group health plans to cover COVID-19 testing without cost sharing charges or other limitations on plan participants.



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## Quarantine Questions



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## Could we send employees home involuntarily if they are exhibiting symptoms?

Yes.

- It's not a disability related action if the illness poses a direct threat
- CDC advises that employees with these symptoms should stay home
- Don't discriminate.



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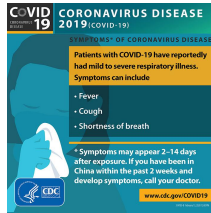
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## Can we ask about symptoms?

Yes.

- Only ask about symptoms



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## Is an employer's knowledge that an employee has COVID-19 subject to HIPAA's privacy restrictions?

Not usually, unless the employer acquired the information in its role as the administrator of the health insurance plan. Because most employers will learn of a COVID-19 diagnosis from the employee or his or her family, the Health Insurance Portability and Accountability Act (HIPAA) usually will not be implicated.

### Should we keep it confidential?

Yes. Let employees know there has been an exposure and notify affected employees to get tested, but don't say, "Scott has it!"



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## May we use a temperature test?

EEOC says you can, now, but it's considered a medical test, so we advise against it, but there may be circumstances where you could uniformly use it if it didn't violate union contracts, HIPAA rules, etc.

It's better to be safe and have people work from home if possible. If your employees need to be at work to work, ask them to self report symptoms.



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## May we send someone home who does not have symptoms but has been in close contact with someone who does have symptoms?

Yes.

You're asking him or her to go home in the name of safety and for business health and continuity.



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## Could we require employees returning from travel to stay home?

Yes, if the employee falls into certain CDC risk categories, including travel to certain areas (i.e., covered by a **CDC Level 3** Travel Health Notice).

As of yesterday, **those areas** include: *China, Iran, Ireland, South Korea, Malaysia, Europe (Schengen Area): Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Monaco, San Marino, Vatican City, United Kingdom: England, Scotland, Wales, and Northern Ireland*

[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)



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## Could we require employees to work from home even if they have not traveled and have no symptoms, as a precautionary measure?

Generally yes, as long as the employee's duties allow telework.



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## When should an employee return to work after being sent home for symptoms?

Case by case. Leave it up to the doctors.

The CDC has [indicated](#) that employees may return to work at least 24 hours after no longer having or exhibiting (a) a fever (b) signs of a fever, and (c) any other symptoms, without the aid of fever-reducing medicines (e.g., anything containing ibuprofen or acetaminophen) or other symptom-masking medicines (e.g., cough suppressants).

This might be different for healthcare providers.



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## Could an employee choose to remain out of work after 24 hours without symptoms?

If they can work from home, consider it. Seems safer, anyway.

As a practical matter, during this outbreak, you may wish to encourage employees to stay home until they feel better, up to a reasonable point.

Remember, don't discriminate.



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## Could we require a doctor's note to return to work?

Yes, but the CDC asks that you don't.

If the employee's illness is a "serious health condition" under the FMLA or a "direct threat" under ADA, the employer could be able to require a return-to-work note if the employer complies with the guidelines for requiring such documentation, including, among others, notifying the employee in the initial determination that fitness-for-duty notes will be required and consistently applying the requirement to all FMLA leaves.



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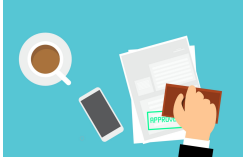
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## Could we refuse a return to work, even with a doctor's note?

Yes, if the employee would create an unsafe or unhealthful work environment or is a direct threat to him- or herself or others.



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## What if they say they're afraid to come in?

If you need them at work, you can require them to come in as long as there is no legitimate threat and they don't require an accommodation.

Under the NLRA, nonsupervisory employees in unionized and non-unionized settings may have the right to refuse to work in conditions they believe to be unsafe.

Employees may be protected from retaliation under the Occupational Safety and Health Act when they refuse to perform work that involves "a risk of death or serious physical harm" if certain conditions apply.

While each situation is different, and a generalized fear of contracting COVID-19 is not likely to justify a work refusal in most cases, employers may want to conduct a thorough review of the facts before any disciplinary action is taken against an employee who refuses to perform his or her job for fear of exposure to COVID-19.



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## Time and Money



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## Could we bypass wage compliance or equal opportunity requirements during this crisis?

The Pandemic is not an excuse for non-compliance with DOL requirements.

Hourly non-exempt employees track and get paid for time worked, at least minimum wage, and get overtime pay as required by state/fed laws. (1 ½ times regular rate for hours over 40 in a work week in most states)

Salaried employees must get full salary in any week when they perform work, subject to very limited exceptions.



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## Could we reduce salaries and hourly rates?

If you are not bound by a contract, you could reduce pay rates with employees. Employees must earn minimum wage. Salaries must be fixed (at least \$684/wk), subject to state laws.

You could reduce the amount of the salary, but it needs to be the same amount each week without variation.

Communication is important here. Talk like a human being.



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## Could we choose to send some people home and keep some at work?

As long as the government allows, you could do this, but be careful not to make choices based on protected categories. That list is pretty long now, so make objective decisions based on business needs.



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## What is a furlough or a layoff or a reduction in force?

Furlough: Temporary reduction in time worked. Benefits might continue.

Layoff: Separating from payroll with possibility of return to work. Benefits normally end per plans but could be continued with plan amendment.

Reduction in Force: Terminations. Return is not expected. Benefits end per plans.

## Are they eligible for unemployment benefits?

In most cases, yes, including partial claims for furloughs in states that allow it. Many states are reducing or waiving waiting periods. Check the state website.



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## What's happening with unemployment insurance?

The feds may give extra funds to states where unemployment exceeds 10% if:

- States require employers to provide notification at separation
- States provide online, in-person or phone assistance when applying
- States ease eligibility requirements such as waiting periods, search requirements
- States don't charge employers directly impacted by COVID-19 illness in the workplace or who under direction of public health officials isolate or quarantine workers



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## What's the WARN Act? (see state attachment)

For employers with 100+ employees

- Requires 60 days advance notice of shut downs, mass layoffs (33% of workforce)

Exceptions to Notice Requirements: (burden of proof with employer)

- Faltering company
- Unforeseeable business circumstances
- Natural Disaster



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## When does a reduction in hours or a layoff trigger COBRA?

Look at your plan documents

A reduction in hours, layoff and a reduction in force are all events, which coupled with a loss of coverage, would be a COBRA qualifying event.

If you're continuing benefits, there's no loss of coverage (so no COBRA)



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## May an employer require employees with COVID-19 to use paid time off for their absence?

Check Families First Act for entitlement to required paid leave first.

If not entitled or already used required sick leave, Yes, subject to:

- the provisions of the employer's current PTO/vacation policies
- any state laws



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## Could we require employees to use vacation/PTO time in less than full day increments?

For non-exempt employees, Yes, as long as the policy and applicable state and local laws allow it.

For Exempt employees, yes, as long as the policy and applicable state and local laws allow it, and the employee's salary is not docked. The time would be deducted from the paid time bank, but the full salary would continue to be paid.



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## What if our current PTO policy doesn't cover this?

You may change your PTO program and policies, even after Families First is enacted.

Comply with required emergency leave payments first. Then,

You could extend PTO/vacation time to employees, even if you decide to allow employees to go into the negative, and have employees agree that negative balances could be deducted from final pay if allowed by state laws.

You could let employees use PTO without deducting from their balance or requiring them to pay it back upon termination.



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## What if we don't offer PTO or paid vacation?

You may be required to offer Paid Sick leave and job protected family leave to certain employees under the Families First Act.

If the Act doesn't apply to you, Consider offering additional pay for time off, relaxing your attendance policies, being flexible with schedule sharing, etc.



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## Could employers alter their policies or create new policies for this situation?

Yes. (sample Work from Home language attached to login)  
Hours. Expectations of availability, response, productivity, check ins, expenses.

Make clear how and how long temporary policies will apply and be consistent.



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## Must we pay hourly employees during a temporary shut down?

If they are not entitled to the emergency paid leave under the Families First Act, and they're not working, No. *They do need to be paid for hours worked.*

If you are forced to close your business temporarily due to COVID-19 issues, consult your HR professional or legal counsel to determine pay requirements.

If your state has predictive scheduling laws, you might be required to give a notice and/or pay a minimum amount for sudden changes, in addition to required leave pay.



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## Must we pay exempt employees during a temporary shut down?

For exempt employees, it depends on whether the absence is initiated by the employer or by the employee. Talk to HR or Legal before docking an exempt employee's pay.

- If the absence is initiated by the employee (including for his or her own illness or that of someone for whom he or she is caring), the employer may dock the exempt employee for full-day absences only when the employee is not working.
- If the absence is initiated by the employer (e.g., the employee must stay home for a mandatory quarantine period, even though he or she is asymptomatic and willing to come to work), the employer may dock the exempt employee only for full seven-day absences that coincide with the employer's pay week when no work is performed.



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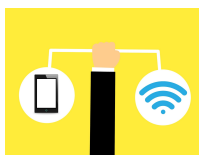
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## How should we handle expenses such as home internet if we send people home to work?

You can reimburse for extra expenses (beyond personal use) if you choose to, but employers don't have to cover home internet charges.

Companies can't require employees to pay additional work from home expenses that would reduce their pay below minimum wage.



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## Your Questions



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### Should employers discipline employees who are away from work because of COVID-19 for violating its attendance policy?

We do not recommend doing this.



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### Is COVID-19 a “serious health condition” under FMLA?

Maybe, maybe not.

Some cases of COVID-19 will not qualify as a serious health condition simply because the employees will not have visited a doctor/healthcare provider for any treatment.

If the employee sought treatment per FMLA guidelines, then maybe. The emergency FMLA coverage is only for employees who cannot work due to childcare needs.



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## Is COVID-19 considered a “disability”?

Normally, no. Even under the amended (2009) ADA, the duration of COVID-19 will likely not be long enough to qualify as an ADA disability.

Complications from COVID-19 (e.g., pneumonia) may qualify as an ADA disability, triggering certain obligations for the employer (e.g., reasonable accommodation, etc.).

Employers should evaluate any applicable state mini-ADAs to ensure they do not contain different or additional requirements or provisions.



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## If an employer treats an employee as if he or she possibly has COVID-19 (e.g., by forcing him or her to stay home until an incubation period has passed), is that a valid basis for a “regarded as disabled” claim?

Likely not. The amended ADA makes clear that “regarded as” claims may not be brought for conditions that are “transitory and minor.”



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## What if employees ask to wear self-provided respiratory protection and/or gloves?

You could allow them to wear them or refuse to allow them if it interferes with the employee's ability to work safely. Consider this message for employees who ask to wear respirators:

- (1) The employer has assessed the situation and determined that respirators are not required to protect employees. Further, both the CDC and the Surgeon General have confirmed that masks are not necessary.
- (2) If employees wish to wear self-provided respirators, the employer will allow them to do so, but it recommends that they consult with their personal physicians to make sure they are physically able to use respirators safely.



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## Are there OSHA requirements that must be followed when an employee is diagnosed with COVID-19?

Yes, in some cases.

1. Ensure that the infected employee stays away from the workplace. For example, employers may want to move such an employee to an isolation room and close the doors or, if an isolation room is not available, to a location away from workers, customers, and other visitors.
2. Take steps to limit the spread (hygiene notices, disinfectants, hand sanitizers) and contact the CDC for guidance.
3. Record illnesses that are work related (infected by co-worker at work).
4. If employee is infected at work and is hospitalized as an in-patient or dies, it must be reported to OSHA within 24 hours.

You are not required to inspect home offices.



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## Could COVID-19 be covered by workers compensation?

It's unlikely unless it's clear that the employee was infected by another employee at work.



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## Now What?

- You will receive a follow-up email with a link to the presentation, as well as the slides and additional resources.
- Join our update call presented by Greg Hare, Ogletree Deakins Tuesday, March 24th at 11:00 ET.
- Visit [threadhcm.com/webinars](https://threadhcm.com/webinars) to view our free recordings and to register for upcoming webinars.
- Hit our website to see links to the latest workplace updates.
- If you could use some HR support, **Let Thread Engage**.



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