

COVID-19 Hot Buttons and Links

Many of these items are fluid and changing hour to hour. This resource is not meant to be an exhaustive guide and its accuracy will change rapidly during this Pandemic. Please look for updates and seek appropriate legal counsel.

On March 11, 2020, the World Health Organization (WHO) declared the COVID-19 coronavirus outbreak as a [pandemic](#). This designation signifies that we are in the midst of a global disease outbreak, which occurs when a new virus emerges for which there is little or no immunity in the human population, begins to cause serious illness, and then spreads easily person-to-person worldwide.

HR6201 - Families First Corona Virus Act was signed into law. This law covers Employers with 1-500 employees. Please follow this link for more details: <http://www.associatedemployers.org/2020/03/covid-19-resource-center/>

This is the link for the full HR6201 law: <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

S.3548 - Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. Please follow this link for more details: <http://www.associatedemployers.org/2020/03/covid-19-resource-center/>

This is the link for the full S.3548 law: <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

What if an employee appears sick?

If any employee presents themselves at work with a fever or difficulty in breathing, this indicates that they should seek medical evaluation. While these symptoms are not always associated with influenza and the likelihood of an employee having the COVID-19 coronavirus is extremely low, it pays to err on the side of caution. Retrain your supervisors on the importance of not overreacting to situations in the workplace potentially related to COVID-19 in order to prevent panic among the workforce.

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or flu?

Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace. During the H1N1 pandemic, the Equal Employment Opportunity Commission (EEOC) stated that advising workers to go home is not disability-related if the symptoms present are akin to the seasonal influenza or the H1N1 virus. Therefore, an employer may require workers to go home if they exhibit symptoms of the COVID-19 coronavirus or the flu.

When can employees refuse to come to work? According to OSHA, they must believe they are in imminent danger. OSHA discusses imminent danger as where there is “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.” We should be sanitizing, practicing social distancing, working remotely if able, doing work via telephone or other digital means and cleaning and sanitizing our workplace to mitigate risk. A fear of exposure is not enough to refuse to come to work.

An employee of ours has tested positive for COVID-19. What should we do?

You should send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws. You may also want to consider asking a cleaning company to undertake a deep cleaning of your affected workspaces. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

If we learn or suspect that one of our employees has COVID-19, do we have a responsibility to report this information to the CDC?

There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

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

Employees who object on behalf of others or act in groups could be covered by the NLRA's protection of concerted protected activity. You will want to proceed with caution and consult with your attorney before taking any steps in this regard. Moreover, under the federal OSH Act, employees can only refuse to work when a realistic threat is present. Therefore, if employees refuse your instruction to travel for business to any other country for fear of catching the COVID-19 coronavirus, try to work out an amicable resolution. For example, the employer and the employee can check and discuss the [CDC](#) (avoid Nonessential travel), State Department, and DHS Travel Advisories, which provide guidance on Travel. The CDC is also advising that some individuals may be more at risk of infection than others in the general population. Thus, follow the CDC direction on pregnant employees or on related reproductive issues, and do not make decisions without medical support. Moreover, actions by other countries, especially in Asia, may cause employee concerns, and absolute warnings and restrictions like those on China may not exist.

Is an employer having to pay for leave because "the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19". Does that apply when the business itself is shut-down by the government, but the employee is free to go wherever he/she wants?

The [Congressional Research Service Report](#) prepared for the members and committees of Congress may be instructive. As noted in the report-Quarantine typically refers to the "separation of individuals who have been exposed to an infection but are *not yet ill* from others who have not been exposed to the transmissible infection." In contrast, isolation refers to the "separation of infected individuals from those who are not infected."

It appears that quarantine and isolation, as defined in law and jurisprudence, involve orders affecting individuals, and not the shut-down of businesses. Courts have set four limits on isolation and quarantine authority: (1) the subject must actually be infectious or have been exposed to infectious disease; (2) the subject must be placed in a safe and habitable environment; (3) the authority must be exercised in a non-discriminatory manner; and (4) there must be procedural due process. Unfortunately, interpretations of these new paid leave laws may be litigated for years. However, until and if the government issues a Stay-In-Place Order, I believe there is an argument that the shut-down of a particular business does not qualify under the Paid Sick Leave Law. This may not be the most popular argument, but I imagine it will be made many times in the years ahead. © 2020 Jones Walker LLP

Can Emergency FMLA be added on to regular FMLA so that employees get 12 weeks for both types?

Emergency FMLA leave is limited to 12 weeks, minus any other FMLA leave taken by an employee during the employer's FMLA year. E-FMLA leave is just another form of FMLA leave, and the FFCRA lumps it together with all other forms of leave in which 12 weeks of leave is provided. Emergency FMLA leave is treated like FMLA leave, and the employee is entitled to use it while the law is in effect, provided other requirements are met. Any amount of E-FMLA leave used will reduce the amount of FMLA leave an employee can take for other reasons during the applicable FMLA year. The FFCRA is currently set to expire on December 31, 2020, but any E-FMLA leave taken may impact the employee's ability to take FMLA leave for other reasons thereafter (especially if the employer is using a rolling calendar year).

When may an employee discontinue home isolation? Per PhillipsLewis

Per the CDC, there are three options for determining when a person may end home isolation, using either (1) a time-since-illness-onset option, (2) a time-since-recovery option, or (3) a test-based option.

- *Time-since-illness-onset and time-since-recovery strategy (non-test-based strategy)*: Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:
 - At least three days (72 hours) have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath); and
 - At least seven days have passed since symptoms first appeared.
- *Test-based strategy (simplified from initial protocol)*: Previous recommendations for a test-based strategy remain applicable. However, a test-based strategy is contingent on the availability of ample testing supplies and laboratory capacity as well as convenient access to testing. For jurisdictions that choose to use a test-based strategy, the recommended protocol has been simplified so that only one swab is needed at every sampling. Persons who have COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:

- Resolution of fever without the use of fever-reducing medications;
- Improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected ≥24 hours apart (total of two negative specimens). See [Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons Under Investigation \(PUIs\) for 2019 Novel Coronavirus \(2019-nCoV\)](#) for specimen collection guidance.
- Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least seven days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness.

[The EEOC confirmed](#) that you may require a doctor's note stating the employee is fit for duty before permitting them to return to work.

Link to CDC Workplace Guidance: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Link to EEOC Guidance on Pandemics: https://www.eeoc.gov/facts/pandemic_flu.html

Link to OSHA Preparing for Covid-19: <https://www.osha.gov/Publications/OSHA3990.pdf>

Link to information from Small Business Administration Guidance: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

Link to WHO Covid vs Flu Symptoms: <https://www.who.int/Portals/75/Coronavirus/COVID-19%20vs%20Cold%20vs%20Flu.jpg?ver=2020-03-10-105044-380>

Link to DOL Resources on COVID-19: <https://www.dol.gov/coronavirus>

Montana Unemployment information: <https://news.mt.gov/governor-bullock-announces-emergency-rules-to-streamline-unemployment-benefits-for-workers-impacted-by-covid-19>

<http://dli.mt.gov/Portals/57/Documents/covid-19/employee-FAQ.pdf?ver=2020-03-26-155411-993>

Wyoming Unemployment information: <http://www.wyomingworkforce.org/docs/data/epidemiology/2020-03-covid19-faq.pdf>

Testing for Uninsured in Montana: <https://news.mt.gov/governor-bullock-announces-uninsured-montanans-to-receive-coverage-for-covid-19-testing-and-treatment>

Required Poster: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Sources include the links above, governmental websites, OgletreeDeakins, PhillipsLewis & National Law Review Website. Ver5. 4-1-2020 ASSOCIATED EMPLOYERS IS A NOT-FOR-PROFIT VOLUNTARY EMPLOYERS' ASSOCIATION THAT PROVIDES INFORMATION SERVICES TO ITS MEMBER EMPLOYERS IN AN EFFORT TO PROMOTE AND MAINTAIN POSITIVE EMPLOYER/EMPLOYEE RELATIONSHIPS. THIS INFORMATION IS BEING PROVIDED AS A SERVICE TO ALL MEMBERS; HOWEVER, IT IS NOT DESIGNED TO RENDER LEGAL ADVICE OR OPINION. CHECK WITH YOUR LEGAL COUNSEL.