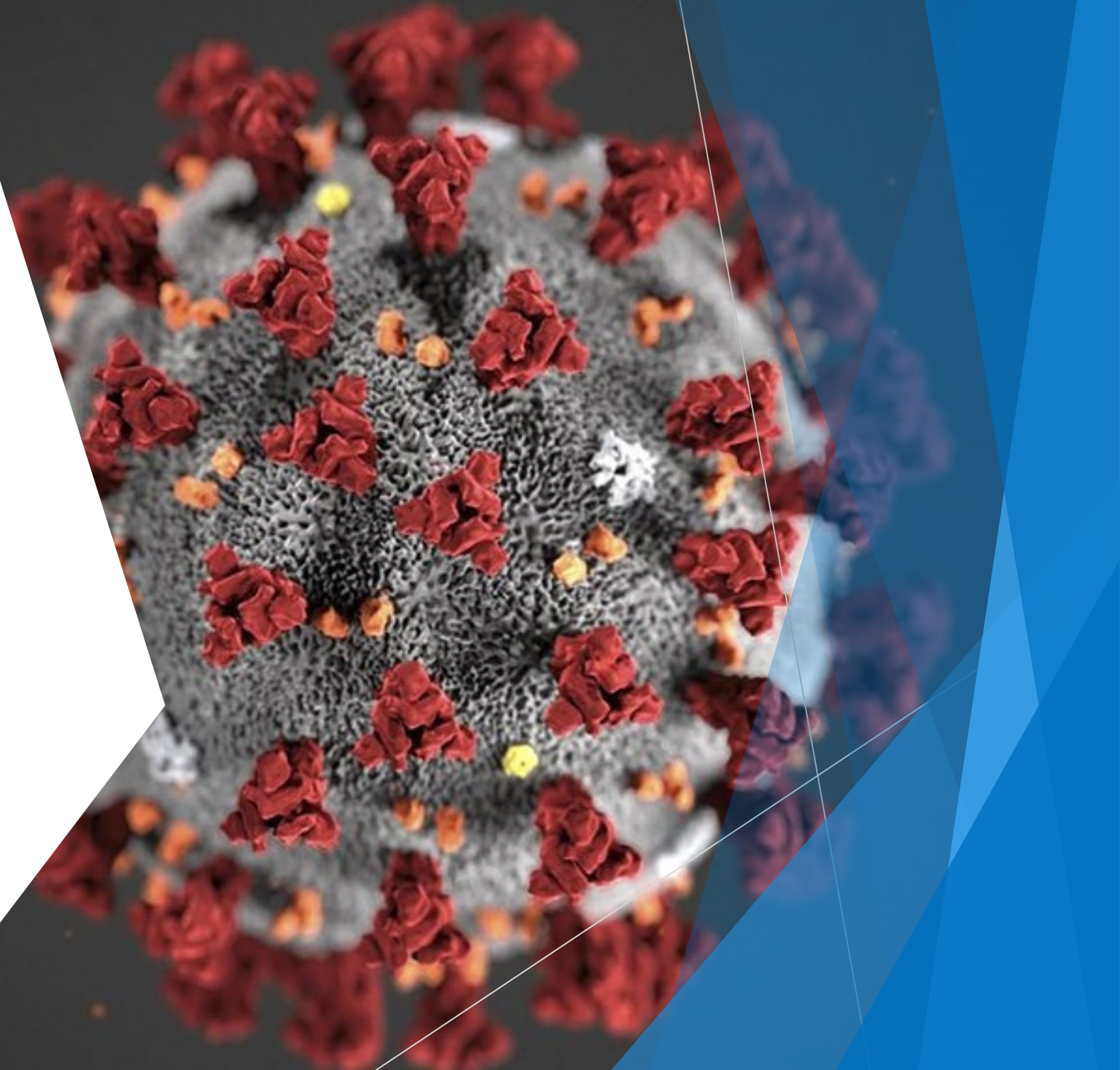


Navigating the Coronavirus: Best Practices For Employers

Presented by: Heather Becker
Antonio Caldarone
David Moore
www.lanermuchin.com

Hosted by: Gregg Mellinger & USI Insurance Services
www.USI.com





Largest privately-held
broker of U.S. business

**"America's Best
Large Employers"**

Two Years in a Row!

Forbes Magazine, 2018 & 2019



150,000⁺



clients served

\$2 *Approaching*
BILLION
IN
Revenue

6,000⁺
employees



150+ Local offices

Servicing local, national,
and international needs.



100⁺ Years of
brokerage
experience

USI ONE® Network Provides Deep Expertise

Dedicated technical experts networked nationally and embedded in local offices with over 6,000 professionals nationwide to build integrated client centered account teams.

Employee Benefits



Dedicated local and regional team members across our resource network service our client teams on a local level.



Property & Casualty

- 2,000+ national employee benefits professionals including enrollment, retirement and wholesale teams
- 3,000+ national property and casualty professionals including our personal lines and program teams
- In-house experts, locally based, ensure your full account team is always available
- Hands-on service and ongoing diligent follow-through



Unmatched Breadth and Depth of Resources

312.467.9800 | lanermuchin.com



LANER MUCHIN

FIRM OVERVIEW

Founded in 1945, Laner Muchin is one of the oldest and largest law firms in the country dedicated exclusively to the representation of employers in the areas of labor and employment law, employment litigation, business immigration and employee benefits. The firm prides itself on staffing cases very efficiently and on being bottom line sensitive. A key to the firm's client loyalty has always been its dedication to client service as exemplified by its unique *Two Hour Commitment*, whereby the firm guarantees that every client phone call or email received during business hours will be returned within two hours or less.

We know your BUSINESS

Many of our clients have been with us for decades due to our unparalleled responsiveness and loyalty as well our zealous representation of their interests.

We represent MANAGEMENT

Laner Muchin exclusively represents management in employment-related litigation, labor relations, employment law counseling, employee benefits, executive compensation and business immigration matters.

We champion DIVERSITY

Laner Muchin is a recipient of the Thomas Sager Award, an annual award given by the Minority Corporate Counsel Association to firms "that have demonstrated sustained commitment to improve the hiring, retention and promotion of minority attorneys." The firm is also an annual sponsor of the ABA Diversity Reception.

We are prominently REPRESENTED

Laner Muchin attorneys are prominently represented among the ranks of Fellows of the College of Labor and Employment Lawyers, Illinois Leading Lawyers, Illinois Super Lawyers and Best Lawyers.





Heather Becker
hbecker@lanermuchin.com



Antonio Caldarone
acaldarone@lanermuchin.com



David A. Moore
dmoore@lanermuchin.com



Gregg Mellinger
SVP Employee Benefits
Gregg.Mellinger@usi.com
Bus. (630) 625-5204
Mobile(630) 915-9111

www.lanermuchin.com
312.467.9800



Agenda

Employers, Human Resources and in-house counsel are grappling with how to respond to the novel Coronavirus (COVID-19) pandemic.

This webinar provides employers with guidance on how to address the impact of the virus on the workplace and what employers can and cannot do.

This is a rapidly developing issue. You should continue to consult with your employment lawyer and monitor the advice of the Center for Disease Control as circumstances change.

What is COVID-19?

- ▶ A respiratory illness.
- ▶ Symptoms include: Fever (100.4 degrees or higher), shortness of breath, and cough.
- ▶ Symptoms may appear 2-14 days after exposure.
- ▶ An individual may be contagious while experiencing no symptoms.



312.467.9800 | lanermuchin.com

Where is COVID-19?



- ▶ Over 100 countries have more than 180,000 reported cases.
- ▶ Over 15,000 cases in the United States; all 50 States.
- ▶ COVID-19 initially spread from person to person in parts of the United States.
- ▶ Recent reporting suggests that there may now be community spread. “Community spread” means some people have been infected and it is not known how or where they became exposed.
- ▶ Risk of infection with COVID-19 is higher for people who are close contacts of someone known to have COVID-19, for example healthcare workers or household members.
- ▶ Other people at higher risk for infection are those who live in or have recently traveled to an area with ongoing spread of COVID-19 or have come in close contact with someone who is confirmed to have COVID-19.



Efforts to Slow Community Spread in the United States

- ▶ On March 16, 2020, the Center for Disease Control recommended that, for the next 8 weeks (through May 10, 2020), all organizers cancel or postpone all in-person events that consist of 50 or more people throughout the United States. Governor Pritzker issues an order in line with this recommendation that will be in place until further notice.
- ▶ In Illinois, under the Governor’s “Stay-At-Home” Order, all individuals are to stay at home and to leave only for certain necessities or to work for an “Essential Business” until April 7, 2020, unless changed.
- ▶ Other States with “Stay-At-Home” or “Shelter-In-Place” Orders include California, New York, New Jersey, and Ohio, among others.





What *Not* To Do

Do Not Panic - Employees and employers are rightly concerned about this issue. However, do not panic. Not everyone who has flu-like symptoms has COVID-19.

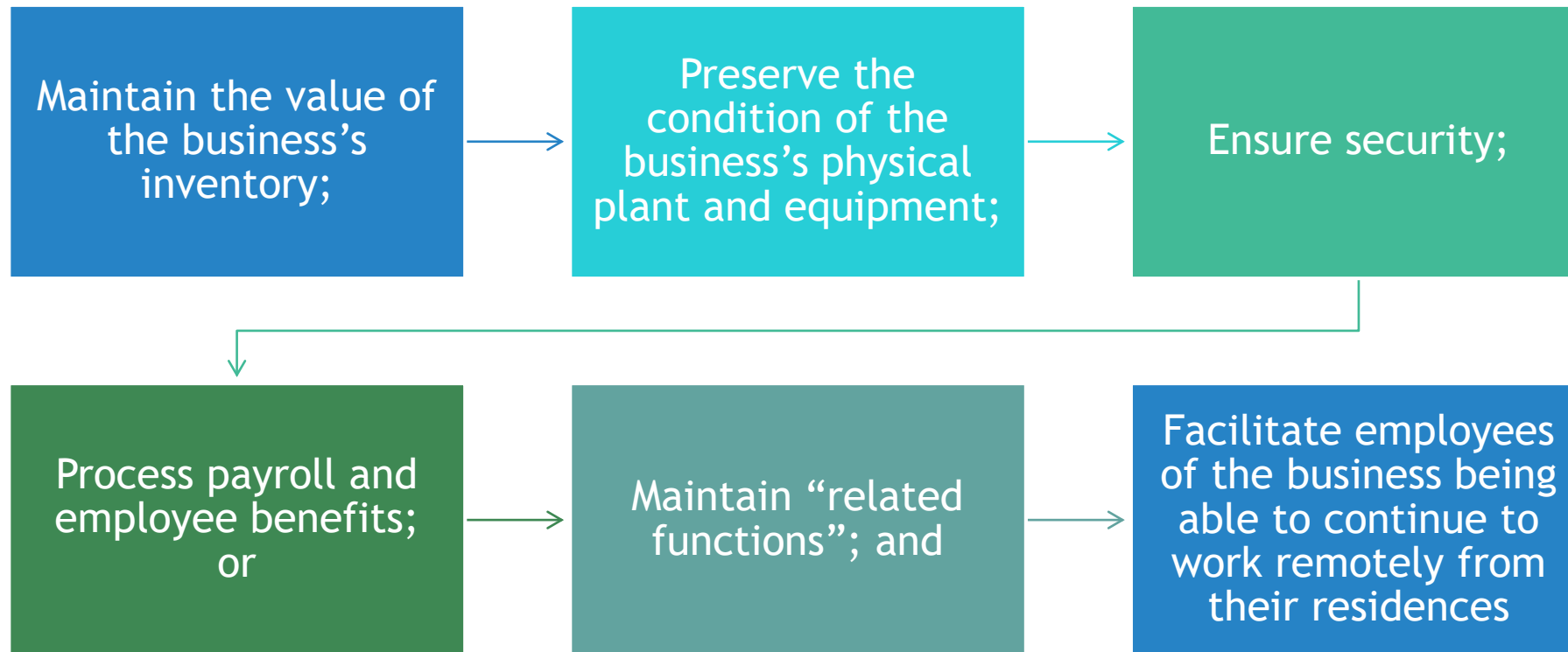
An overreactive response by an employer could spark unnecessary panic in the workplace, disrupting operations.

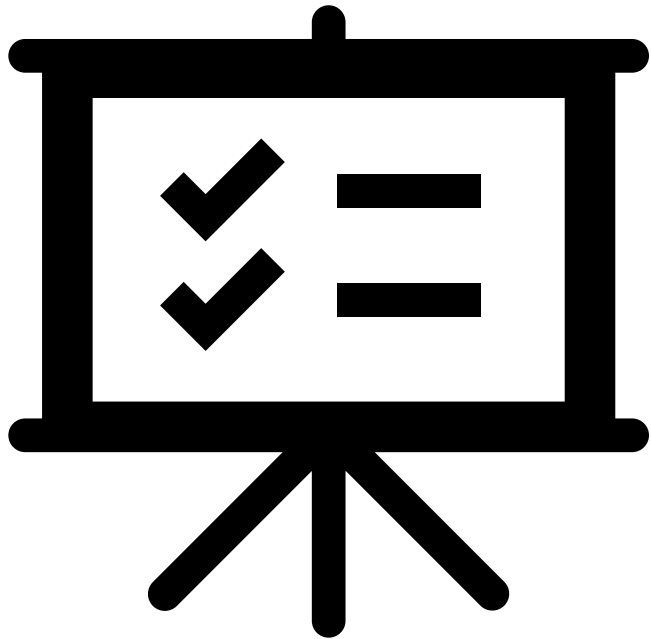
Plan Update: Essential Businesses Under Stay-At-Home Orders

| | | | | | |
|---|--------------------------------|---|--|--|---|
| Healthcare & Public Health Ops. | Human Services Ops. | Essential Infrastructure | Essential Gov. Functions | Stores that sell groceries & medicine | Food, beverage, & cannabis production & agriculture |
| Charitable & social services | Media | Gas stations & businesses needed for transportation | Financial institutions | Hardware & supply stores | Critical construction trade |
| Mail, post shipping, logistics, delivery & pick-up services | Edu. institutions | Laundry services | Restaurants (for consumption off premises) | Supplies to work from home | Supplies for Essential Businesses & Ops. |
| Transportation | Home-based care & services | Residential facilities & shelters | Professional services | Day care centers for employees exempted by the Order | Manufacture, distribution & supply chain for critical products & industries |
| | Critical labor union functions | Hotels & motels | Funeral services | | |



Plan Update: Non-Essential Businesses May Continue Minimum Basic Operations





Reviewing Your Existing Plan

Have a preparedness plan - Create (or review) an operations plan to be prepared and involve all necessary stakeholders (*i.e.*, HR, operations, facility/maintenance, legal, etc.). At a minimum, the plan should:

- Designate a point person to make HR and operational decisions.
- Have a process in place of how to address an employee who is suspected of having exposure or symptoms and determine who will make the decision of sending an employee home or prohibiting the employee from working.
- Develop a communications protocol to notify employees of possible exposure, including who will communicate the method and where employees can get more information.
- Have a communication strategy to handle press inquiries or customer/client inquiries.

Plan review:

Address whether to limit business travel or cancel any upcoming conferences or large gatherings (consider phone or video conferences in lieu of in-person meetings, even if individuals are in the building).

Identify how to handle increased employee absences due to illness (or suspected illness), school closings, disruptions in mass transit or employees who refuse to work because they are scared.

Identify positions that are eligible for work-from-home arrangements on either a temporary or long-term basis.

Prepare for how the business will continue to operate if there is mass absenteeism, especially the absence of key employees.

Plan review:

Determine whether furloughs or temporary layoffs may be necessary in the event of a reduction in business, supply, etc., and how will they be implemented.

You are not required to report actual or possible infections to public health officials; however, state and local public health agencies have hotlines to make inquiries or voluntarily disclose infections at work. Have this information handy.

OSHA does not require you to take more than reasonable steps to protect employees. Most employers do not have to provide face masks or gloves. Your obligations are industry-specific, so be sure to consult counsel regarding OSHA requirements that apply to your business.

Determine whether exposure at work or an infection from an employee is reportable to your workers' compensation carrier.

Families First Coronavirus Response Act

- ▶ Effective date is April 2, 2020. Applies to ERs with fewer than 500 EEs and all government ERs.
- ▶ 2 weeks of Emergency Paid Sick Leave for certain COVID-19 related matters.
- ▶ FMLA expanded to allow paid leave to care for EE's child, if the child's school or other place of care has been closed, or the child care provider is unavailable, due to COVID-19.
- ▶ Similar leave for EEs of ERs who are parties to a multi-ER collective bargaining agreement where those ERs contribute to a multi-employer benefit plan.
- ▶ Tax credits equal to 100% of the FFCRA-mandated wages paid each calendar quarter subject to certain caps, the Medicare taxes owed on those wages, and the expenses associated with maintaining group health plan coverage associated with those wages.
- ▶ Greater access to unemployment insurance for EEs who are off work for certain reasons related to COVID-19.
- ▶ Coverage of COVID-19 testing at no cost under health plans.



FFRCA: Emergency Paid Sick Leave Act

- ▶ **Eligible Employees:** All. Fulltime: 80 hours. Part-time: 2-week average hours.
- ▶ **Reasons for Use:** EE cannot work or telework because:
 - ❖ (1) EE is subject to state or local quarantine or isolation order related to COVID-19;
 - ❖ (2) EE has been advised by a health care provider to self-quarantine due to COVID-19 concerns;
 - ❖ (3) EE is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - ❖ (4) EE caring for an individual who is subject to government quarantine or isolation order or has been advised by a health care provider to self-quarantine as described above;
 - ❖ (5) EE is caring for a child because the child's school or place of care has been closed, or the childcare provider of such child is unavailable, *due to COVID-19 precautions*; and
 - ❖ (6) similar conditions specified by HHS, Treasury and DOL.
- ▶ **Rates of Pay:**
 - ❖ Absences for first three reasons, EE receives greater of EE's regular rate of pay or the applicable minimum wage, but pay is capped at \$511 per day or \$5,110 total.
 - ❖ Absences for last three reasons, EE receives two-thirds of EE's regular rate or the applicable minimum wage, but pay is capped \$200 per day or \$2,000 total.



FFCRA: FMLA Expansion

- ▶ **Eligibility:** All full-time, part-time, and temporary EEs who have been employed with an ER for 30 calendar days.
- ▶ **New Qualifying Absence:** EE may use leave if unable to work (or telework) due to a need for leave to care for the EE's child under 18 years of age if the child's school or other place of care has been closed, or the childcare provider of such child is unavailable, due to a public health emergency.
- ▶ **Paid v. Unpaid Leave:**
 - ❖ First ten days are unpaid. EE may choose to use Emergency Paid Sick Leave or existing PTO, Vacation, Sick Leave, Personal Days, etc., but ER cannot mandate.
 - ❖ After the first ten days, paid at two-thirds of EE's regular rate capped at no more than \$200 per day and \$10,000 total.
- ▶ **Amount:** FMLA remains capped at 12 weeks for all qualifying reasons.
- ▶ **DOL & Treasury Regulations:** Are coming, including clarification of small employer exception.





Be Proactive

Strongly encourage employees to take proactive measures to prevent infection:

- ▶ Make hand sanitizer and tissues available.
- ▶ Inform employees of the recommendations of health care professionals, such as:
 - ❖ washing hands often with soap and water for at least 20 seconds or use an alcohol-based hand sanitizer if soap and water are not available.
 - ❖ avoid touching eyes, nose, and mouth with unwashed hands.
 - ❖ covering your mouth and nose when sneezing or coughing, but not with your hands. Discard tissues after each use.
- ▶ Clean and disinfect frequently touched objects and surfaces with recommended products.
- ▶ Maintain flexibility with employees on where and how they work.
- ▶ Consider staggering work schedules or lunch hours to avoid a large number of employees in one place.



What Can You Ask of Your Employees?

Employers have the right to:

- ▶ Ask employees if they have a fever, cough or shortness of breath.
- ▶ Require employees to inform you if they have been diagnosed with COVID-19, exposed to a person diagnosed with COVID-19, or have traveled to an area with an outbreak.
- ▶ Require employees to inform you of any out-of-state travel plans.
- ▶ Encourage employees to go to a health care provider to be tested for COVID-19.



When Can You Prohibit an Employee from Working?

You can send an employee home from work and prohibit the employee from working if the employee:

- ▶ Exhibits symptoms of COVID-19.
- ▶ Has been exposed to someone diagnosed with COVID-19.
- ▶ Is diagnosed with COVID-19.



Under What Circumstances Can the Employee Return to Work?

Once an employer sends an employee home, the employee can be prohibited from returning to work until:

- ▶ 24 hours after the employee is symptom free without the use of fever-reducing medicine and has no other risk factors.
- ▶ 14 days after the employee has been exposed to someone diagnosed with COVID-19.
- ▶ 14 days after the employee has returned from travel to an area with an outbreak, such as Italy, China or Washington State.
- ▶ Until an employee diagnosed with COVID-19 is cleared to work by a health care provider.



If an Employee Tests Positive, What Else Should an Employer Be Doing to Protect Its Workforce?

If an employee is confirmed to have COVID-19, you CAN and should:

- ▶ Inform employees that there is a risk they have been exposed to COVID-19 in the workplace.
- ▶ Maintain confidentiality as to the person who may have exposed them.
- ▶ Consider increasing cleaning measures and whether there are other steps that can be taken to reduce the spread.
- ▶ Notify the State or Local Department of Public Health.





If An Employee Cannot Work:

- ▶ Designate time off as FMLA, if applicable (employee or family member).
- ▶ Consider whether any other paid or unpaid leave policies apply, such as sick, vacation/PTO or personal leave (for employees not eligible for FMLA), and whether you will require employees to use paid sick or vacation/PTO.
- ▶ Consider whether COBRA election notices should be sent.

A photograph of a desk setup. On the left, a white ceramic mug with a white straw. In the center, a pair of black-rimmed glasses. On the right, a box of white tissues with a brown and white striped pattern. The background is dark, and the foreground is a light-colored textured surface.

Paying Employees for Work

- ▶ Hourly employees must be paid for all hours worked.
- ▶ Review legal requirements regarding whether exempt employees must be paid their salary. For example, if you require an exempt employee not to work, then they must be paid. If an exempt employee does not perform any work for the entire workweek, it does not have to be paid.



You CANNOT

Discriminate - Do not single out employees based on national origin, race, ancestry or citizenship status. Enforce harassment policies where other employees may make comments or jokes about an individual's national origin, race, ancestry or citizenship status.

- ❖ You cannot prohibit employees from traveling to destinations for non-business reasons, but you may encourage them to check the Centers for Disease Control's Traveler's Health Notices before making travel decisions.
- ❖ You can ask employees who have traveled to areas with COVID-19 outbreaks if they have any symptoms.

You CANNOT (cont'd)



- ▶ **Make disability-related inquiries** - You may not make medical inquiries of disabled employees to determine whether they have a compromised immune system and are more susceptible. However, you may inquire why an employee has called off from work.
 - ❖ You can ask if the employee has been diagnosed with COVID-19 or symptoms (e.g., fever, shortness of breath, or cough).
 - ❖ If an employee with a disability voluntarily discloses their disability because they are concerned that they are susceptible, you must engage in the interactive process (determine what, if any, accommodation is appropriate under the circumstances) and keep this information confidential.



You CANNOT (cont'd)

- ▶ **Require employees to take certain actions -**
You may not require that your employees get a flu shot or require them to submit them to medical testing if they have no symptoms and are not at high risk.



- ▶ Discuss these issues with union representatives now.
- ▶ Check your collective bargaining agreement provisions on attendance policies, leaves of absence, medical testing, furloughs, closure of facilities or departments, and other related provisions before making decisions that would impact the union employee's terms and conditions of employment.
- ▶ Forced time off without pay may be considered a disciplinary suspension and give rise to a grievance.

For Employers Of Unionized Employees



Reliable Sources

There is a lot of misinformation out there and assumptions being made. You should make decisions based on reliable sources and follow recommendations from public health professionals.

Government Agencies Guidance: CDC

- ▶ Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)
- ▶ What To Do If You Are Sick
- ▶ Disinfecting Your Facility If Someone is Sick
- ▶ Interim U.S. Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-Confirmed Cases
 - ❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



Government Agency Guidance: Federal

- ▶ Occupational Safety and Health Administration: COVID-19
- ▶ Occupational Safety and Health Administration: Guidance on Preparing Workplaces for COVID-19
- ▶ U.S. Department of Labor: COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act Questions and Answers
- ▶ U.S. Department of Labor: COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act Questions and Answers

❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



Government Agency Guidelines: Federal

- ▶ Department of Homeland Security: Memo on Identification of Essential Infrastructure Workers During COVID-19 Response
- ▶ Equal Employment Opportunity Commission: What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus
- ▶ Equal Employment Opportunity Commission: PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT
- ▶ IRS: News Release Regarding FFCRA Tax Credits

❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



312.467.9800 | lanermuchin.com

Government Agency Guidance: Illinois

- ▶ State of Illinois: Stay-At-Home Order
- ▶ State of Illinois: Coronavirus Disease 2019 (COVID-19)
- ▶ State of Illinois (IDES): COVID-19 and Unemployment Benefits
- ▶ City of Chicago: COVID-19: Guidance for Businesses and Employers

❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



Laner Muchin Practical Guidance

- ▶ Our Updated COVID-19 Guidance
- ▶ Families First Coronavirus Act Enacted Into Law
- ▶ Governor Pritzker Issues Stay-at-Home Order
- ▶ OSHA: Keeping Employees Safe
- ▶ WARN Issues Regarding COVID-19 Related Closures and Layoffs

❖ *This Guidance is not legal or medical advice and should not be relied upon as legal or medical advice. You should contact an attorney or medical professional before taking action on the information contained in this Guidance*



USI Insurance Services: *Helping Clients Prepare & Respond to Public Health Emergencies*

➤ <https://www.usi.com/public-health-emergencies/>

Employee Benefits

As COVID-19 continues to spread across the U.S., employees are concerned about their health, medical coverage, and company leave policies. To reduce uncertainty and alleviate concerns, USI has prepared these helpful updates:

Benefit Eligibility Considerations in a Coronavirus Environment - Terminations, Layoffs, and Reductions in Hours. High-level information regarding compliance concerns for employers considering reducing hours or laying off employees.

March 19, 2020 USI Compliance Update - Families First Coronavirus Response Act Signed into Law.

March 17, 2020 USI Compliance Update - Coronavirus and the Family and Medical Leave Act.

March 11, 2020 USI Compliance Update - Coronavirus Health Coverage and Employee Leaves of Absence.

COVID-19 | Response from National Health Insurance Carriers. Updates on how health insurance carriers are covering COVID-19 diagnostic testing and offering additional resources to all members impacted by the virus.



USI Insurance Services: *Helping Clients Prepare & Respond to Public Health Emergencies*

➤ <https://www.usi.com/public-health-emergencies/>

Response and Risk Mitigation

In the event of pandemic influenza, businesses will play a key role in protecting employees' health and limiting the spread and negative impact to the economy. USI has prepared the following documents to assist our clients with business continuity, employee safety and communications:

[COVID-19 Preparedness and Risk Mitigation Resource Guide](#)

[Pandemic Checklist](#)

[Telecommuting Policy and Procedure COVID-19](#)

[Employee Work From Home Guide](#)



USI Insurance Services: *Helping Clients Prepare & Respond to Public Health Emergencies*

➤ <https://www.usi.com/public-health-emergencies/>

Property & Casualty and Personal Risk

Insurance coverage and claims considerations resulting from an influenza epidemic or influenza pandemic situation will require a close examination of all insurance policies in place. USI has prepared the following material, discussing how business insurance coverage may be affected, the insurance industry's response to the situation, and steps you can take to prepare for the business impact of the virus:

[Pandemic Claim Reporting Guidelines](#)

[Preparing and documenting a Business Interruption Claim](#)

[USI's Coronavirus FAQ](#)

[Coronavirus Workers Comp and OSHA Advisory](#)

[D&O FAQ Addendum](#)

[OSHA Coronavirus Compliance Bulletin](#)





QUESTIONS