Important Updates
On Coronavirus and the Workplace
March 20, 2020

Presented by TechServe Alliance
Introduction
Agenda

• Coronavirus Basics
• Best Practices for Addressing Risks
• Families First Coronavirus Response Act
• Agency Guidance on Existing Workplace Laws
Coronavirus Basics
COVID-19

- Illness caused by a novel coronavirus (a new coronavirus that has not been previously identified)
- Symptoms: fever, cough, shortness of breath
Spread of COVID-19

United States
- Over 10,000 confirmed cases
- Cases in all 50 states and D.C.
- Community spread in multiple states

“Community spread”
- People have been infected with the virus in a specific geographic area
How is COVID-19 diagnosed?

**Do you have symptoms?**
- Contact with sick person?
- Recent travel to area with known cases?

**Contact healthcare provider if you have symptoms**
- Doctor determines symptoms of COVID-19 and whether testing is required
- Higher risk individuals should contact their healthcare providers early

**Current Treatment**
- No vaccine or specific treatment yet
- Supportive care
Best Practices for Addressing Risks
15 Days to Slow the Spread

- Listen to and follow the directions of your State and Local Authorities.
- **If you feel sick**, stay home. Do not go to work. Contact your medical provider.
- **If your children are sick**, keep them at home. Do not send them to school. Contact your medical provider.
- **If someone in your household has tested positive** for the coronavirus, keep the entire household at home. Do not go to work. Do not go to school. Contact your medical provider.
- **If you are an older person**, stay home, and away from other people.
- **If you are a person with a serious underlying health condition** that puts you at increased risk (for example, a condition that impairs your lung or heart function or weakens your immune system), stay home and away from other people.
Federal Guidelines (cont.)

- Work or school **FROM HOME** whenever possible.

- **Critical infrastructure**
  - Defined by Department of Homeland Security (includes healthcare, pharmaceutical and food supply)
  - Maintain normal work schedule, follow CDC guidance

- Avoid social gatherings of more than **10 people**

- **Avoid discretionary travel**, shopping trips, and social visits.

- **DO NOT VISIT** nursing homes or retirement or long-term care facilities unless to provide critical assistance.

- **Practice good hygiene**
  - Wash hands
  - Avoid touching your face
  - Sneeze or cough into a tissue or the side of your elbow
  - Disinfect frequently used items and surfaces

- Use drive-thru, pickup, or delivery options
  - Avoid eating in restaurants.
Effects on the Workplace

Absenteeism

Change in patterns of commerce

Supply chain disruption
Administrative Controls

Goal: Change the way people work

- Promote awareness
- Manage behaviors
- Not as effective, but perhaps quicker to implement

Elimination
Substitution
Engineering Controls
Administrative Controls
PPE

Social Distancing
remaining out of congregate settings, avoiding mass gatherings and maintaining distance (approximately 6 feet) from others when possible
CDC Guidance

Recommended Strategies you can use NOW
- Actively encourage sick employees to stay home
- Separate sick employees
- Emphasize good etiquette
  - Stay home if sick
  - Hand hygiene
  - Cough/sneeze into tissue or elbow
- Perform routine environmental cleaning
- Advise employees before traveling
Planning Considerations

• Objectives:
  • Reduce transmission
  • Protect people at higher risk
  • Maintain business operations
  • Minimize adverse effects in supply chain

• Key Considerations
  • Disease severity
  • Disease impact
  • Prepare for possible increased absenteeism
  • Local control for satellite offices and branches
  • Coordination with state and local health officials
Infectious Disease Outbreak Response Plan

- Ensure the plan is flexible
- Involve employees in developing and reviewing the plan
- Ensure policies and practices conform to public health recommendations
- Share your plan with employees, explain policies and flexibilities
- Share best practices with other businesses in community
- Identify possible work-related exposure and health risks
- Explore whether you can establish flexible policies and practices (remote work, staggered shifts, increased employee distancing)
- Identify essential business functions, essential jobs or roles, and critical elements within your supply chains
Recommendations (cont.)

- Set up authorities, triggers, and procedures for activating and terminating the company’s infectious disease outbreak response plan
- Establish a process to communicate information to employees and business partners
- Consider canceling non-essential business travel (check government travel advisories)
- Learn about your community’s outbreak response plan
- Determine how you will operate if absenteeism (sick employees, caring for sick family members, staying home to watch children dismissed from school)
- Engage with state and local health departments to confirm communication (information dissemination) channels
Families First Coronavirus Response Act
Coronavirus Relief Bill

- Signed into law on March 18
- Contains several provisions to provide relief for effects of coronavirus situation
- Includes:
  - Funding for federal programs and unemployment compensation
  - Emergency paid sick leave
  - Expanded FMLA rights
  - Coverage for COVID-19 testing
  - Tax credits for employers that provide required leave (including self-employed individuals)
Emergency Paid Sick Leave

• Covered employers must provide paid sick time when an employee is unable to work (or telework) due to COVID-19

• Effective April 2 (or sooner?) through Dec. 31, 2020
Definitions

**Covered employer**
government agency of any size or person engaged in/affecting commerce who employs fewer than 500 employees

**Employee**
government employee or as defined by FLSA
  • Regardless of length of employment

**Exemptions:**
  • Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
  • Employers can choose to exempt medical provider and emergency responder employees
Reasons for Paid Sick Leave

- The employee has been ordered or medically advised to self-quarantine or isolate due to COVID-19 (or is caring for someone who has)
- The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis
- The employee is caring for his or her minor child if the school or child care is unavailable due to COVID–19
Duration of Paid Sick Leave

- **Full-time employees**: 80 hours
- **Part-time employees**: the number of hours the employee works over a 2-week period (on average)

*Sick time does not carry over from one year to the next*
Required Compensation

- Based on regular rate of pay, federal minimum wage or state/local minimum wage (whichever is higher)
  - 100% of pay if employee is sick or quarantined/isolated (up to $511/day and $5,110 aggregate)
  - 2/3 of pay if employee is caring for a family member (up to $200/day and $2,000 aggregate)
- DOL to issue guidelines on calculating pay
Other Paid Sick Leave Rules

- **Employer may not:**
  - Require EE to search for/find a replacement EE for leave period
  - Require EE to use other paid leave first
  - Retaliate against EE for using leave

- **Employer may:**
  - Require EE to follow reasonable notice procedures after first day of leave
Other Paid Sick Leave Rules

• Employer must post and keep posted a notice of the paid sick leave requirements
  • In conspicuous places on the premises of the employer where notices to employees are customarily posted
  • DOL will issue a model notice
• Special rules apply to collectively bargained employees
• Unused paid sick leave does not have to be paid out at termination
Expanded FMLA

- Requires partially paid FMLA leave for eligible employees who cannot work due to closure of school or child care
- Expands definitions of eligible employee and covered employer
- Effective April 2 (or sooner?) through Dec. 31, 2020
Expanded FMLA - Definitions

- **Eligible employee**: employee who has been employed for 30+ calendar days
- **Covered employer**: person engaged in/affecting commerce who employs fewer than 500 employees
- **Exemptions**:
  - Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
  - Employers can choose to exempt medical provider and emergency responder employees
Expanded FMLA - Definitions

• **Qualifying need related to a public health emergency**: An employee is unable to work (or telework) due to a need to care for his or her minor child if the school or child care provider is unavailable due to a public health emergency.

• **Public health emergency**: An emergency with respect to COVID-19 declared by a Federal, State, or local authority.
Expanded FMLA - Paid Leave

• The first 10 days of expanded FMLA leave may be unpaid
  • An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave

• Paid leave must be provided after 10 days
  • At least 2/3 of the employee’s regular rate based on normally scheduled hours
  • Pay capped at $200/day and $10,000 overall
Expanded FMLA – Other Provisions

• Employee must provide notice of leave “as is practicable”
• FMLA restoration rights do not apply to employers with fewer than 25 employees if conditions are met
• Special rules for collectively bargained employees
COVID-19 Testing

- Group health plans and health insurance issuers **must cover COVID-19 testing**
- Plans and issuers may not impose:
  - Cost sharing (such as deductibles, copayments or coinsurance)
  - Prior authorization or other medical management requirements
- Applies to all group and individual plans or policies
- Testing also covered under government health programs
Unemployment Compensation

- The Act provides federal funds to help states pay for increased UI claims caused by the outbreak.
- The Act encourages states to waive limitations on UI benefits for COVID-19-related claims.
- Other DOL guidance says states may allow UI benefits in non-standard situations.
Agency Guidance on Existing Workplace Laws
Affected OSHA Standards

- General Duty Clause
- Illness Reporting and Recording
- Personal Protective Equipment
- Toxic and Hazardous Substances
- Environmental Controls – Sanitation
Work-related Incidents (OSHA)

An incident is presumed to be work-related if it results from events or exposure that occur in the work environment and the work environment caused or contributed to the resulting condition OR significantly aggravated a pre-existing injury or illness.
Remote Work – Wages (DOL)

- FLSA generally applies to hours actually worked
  - Exempt salaried employees must receive their salary each week
- Employers can require/encourage employees to telework
  - Do not single out employees for working at/away from office
  - Salary/compensation remains the same
  - Beware of overtime work caused by remote access

When not all employees can work from home, the DOL encourages social distancing (e.g., staggered work shifts)
Transportation Industry (FMCSA)

- March 13 – Emergency exemption
  - Drivers directly assisting in relief efforts
  - Waiver from hours of service regulations
- Direct assistance (expanded March 18)
  - Medical supplies, equipment, patients and personnel
  - Supplies and equipment for community safety, sanitation, and prevention
  - Food, paper products, and other groceries for emergency restocking
  - Raw materials for the manufacture of essential items;
  - Fuel
Workers’ Compensation

- Generally governed by State law
- Usually cover only if infection work-related
- States relaxing rules for
  - Healthcare workers
  - Emergency responders
ADA: EEOC Pandemic Publication and FAQs

• The ADA normally prohibits asking employees or applicants for medical information

• During a pandemic, different rules apply
  • Employers may ask employees and applicants for information on symptoms
  • Employers can require sick employees to stay home or provide fitness for duty information
  • Employers may delay start dates or withdraw offers if it needs an applicant to start immediately

• Must keep employee information private
• **COVID-19 or Other Public Health Emergencies and the FMLA Q&As**

• Applies prior pandemic influenza guidance to COVID-19

• Employees may be entitled to FMLA leave if they or a family member are sick

• Leave taken to avoid exposure would not be protected under the FMLA

• Standard FMLA rules apply in most situations

• Employers should consider flexible leave policies for their employees
HIPAA Privacy and Security

- **HHS Bulletin: HIPAA Privacy and Novel Coronavirus**
  - issued February 2020
- Reiterates that the Privacy Rule still applies during a pandemic or emergency situation
- Privacy Rule applies to covered entities and business associates
- PHI can be shared for specific reasons under the Privacy Rule under existing rules
- Most information employers have is not PHI
- Must apply technical safeguards under Security Rule
Disclosure of PHI

• Permissible disclosures:
  • For treatment
  • Public health activities
  • To people involved in an individual’s care and for notification
  • To prevent a serious and imminent threat

• Disclosures to the media or others not involved in the care of the patient or notification are generally prohibited

• Most disclosures must be “minimum necessary information”
ACA – Essential Health Benefits

- CMS FAQs issued March 12
- EHB generally includes coverage for the diagnosis and treatment of COVID-19
  - Exact coverage details and cost-sharing amounts for individual services may vary
- EHB includes quarantine/isolation in a hospital (not at home)
- Any future COVID-19 vaccine would be covered as EHB if recommended CDC
  - Required to be covered beginning with plan year that is 12 months after recommendation issued
  - Plans can cover sooner
HDHPs and COVID-19 Costs

- IRS Notice 2020-15 issued March 11
- HDHPs can pay for COVID-19 testing and treatment before plan deductible is met
- These plans remain HSA compatible
- Future COVID-19 vaccine costs
  - Count as preventive care
  - Can be paid for by an HDHP without cost sharing
Federal WARN Act

• Covered employers must provide 60 days’ advance notice of imminent covered plant closings and mass layoffs
• Applies to employers with 100 or more employees
• Some states have their own requirements
  • May apply to more employers
  • NJ will require severance pay (July 2020)
Health Plan Coverage

• ERISA plans must be administered in accordance with their terms
• Maintenance of benefits during leave will depend on the situation
• COBRA or state continuation coverage may be available for employees who lose coverage due to job loss or reduction in hours of employment
Questions?
Thank You!