



# Coronavirus: Pressing HR Questions Answered

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Presented by:

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# General Information

Below are some useful informational links about the Coronavirus in general, CDD guidance for travelers, and a link to Frequently Asked Questions (FAQs) prepared by a team of FP attorneys.

- CDC Coronavirus page: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC Travel site: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>
- World Health Organization “Myth Busters:” <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>
- Guidance for Ohio employers: [www.coronavirus.ohio.gov](http://www.coronavirus.ohio.gov)

# General Information

- **FMLA considerations:** Is COVID-19 a FMLA-qualifying condition? Most likely. Remember, FMLA applies to employee, spouse, child and parent. Require the certifications but grant tentative.
- **Americans With Disabilities Act:** Is COVID-19 a disability?
- **Wage Hour Issues:** Non-exempt employees must be paid for hours worked and must accurately record hours.

# Questions

- Can I send an employee home if they appear to have symptoms of the flu or COVID-19?
  - Do I have to pay them?
  - Can I require a doctor's note?
- What if any employee gets sick during the shift can I send them home?
  - Do I have to pay them?
  - Could the employee claim to have contracted it at work?

# Questions

- Do I have to pay employees for time off because they have the COVID-19 virus?
  - Do I have to pay employees if they are quarantined because of a family member has COVID-19?
- Can I ask employees why they were absent?
- If an employee does not want to work b/c of fears of the virus, is that protected?
  - Paid?
  - FMLA?
  - Disciplinary action?

# Questions

- Can I require an employee to be tested for COVID-19?
- How should we handle doctor's notes?
  - For absences?
  - For return to work?

# Questions

- Is Coronavirus a “disability” under the ADA?
- What if a pregnant employee does not want to work for fear of contracting COVID-19?
  - Would this be short-term disability?
- Can I take employees’ temperatures?

# Questions

- Is time off due to the Coronavirus considered FMLA-qualifying?
- Do we have to allow employees to work from home?
- Can employees self-quarantine?

# Questions

- If an employee claims to contract COVID-19 at work, is that a workers' compensation claim?
- Is an employee contracting COVID-19 an OSHA-reportable incident?

# Questions

- What if an employee cannot work because the schools are shut down for 3 weeks?
  - Do I have to pay them?
  - Should I pay them?
  - Can I force the employees to use PTO or vacation?
  - Is it FMLA-qualifying?
  - What are some creative ways to deal with this?

# Questions

- Can the dealership tell vendors not to come on-site? Should we?
- Can we modify schedules and/or reduce staff working each day to reduce number of employees working and interacting?

# Questions

- What should we communicate to employees now?
- What happens if the Government orders business to close?
  - Unemployment benefits?
  - WARN Act notices?
  - Continued benefits?

# Questions

- What if an employee notifies us that s/he tested positive for the coronavirus?
- How do we handle employees returning from trips abroad?

# Questions

- What if employees refuse to work with employees who are returning from abroad?
- Can we prohibit our employees from traveling within the US? Outside the US?

# OSHA – General Duty Clause, Section 5(a)(1)

The OSHA **general duty clause**, Section 5(a)(1) of the Occupational Safety and Health Act, requires that each employer furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.

# OSHA – General Duty Clause, Section 5(a)(1)

- Develop an Infectious Disease Preparedness and Response plan.
- Prepare basic preventative measures:
  - Promote Hand washing;
  - Workers should stay home if sick;
  - Encourage covering of mouths and nose while coughing or sneezing;
  - Develop Work at Home policies if possible;
  - Maintain regular housekeeping practices.
  - Develop policies to identify and isolate the ill.

# OSHA – General Duty Clause, Section 5(a)(1)

- Implement Workplace Controls
  - Engineering controls
    - Install high efficiency air filters
    - Increase ventilation
    - Installing barriers like sneeze guards
  - Administrative controls
    - Encourage Sick workers to stay at home
    - Establish alternate days or shifts to reduce total number of workers' that could be exposed
    - Discontinue non-essential travel
  - Personal Protective Equipment
    - Examples:
      - Gloves
      - Goggles
      - Face shields
      - Face masks
      - Respiratory protections

# OSHA – General Duty Clause, Section 5(a)(1)

- Recordability:
  - OSHA considers COVID-19 to be recordable if work related;
  - “if an event or exposure in the work environment either caused or contributed to the resulting condition...”
  - Work environment is defined as “the establishment and other locations where one or more employees are working or are present as a condition of their employment:
    - Employers premises;
    - Conferences
    - Client sites
  - Infectious diseases are work-related if infected at work-employer must make a “reasonable inquiry.”

# Workers' Compensation

- Health care worker or first responders there is a presumption that any communicable disease contracted by such a worker is the result of their employment.
- Contracting the COVID-19 would not be compensable as an injury however it could be compensable as an “occupational disease.” To be an occupational disease you must show:
  1. The illness or disease was contracted in the course of employment, meaning that the illness or disease was proximately caused by employment;
  2. The illness or disease must arise out of employment through conditions that are peculiar to the work *or* from a hazard that distinguishes the employment from employment generally; and
  3. The employment creates a risk of contracting the disease in a greater degree and in a different manner than in the public generally.

# Unemployment Compensation

- If an employer must shut down operations and no work is available, individuals may be eligible for unemployment benefits if they meet the monetary criteria and the federal weekly eligibility criteria.
- Contributory employers could see an increase in their tax rate, which would result in higher taxes.
- If employee self-quarantines the individual—not the employer—is choosing not to work and, therefore, would be ineligible. If the employer required the individual to stay home but did not offer telework, the individual might be eligible for benefits if they met the monetary and weekly eligibility criteria.

# Unemployment Compensation

- If an employee is in mandatory quarantine because of suspicion of having the coronavirus, will they might be eligible for unemployment benefits however it may be problematic as they are not available for work.
- If the employee becomes ill from COVID-19 they are not entitled to benefits as the Federal requirements mandate that claimants be able to work, available for work, and actively seeking suitable work. If someone is ill, they would not meet these criteria.
- If the president of the United States declares the coronavirus a national disaster, and if individuals experience a loss of work in Ohio as a result, they may be eligible for unemployment benefits and/or Disaster Unemployment Assistance.

# Thank You Questions?

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