

Coronavirus (COVID-19) FAQs for Healthcare Industry Employers

Important information for today's webinar:

No phone dial-in is needed. All audio will come through your computer speakers or headphones connected to your computer audio.

All attendees are in Listen Only mode for the duration of the presentation.

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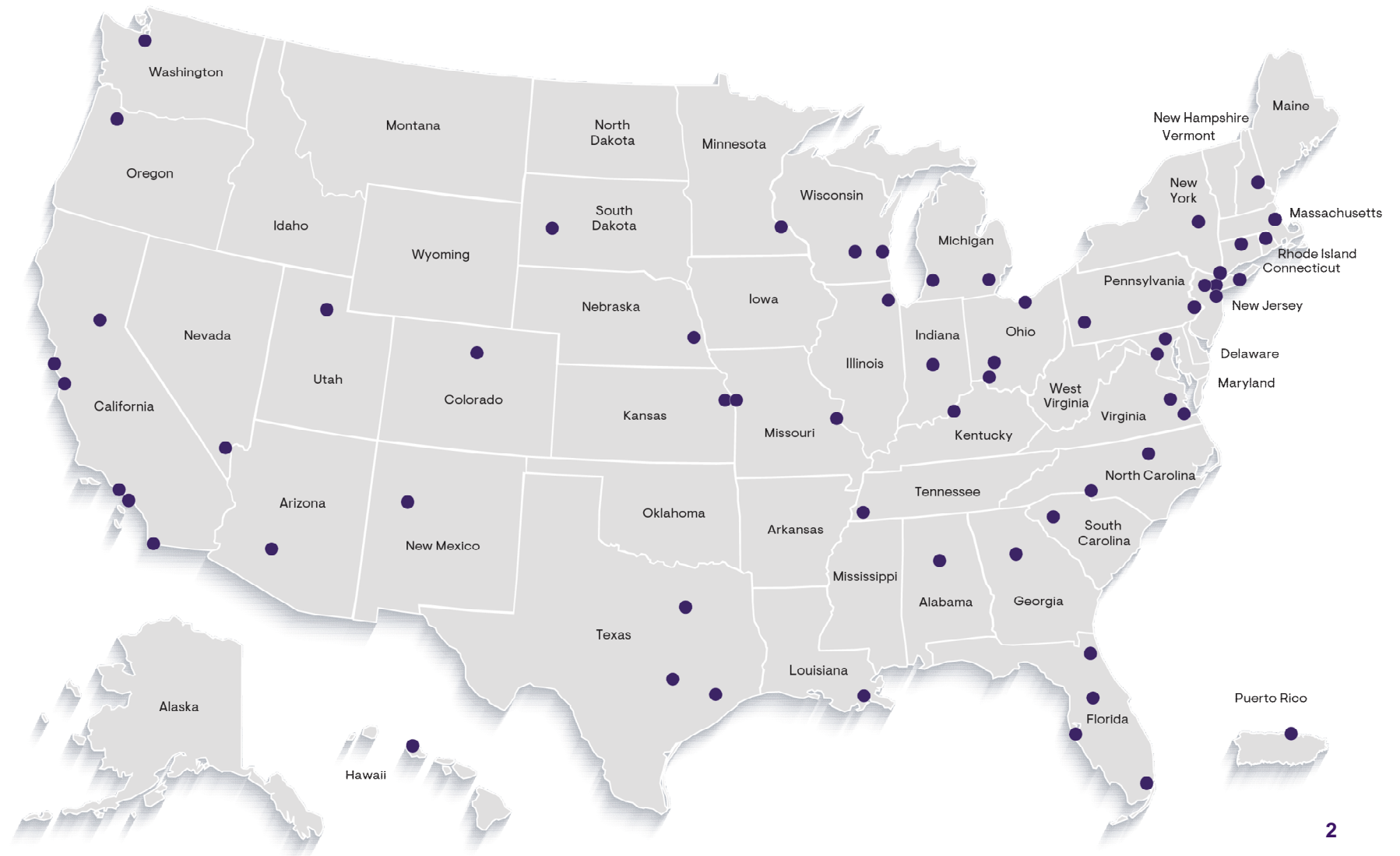
Strategically located to serve employers' needs

61

Locations Nationwide

950+

Attorneys



Families First Coronavirus Response Act

Overview of the Law

- Signed into law on March 18, 2020
- 2 key provisions for employers:
 1. Creates limited paid sick leave
 2. Amends FMLA to expand coverage for COVID-19 childcare-related reasons
- Emergency paid sick leave and expanded FMLA leave provisions effective **April 1, 2020** and will remain in place until the end of 2020

“Covered Employer”

- Private employers with fewer than 500 employees
- Certain public employers

“Covered Employer”

- An employer of a Healthcare provider or emergency responder can elect to exclude those particular employees from these provisions
- Healthcare provider is defined under FMLA as doctors, dentists, optometrists, clinical psychologists, nurse practitioners and physician assistants (who are authorized to practice under state law), etc.
 - Healthcare provider does not include RNs

“Covered Employer”

- Potential exemption of businesses with fewer than 50 employees when the provision would jeopardize the viability of the business as a going concern
- U.S. Department of Labor expected to issue regulations

Emergency Paid Sick Leave Act

Eligible Employee

All employees of a covered employer are immediately eligible for paid sick leave

Qualifying Reasons for Emergency Paid Sick Leave

Employee is unable to work or telework due to a need for leave because:

1. Employee is **subject to a quarantine or isolation order** related to COVID-19
2. Employee has been **advised by a healthcare provider to self-quarantine** due to concerns related to COVID-19
3. Employee is **experiencing symptoms** of COVID-19 and seeking a medical diagnosis

Qualifying Reasons for Emergency Paid Sick Leave

Employee is unable to work or telework due to a need for leave because:

4. Employee is caring for an individual who is needs to quarantine, isolate, or self-quarantine under government order or health care advisor advice
5. Employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions
6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor

Emergency Paid Sick Leave Entitlement

- Full-time employee
 - 80 hours of paid sick leave
- Part-time employee
 - A number of hours equal to the number of hours such employee works, on average, over a two-week period
- Varying schedule employee
 - Based on average number of hours such employee was scheduled to work per day over the preceding 6 months
 - If not employed during that 6-month period, use reasonable expectation of scheduled hours at time of hire

Emergency Paid Sick Leave Compensation Amount

- Leave for Employee's own COVID-19 qualifying reason (#1-3):
 - Paid at the employee's regular rate of pay
 - Cap: \$511 per day and \$5,110 in the aggregate
- Leave to care for family member's COVID-19 qualifying reason (#4-6):
 - Paid at 2/3 of employee's regular rate of pay
 - Cap: \$200 per day and \$2,000 in the aggregate

Additional Important Provisions

- Notice
 - Employer must post notice in conspicuous places where notices are customarily posted (DOL to provide model notice)
 - After the first sick day, employer may require an employee to follow reasonable notice procedures in order to receive paid sick leave
- Prohibitions
 - Cannot require employee to use other paid leave first
 - Cannot require employee to find a replacement employee
 - Cannot discharge, discipline, or discriminate against an employee who takes paid leave (or engages in related protected activity)
- Enforcement consistent with FLSA

Emergency FMLA Expansion Act

“Eligible Employee”

- Only eligibility requirement is that employee must have been employed for at least 30 calendar days
- Traditional FMLA eligibility requirements are not applicable to added sections (but still apply to other FMLA leaves)
 - Employed for 12 months;
 - Worked for at least 1,250 hours in preceding 12 months; and
 - 50 employees within a 75-mile radius of worksite.

Expanded Reasons for Leave

- Employee is unable to work (or telework) due to a need to care for the employee's son or daughter under 18 years of age if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency
- "Public health emergency" is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority

FMLA Entitlements for Childcare Provision

- First 10 days of leave unpaid
 - Employee may elect to substitute any accrued vacation, personal or sick leave (including the new Emergency Paid Sick Leave) during this period
- Subsequent absences for this reason must be paid at 2/3 the employee's regular rate of pay
 - Capped at \$200 a day and \$10,000 in aggregate per employee.

Notice/Job Protection

Notice

- Employee must provide the employer with “such notice of leave as is practicable”

Job Protection

- Normal FMLA rules apply (reinstate to same or equivalent position)
- Exception for employers with fewer than 25 employees **if**
 - The employee’s position no longer exists due to economic conditions or other changes in the employer’s operations that affect employment and are caused by the public health crisis during the period of leave **and**
 - The employer makes reasonable efforts to restore employee to the same/equivalent position **and**
 - If those reasonable efforts fail, the employer makes efforts to contact and reinstate employee if an equivalent position becomes available within one year

Healthcare Workplace Considerations in a COVID-19 World

How Can We Convince Our Employees to Come to Work?

- **Increase pay:** Offer incentive pay, extra pay differential hazardous duty pay, bonuses
- **Workplace education:** Regularly educate employees on the measures the employer is taking to prevent the spread of COVID-19 to employees
- **Internal encouragement/morale boost:** Regularly state the vital role our healthcare providers play in stemming the tide of this pandemic
- **Daily, Quality-of-Life Benefits:** Explore any and all options to make it easy to come to work – childcare, food shopping, dry cleaning services

How Can We Convince Our Employees to Come to Work?

- **Avoid creating continuity of operations issues.** If the hospital terminates a physician or two from a group for refusing to work, might that lead to the whole group severing their relationship with the employer
- **Partner with medical staff leaders** to “rally the troops” in an effort to get them to keep seeing patients
- **External/political encouragement:** Consider lobbying mayors and governors to issue emergency orders that at least strongly encourage healthcare workers to continue coming to work
- **Supportive plan:** Develop a supportive plan for healthcare workers who become infected and communicate regularly about the available support

How Can We Convince Our Employees to Come to Work?

- **Beware of Employment Agreements:**
Remember that many physicians will be subject to employment agreements that will only permit termination for cause or with 60-90 days' notice without cause
- **Telework and alternative work responsibilities and arrangements:** Staff hotlines/calls from home to ensure the providers have capacity to handle the influx
 - [HIPAA rules have been relaxed for Telehealth Providers](#)

How Can We Convince Our Employees to Come to Work?

- **Higher-Education Assistance:** Offer to assist those employees who are interested in going back to school and earning advanced degrees when the pandemic ends:
 - **Financial assistance:** Reduced tuition, or grant money
 - **Non-Financial assistance:** Preferred consideration when applying to graduate programs, strong recommendations/commendations/awards to enhance graduate and/or medical school applications
 - **Experience:** Stress that continuing to work under difficult conditions will result in valuable, one-of-a-kind experiences that will assist with admission to graduate school, as well as professional development and advancement in general
- **Deferred/Additional Paid Time Off:** Offer employees additional days off if they defer taking off during the crisis or additional PTO when the crisis ends

What is the Criteria for HCP to Return to Work?

- CDC's Criteria for Return to Work for Healthcare Personnel with Confirmed or Suspected (COVID-19)
 - **Test-based strategy.** Exclude from work until:
 - Resolution of fever without the use of fever-reducing medications *and*
 - Improvement in respiratory symptoms, *and*
 - Negative results from at least two consecutive nasopharyngeal swab specimens collected ≥ 24 hours apart
 - **Non-test-based strategy.** Exclude from work until:
 - At least 3 days have passed *since recovery* defined as resolution of fever without the use of fever-reducing medications *and* improvement in respiratory symptoms; *and*
 - At least 7 days have passed *since symptoms first appeared*

What is the Criteria for HCP to Return to Work?

- Per the CDC's guidance, in a staffing crisis, a healthcare employer may determine that the recommended approaches cannot be followed, in which case health care providers should be evaluated by occupational health to determine appropriateness of earlier return to work
- **In such scenarios:**
 - HCP should be evaluated by occupational health to determine appropriateness of earlier return to work
 - If HCP return to work earlier than recommended above, they should still adhere to the Return to Work Practices and Work Restrictions recommendations above
 - For more information, see [CDC's Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with COVID-19](#)

Implementing Pay Changes, Furloughs, and Reductions in Force

Time for Drastic Measures?

Workforce Options

- Reassign employees to areas of more critical concern
- Reduce wages/salaries
- Reduce hours of work
- Furloughs
 - A/K/A: Temporary layoff, temporary leave, inactive status, “on reserve”
- Terminations
 - A/K/A: Reductions in force or “RIFs”, layoffs

Workforce Options

How Do We Decide What to Do?

- Strategic plan
- Cash reserves, cash flow, and other operational issues
- Industry factors and outlook
- What kind of message do we want to send employees?
- CDC guidance
- Regulatory considerations
- Collective Bargaining Agreements

Reduction of Hours and Pay

What Do We Need to Consider?

- Wage Notice Requirements
 - Example: In SC, must provide written notice 7 days in advance
- FLSA + State Wage-and-Hour Laws
 - Non-Exempt Employees
 - Exempt Employees
- Unemployment Benefits
- Benefit Plans and Policies
- WARN Notices

Furloughs and RIFs

What Do We Need to Consider?

- WARN Notices (or Furlough Notices)
- Selection Criteria
- Immigration Status
- Termination Notices
- Final Paycheck Requirements
- Unemployment Insurance

Stay Up To Date

Jackson Lewis Coronavirus/COVID-19 Task Force

<https://www.jacksonlewis.com/practice/coronaviruscovid-19>

- Closure Orders <http://bit.ly/JLClosures>
- Mass Gathering Limitations <http://bit.ly/JLGatherings>
- Paid Family Leave Guidance <http://bit.ly/JL-PFL>
- Predictive Scheduling Guidance <http://bit.ly/JLPredict>
- Paid Sick Leave Guidance <http://bit.ly/JL-PSL>
- State Disability and Workers' Compensation Guidance <http://bit.ly/JL-Dis-WC>
- Unemployment Insurance Guidance <http://bit.ly/JL-UI>

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Thank **you.**

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