



How does COVID-19 Impact Your Business?

guide for frequently asked questions

As the coronavirus (COVID-19) continues to spread in the U.S. and outcomes remain uncertain, we have received an influx of client questions about business implications.

This is a compilation of the most frequently asked questions from the business community. If you have specific questions regarding how an outbreak may affect your business, please don't hesitate to contact the team at McClone. We are here for you.

We continue to monitor the evolving situation and we will update guidance as more information becomes available.*

* Information updated March 24, 2020.





General

What is COVID-19 and how does it spread?

COVID-19 is a respiratory infection that appears to spread mainly among people who are in close contact with one another (within about 6 feet). Much is unknown about how the virus that causes COVID-19 spreads. Current knowledge is largely based on what is known about similar coronaviruses and respiratory illnesses. Respiratory illnesses (like seasonal influenza) are transmitted through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses or possibly be inhaled into the lungs of people who are nearby.

Symptoms of COVID-19 may include:

- Fever
- Dry Cough
- Shortness of Breath

If you experience any of these symptoms or have reason to believe you have been exposed to COVID-19, call your healthcare provider for medical advice and follow the [steps to take when sick from the Centers for Disease Control and Prevention \(CDC\)](#).

What can I do to protect myself from COVID-19?

There is currently no vaccine to prevent COVID-19.

The most effective way to prevent illness is to avoid being exposed to the virus. Some best practices in prevention include:

- Frequent hand washing with soap and water, or hand sanitizer
- Avoid touching your eyes, nose and mouth with unwashed hands
- Avoid sharing cups or utensils with anyone, especially those who are sick
- Avoid shaking hands
- Cover your nose or mouth with a tissue when coughing or sneezing
- Avoid close contact with anyone who might be sick
- Clean and disinfect all surfaces often
- Require all employees to stay home if they are sick





Testing & Employee Relations

Who is most at risk?

Older people, especially those with severe chronic medical conditions like heart, lung or kidney disease.

Are there any Equal Employment Opportunity concerns related to COVID-19?

Just like in any other circumstances, employers cannot select employees for different treatment based on race, color, religion, sex, national origin, age, disability or any other prohibited factor.

Can we ask employees to stay home or leave work if they exhibit symptoms of COVID-19, or would sending sick employees home violate the Americans with Disabilities Act?

No, sending employees home with symptoms of contagious illnesses would not violate ADA restrictions. You are allowed to ask employees to seek medical attention and get tested for COVID-19 if you have reason to believe an employee exhibits any of the warning signs.

Is COVID-19 testing covered by our group health plan?

Yes. COVID-19 testing is a provision included in the Families First Coronavirus Act. The legislation requires private health plans (including fully insured, self-funded and grandfathered plans) to provide coverage for COVID-19 diagnostic testing and related services to employees and their covered dependents with no cost sharing (e.g., deductible, copayment or coinsurance).

Related services include in-person and telehealth provider consultations and facility costs related to COVID-19 diagnosis and treatment. In addition, health plans cannot require prior authorization for COVID-19 testing or services.

This regulation will be in effect April 1, 2020, until the end of the national emergency period.





Employee Relations

What should we do if any employee has tested positive for COVID-19?

You should send home all employees who worked closely with the infected employee for a 14-day period of time to ensure the infection does not spread.

When sending the employees home, don't identify by name the infected employee or you could risk a violation of confidentiality laws. You should then deep clean all effected areas. If you share a building or office space, you should also inform building management so they can take whatever precautions are necessary.

What if one of our employees is suspected, but not confirmed, to have COVID-19?

All suspected cases should be treated as if the employee was confirmed to have contracted COVID-19.

What if an employee reports contact with someone who has tested positive for COVID-19?

Treat the situation as if the exposed employee has a confirmed case of COVID-19, sending home any potentially infected employees with whom that person may have come in contact.

If we have an employee with a confirmed case of COVID-19, must we report it to the CDC?

There is no obligation for an employer to report suspected or confirmed cases of COVID-19. The healthcare provider is the one who must report all confirmed positive cases of COVID-19.

Do HIPAA privacy rules apply during the COVID-19 pandemic?

Yes, HIPAA applies. Make sure you continue to protect the privacy of any infected employees. Medical information should be treated as confidential and afforded the same protection as any HIPAA protected information.





Employee Relations

What obligations exist under HIPAA privacy rules if we are contacted by officials asking emergency personal health information about an employee?

Information should only be disclosed to authorized personnel. You should be careful not to release information to someone until you have properly identified them.

An employee alleges he contracted the virus at work. Will this result in a workers' compensation claim?

It depends. If the employee is a healthcare worker or first responder, the answer is likely yes. For other categories of employment, a compensable workers' compensation claim is possible but further analysis would be necessary.

What are the benefits an employee will receive if granted workers' compensation?

The good news is that in most situations the virus does not pose any significant long-term healthcare problems. You would be exposed to medical costs associated with the treatment, and compensation costs associated with any recovery time including quarantines required by employer, local, state or federal government agencies.

Can an employee refuse to come to work because of fear of infection?

Employees are only allowed to refuse to work if they believe they are in imminent danger. OSHA describes imminent danger as "threat of death or serious physical harm." Section 13(a) of the Occupational Safety and Health Act (OSH ACT) defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act."

Most work conditions in the U.S. don't meet the elements required for an employee to refuse to work. This is general guidance and each employer must determine whether it is permissible for employees to refuse work. An example to consider is requiring a medical professional to work in a setting without proper protective equipment.





Employee Travel

Can employees refuse to travel as part of their job requirements?

If an employee objects to travel, you will want to proceed with caution and consult an attorney before taking any steps. Under the federal OSH Act, an employee can refuse to work when a realistic threat is present.

Should employees continue to travel?

You should limit all travel if possible and consult the [CDC's travel advisory](#) if travel is necessary. Some states have put travel bans in place. Wisconsin is under a Safer at Home order from March 25 through April 24, limiting travel to essential needs only.

Can we prohibit employees from traveling to a non-restricted area on their personal time?

You cannot prohibit otherwise legal activity, such as travel abroad by an employee. You could risk legal exposure, reduce employee morale, and create negative publicity if you try to terminate an employee who refuses to cancel personal travel at your request.

If an employee is currently traveling or working abroad, are there restrictions on returning to the United States?

American citizens, lawful permanent residents and their families who have been out of the country in the past 14 days will be allowed to enter the U.S., but will be redirected to one of these airports:

- JFK International Airport
- Chicago O'Hare International Airport
- San Francisco International Airport
- Seattle-Tacoma International Airport
- Daniel K. Inouye International Airport
- Los Angeles International Airport
- Hartsfield-Jackson Atlanta International Airport
- Washington Dulles International Airport
- Newark Liberty International Airport
- Dallas/Fort Worth International Airport
- Detroit Metropolitan Wayne County

Those returning from abroad should stay home and monitor their health. More information is available from the CDC on their [Traveler's Health page](#).





Remote Work

Should we institute a temporary remote work policy?

The CDC currently recommends social distancing as a way to reduce the spread of the virus, but there is no current federal mandate for remote work. The decision should be evaluated on a company basis depending on local laws. Wisconsin has issued a Safer at Home order effective March 25 – April 24.

Organizations providing “essential care or services” will remain open and workers, including healthcare workers, family caregivers, grocery store employees, etc., are allowed to continue to travel to and from work. For a list of essential businesses or to inquire if your business is considered essential, [visit the Wisconsin Economic Development Corporation website](#). Non-essential businesses that have their workers or contractors performing remote work exclusively at home are allowed to continue to operate during the Safer at Home order.

What can we do to prepare for a possible remote work environment?

- Take inventory of the types of equipment your workers would need to get their jobs done.
- Encourage employees to start preparing for the possibility of working at home. Have them develop a “ready bag” with stuff they would need to work effectively at home.
- Be clear with employees about what is acceptable to take home.
- Begin to make any necessary materials digital to make it easier to use from home.
- Take time to develop and document your remote work policy.

What should be included in a remote work policy?

- Are your workers encouraged to work from home or barred from coming to the office?
- Will any essential personnel be exempt at certain physical locations?
- Will they need to be available at all times during the working day?
- Will remote meetings take place online, over the phone, camera, etc.?
- Will you prohibit employees meeting in person? Will there be size limitations to the meetings?
- Will you prohibit employees from meeting with outside parties?
- Will you prohibit employees from performing work outside of their homes (i.e., coffee shops)?
- Will you allow employees to work on their own devices or only company issued devices?





Leave and Health Benefits

If we have a unionized workforce, can we make changes to union employees' work schedules or duties in response to COVID-19?

The first authority for determining your rights and obligations is your own collective bargaining agreement. Many agreements will have certain provisions to allow for employer flexibility in situations like this.

Does the Family and Medical Leave Act (FMLA) apply to the COVID-19 pandemic?

It could, FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons which may include [contagious illnesses if complications arise that create a "serious health condition"](#) as defined by the FMLA.

Employees could be protected by FMLA to the extent they would otherwise meet FMLA requirements.

Can employees remain on the health plan even if they are not actively working?

It depends, continuation of benefits is usually outlined in the Summary Plan Description (SPD) or combination of the employer application and the insurance certificate, but generally, there are three ways employees can stay on a group health plan:

No. 1 Reduced Hours and PTO/Sick Days

- Most health plan coverage continues through the end of the month.
- Contracts establish benefit eligibility based on an hourly requirement.
- PTO/Sick Pay (usually a cap on days) can be used to meet eligibility requirements.

No. 2 Emergency Family and Medical Leave Act (FMLA) Expansion Act

- Goes into effect April 2, 2020; temporarily expands entitlement to FMLA leave to employees who are unable to work or telework because they need to care for their child (under 18) if the child's school or place of care is closed due to a public health emergency.



FAQ

- Employees under FMLA are entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

See our guide Families First Coronavirus Act: What does it mean for you? for a more details.

No. 3 Consolidated Omnibus Budget Reconciliation Act (COBRA)

- If you lay off employees or you determine employees won't meet other eligibility, COBRA must be extended.

For more details on extending benefits to employees, read COVID-19: FAQs for Business Closure.

Can we charge time missed to vacation and leave balances?

The Fair Labor Standards Act (FLSA) does not regulate the accumulation and use of vacation or other leave. Under the Family and Medical Leave Act (FMLA) Expansion Act however, the employer cannot require the employee to substitute paid time off (e.g., accrued PTO or vacation days) for unpaid time.

Will Business Interruption Insurance cover COVID-19 disruptions?

Generally speaking, business interruption insurance is a product that covers loss of income suffered by a business as a result of disruption to operations. COVID-19 will not typically trigger coverage, but all policy language and coverage should be researched to see if any potential coverage would apply to your individual situation.

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