

Cutting-edge Return to Work Issues in the Evolving World of COVID-19

*Association of Corporate Counsel, Chicago Chapter
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Overview of Webinar Topics

- Latest guidance from the CDC, State of Illinois, City of Chicago, OSHA
- No School/Hybrid Remote Learning – Challenges for Employers
- Employees refuse to return to work
- Testing and contact tracing
- Exploring liability protection and workers' compensation claims
- Reducing litigation risk through positive employee relations.



Our Team For Today



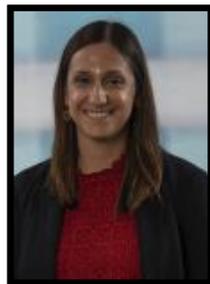
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Guidelines for Safe Workplaces



Compare the Guidelines – Should vs. Must

Topic	CDC https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html	Illinois https://dceocovid19resources.com/rest-ore-illinois	City of Chicago https://www.chicago.gov/city/en/sites/covid-19/home/reopening-business-portal/business-guidelines.html
Percent Return	Silent	Maximum 50% of capacity in Phase 3	Maximum 25% of capacity in Phase 3
Spacing	Recommend 6' and signs	Recommend 6' and must post IDPH sign	Recommend barriers and 6' and must post sign
Masks/PPE	Encourage and provide no cost	Should require all to comply	Required all times in common areas and everywhere if < 6'
Daily Checks	Recommend symptom check and reports	Should conduct daily symptom and temperature checks	Encouraged before leaving home and prior to entry
Other	Provide sanitizing supplies Discourage all sharing Minimize travel	Provide sanitizing supplies Discourage all sharing/stagger in-out Minimize travel If can work from home, should work from home	Required sanitizing supplies at entry Discourage all sharing/stagger in-out Minimize travel Must follow CDC guidelines if positive test before return to work

A word about OSHA ...

- Despite many COVID-19-related complaints, the agency had as of early July issued only one COVID-19 violation. Six employees at nursing home in GA were hospitalized – but no timely report (\$6500 fine)
- Guidance from OSHA under “general duty” clause – take reasonable measures to protect and prevent (<https://www.osha.gov/Publications/OSHA3990.pdf>)
- In the absence of a COVID-19-specific OSHA standard, State and local governments are free to fashion new COVID-19-specific standards, thereby stepping in where OSHA has remained silent.
- Virginia’s emergency worker protection rule (July 27), employers immediately comply with CDC guidance and state-issued instructions. Watch for other states to follow.

Lessons Learned: In-House Perspective

Some workers never left the workplace and safety protocols evolved quickly. As your companies face a gradual return of remote workers, what lessons can be applied from the standpoint of making the workplace safe?



Challenges with Limited School Re-Opening



Setting the Stage

- Current Affairs

- Few schools are fully open, most are remote or hybrid remote (2 days per week)

- Pressure and Trends

- Federal Gov't encouraging return to classroom, but local school boards and teachers unions have other ideas

- Impact on Employees

- Percentage of workforce with school-aged children - 91% of the 34 million families with children under 18 have at least one working parent, according to the Bureau of Labor Statistics
- Demands of remote learning for pre-high school children
- Ability to work from home
- Strain on ability to work from home while managing child learning and supervision

Families First Coronavirus Response Act



► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

FFCRA – School Closure

- Employers with less than 500 employees must allow employees up to 12 weeks of leave if employee is unable to work (or telework) because their child's school has been closed or the child care provider is unavailable due to the coronavirus.
- Certain employers with fewer than 50 employees may be exempt from these FFCRA requirements if providing employees such leave would jeopardize the viability of the business as a going concern.
- To be eligible, employees must have worked for at least 30 days and the child must generally be under 18 years old.
- Post Notice of Rights in workplace:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf



Expanded Family and Medical Leave

- The FFCRA's paid leave provisions apply to leave taken between April 1, 2020, and December 31, 2020.
- For leave taken for child-care related reasons, employees may take up to 12 weeks of expanded family and medical leave.
- Although the first 10 days of leave may be unpaid, the remainder of this leave (up to 10 weeks) must be paid at a rate of at least two-thirds (2/3) the employee's regular rate of pay (not to exceed \$200 per day and \$10,000 in the aggregate).
- During the initial 10 days, an employee may elect to use emergency paid sick leave under the FFCRA (also at 2/3 pay up to \$200/day) or substitute any accrued vacation leave, personal leave, medical or sick leave for unpaid leave.



Intermittent Leave



- Intermittent leave may only be taken if the employer allows it. **Breaking news – New York ruling*
- In such cases, the employee and employer should agree upon an intermittent leave schedule in advance.
- If the employer has a history of allowing intermittent leave in other situations, denying intermittent leave for parents without a good business reason may be construed as interference with protected leave under the FFCRA.

Definition of “Closed”



My child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

Choosing Home-Based Learning

- **Some schools are allowing parents to decide whether their child does home-based learning or in person learning. In such a circumstance, where the employee elects home-based learning, rather than in person learning, is FFCRA leave available?**
- The Department of Labor has not yet provided clear guidance on whether a school would be considered “closed” under these circumstances. Accordingly, employers should be cautious about denying FFCRA leave under this scenario. Although there may be a technical statutory argument that the school is not “closed,” the broad intent of the FFCRA appears to allow leave for parents who are needing time off while schools are dealing with COVID-19.



Leave Exhausted



- **What if the employee has already exhausted some or all of their Emergency Paid FMLA leave earlier in the year?**
- If the employee has only used some of their Emergency Paid FMLA leave earlier in the year, they can use the remainder of their paid leave through December 31, 2020. If, on the other hand, the employee has used all of their Emergency Paid FMLA earlier in the year, they are not entitled to any additional time under the FFCRA. Those employees may be entitled to other leave under state and local laws or company policies.

Documentation to Support FFCRA Leave

44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.



What if the FFCRA Does Not Apply?

- Workplaces that are supportive, flexible, reasonable and accommodating will attract and retain top talent.
- Survey employees now to understand what, if any, accommodations they may need in advance of the fall term and open up that dialogue
- Work from Home Policy: A sound policy will outline what hours they are expected to work, and set forth a set schedule for virtual meetings or conferences
- Consider flexible working hours, unpaid leave, reduced schedule or reduced pay
- Leaders should be expected to check in more often and offer support

An In-House Perspective

For companies with more than 500 employees, the FFCRA paid leave (and the federal tax credits) are not available. What are your strategies for assisting employees who struggle with childcare due to schools being closed?



Resistance to Return Other Than School Closures

- Wide-spread reports of employees nervous to return to work due to personal concerns
- How do employers overcome resistance?
 - Dig into the reason before rush to judgment
 - Explain the safety protocols in place
 - Discuss possible accommodations such as relocation or staggered shifts
 - Explain the staffing issues and create buy-in for teamwork
 - Consider incentives such as transportation subsidy

Reporting Recall Refusals



An In-House Perspective

Have you encountered this situation and how have you dealt with it?





Testing and Contact Tracing

COVID-19 Symptom Inquiries

- During the pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of COVID-19 but should not inquire about symptoms unrelated to COVID-19
- Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease.
 - For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, sore throat, new loss of smell or taste, as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting
- Employees should be sent home if they exhibit COVID-19 symptoms at work or instructed to stay home if the employee calls and reports COVID-19 symptoms from home
 - Once a positive COVID-19 case is reported, employers should follow CDC and OSHA guidance as well as applicable state and local orders

Notice of a Positive test – now what?

Minimal contact tracing (to notify others of possible self-quarantine requirement)

- The CDC has determined that COVID-19 exposure risk begins when someone is within 6 feet of the infected person for 15 minutes or more. The agency also notes that infected people can spread the virus 48 hours before the onset of symptoms. Coined the "6-15-48 rule".

Consider privacy limits before adopting contact-tracing beyond the workplace or Apps that record a user's proximity to other people within the workplace based on Bluetooth, GPS or Wi-Fi signals.

Consult CDC guidance on return to work timing:

- **Persons with COVID-19 who have symptoms** and were directed to care for themselves at home may discontinue isolation under the following conditions:
- 1. At least 10 days* have passed since symptom onset **and**
- 2. At least 24 hours have passed since resolution of fever without the use of fever-reducing medications **and**
- 3. Other symptoms have improved.

Records of Health Screening and Testing

- EEOC

- EEOC allows employers to maintain a log of temperature check results but must maintain confidentiality of this information, other than disclosing to a public health agency when the company learns the employee has COVID-19
- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

- Privacy

- Medical records should be maintained confidentially in an employment file separate from the personnel file

Exploring Liability Protection and Workers Compensation Claims



Exploring liability protections and workers' compensation claims

- Emerging Questions:

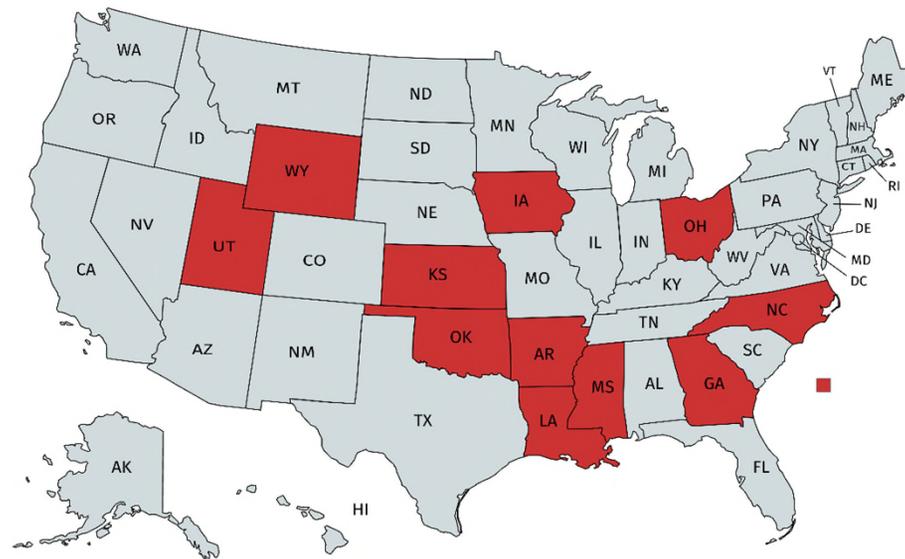
- How is the government -- federal, state, local -- responding in terms of protections for businesses who may be afraid of COVID-19 related claims from customers, vendors, and employees?
- Should businesses require liability waivers from their customers, vendors, and employees for COVID-19 exposure?

Where is the COVID-19 litigation?

- The majority of cases deal do not deal with transmission
 - Insurance coverage
 - Challenges to stay-at-home orders
 - Prisoner lawsuits
- A more limited number of cases relate to alleged unsafe workplaces
- Emerging area: class actions
 - Challenges to mandatory mask policies in stores, amusement parks
 - Challenging safety protocols

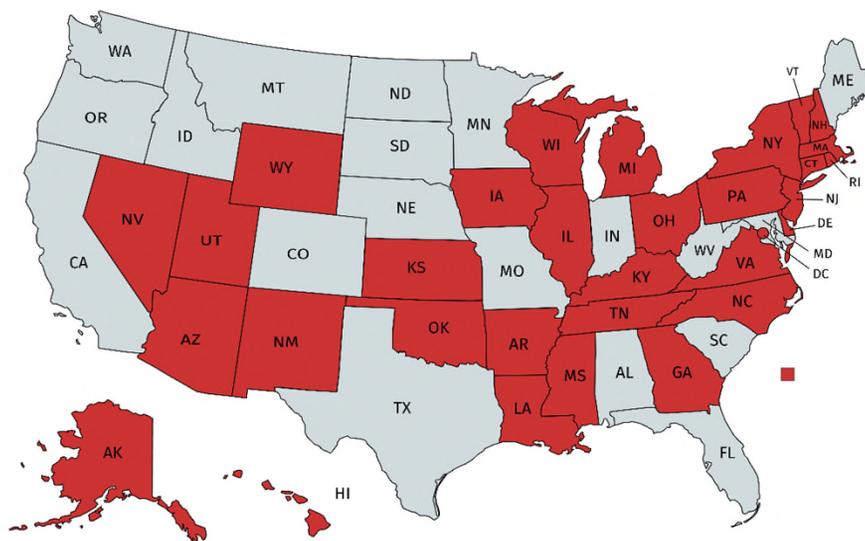
States with broad statutory protections

(July 2020)



Created with mapchart.net ©

States with protections for health care providers (statute or executive order) (July 2020)



Created with mapchart.net

Variations among state laws

- As state laws vary -- either enacted or introduced -- so do the businesses they cover
 - Louisiana - restaurants providing to-go meals
 - Ohio - emergency services
 - Arizona - schools, churches, religious organizations

“SAFE TO WORK Act”



“One of the chief impediments to the continued flow of interstate commerce as this public-health crisis has unfolded is the risk of litigation...”

SAFE TO WORK Act, SB.4317 §2(a)(12) (July 27, 2020)

“SAFE TO WORK Act”

- A uniform federal solution to an “ill-suited” patchwork of state and local rules ... that relies on a patchwork of state and local guidance
- Stricter limits on damages or liabilities are not preempted and workers’ compensation laws are not preempted
- A defense, but not immunity
- Covers actions between Dec. 1, 2019 and Oct. 1, 2024
- If passed in its current form, would apply to exposure cases and “accommodation” cases

“SAFE TO WORK Act”

- High burdens to establish liability
 - A plaintiff must prove by “clear and convincing” evidence (instead of “more likely than not”):
 - the business did not make reasonable efforts to comply with “applicable government standards and guidance”
 - the business engaged in gross negligence or willful misconduct, and
 - that the “actual exposure” to coronavirus caused the injury
- If the business has a written policy on the transmission of coronavirus that was more protective than the applicable government standards, the business will be presumed to have made reasonable efforts and the plaintiff will need to establish that the business was not following its policy
- A number of other procedural changes that may create strong opposition, despite the backing of Senate leadership and numerous business organizations

An In-House Perspective

How are you handling things in the meantime?



What about waivers?

- Waivers are often used as a deterrent and therefore are not routinely tested in terms of their effectiveness
- Potentially effective and enforceable for customers and vendors, but generally limited to negligence (as opposed to gross negligence/willful and wanton/reckless disregard)
- If some version of the SAFE AT WORK Act passes, it could provide national protections for negligence claims provided the businesses are following applicable guidelines
- What message are you sending your customers and vendors if you require them to sign a waiver before you will conduct business with them?

Employee Protections

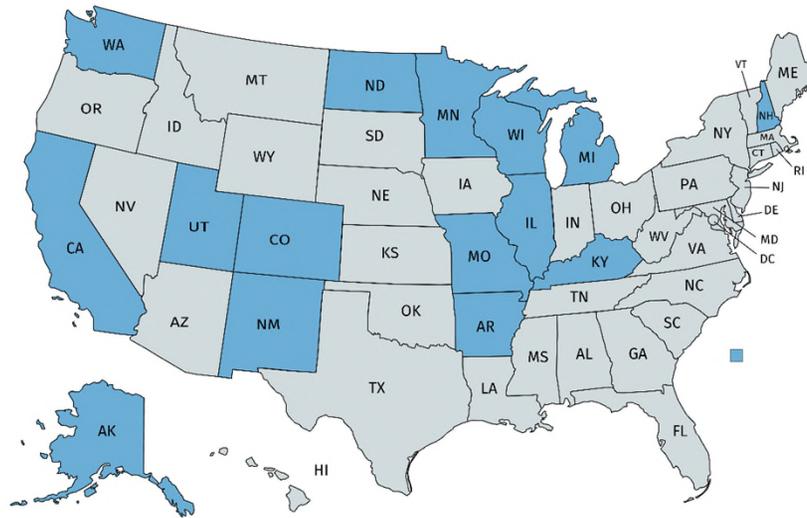


Workers' compensation is the exclusive remedy for injury and illness ...

... “arising out of” and “in the course of” employment

- It is one thing when the claim involves a clear workplace injury, but quite another thing when the source of an infection is unclear.
- Ordinary diseases of life contracted at work are not typically considered workers' compensation claims, so many states are defining COVID-19 as an “occupational disease” similar to chemical exposures.

W/C Claims - Presumptions of Compensable Illness (July 29, 2020)



Created with mapchart.net ©

The presumption may be limited to specific types of employment, but “first responders” are almost universally presumed to have contracted COVID-19 through their work

- California - any employee
- Minnesota - first responders and health care workers, and workers who provide childcare to first responders and health care workers
- Pennsylvania - “life-sustaining business”
- Illinois - employees of “essential business” as defined by Executive Order 2020-10 provided they were:
 - required by their employment to encounter members of the general public or
 - work in employment locations of more than 15 employees

Employee Waivers



Not just likely unenforceable, but possibly illegal

- California: “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void ...” Cal. Labor Code §2804; “No contract ... shall exempt the employer from liability for the compensation fixed by this division ...” Cal. Labor Code §5000(a)(1)
- Illinois: “It shall be unlawful for any employer ... to interfere with, restrain or coerce an employee in any manner whatsoever in the exercise of the rights and remedies granted to him or her by this Act ...” 820 ILCS 305/4(h)

An In-House Perspective

Have you changed the way you approach workers' compensation claims?



Managing Your Workforce: *Avoiding Claims of Discrimination*



Rise in Traditional Discrimination Claims

Employers may see a rise in lawsuits from “Vulnerable Employees” claiming they were not hired or were terminated because of fears of increased absenteeism or inability to work if they get sick from COVID-19, from parents who need to care for children out of school, or from Asian employees due to xenophobia.

- Age Discrimination
- Disability Discrimination
- Gender Discrimination
- National Origin Discrimination

1. Elderly individuals.

2. Individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.

Discrimination Against COVID-19 Victims

- **Can an employer conduct pre-employment COVID-19 testing and refuse to hire applicants who test positive?**
 - EEOC Guidelines for Pandemic Preparedness say YES as long as the employer follows the ADA requirements for the timing of medical examinations (i.e. after a conditional offer has been made); and requires all applicants to take the test.
- **Can an employer terminate an employee who tests positive for COVID-19 after engaging in risky behavior like going to the beach or traveling to a “hot spot”?**
 - Although technically, discipline for engaging in prohibited behavior is different from discipline for being sick or absent, this is almost certainly likely to be challenged, and would require an actual policy be in place and enforced consistently. Many states also have laws prohibiting discipline against employees who engage in “lawful off duty activity.”

Preparing for Return to Work Accommodation Requests

- Train BOTH management team and HR team to ensure awareness of available FFCRA benefits
- Remind BOTH management team and HR team that interactive process framework has not changed – even if results have changed
- Ensure that managers understand ANY negative comments about FFCRA leave usage are potentially problematic:

Eastern Airlines Accused Of Firing Exec Over COVID-19 Leave



By [Danielle Nichole Smith](#)

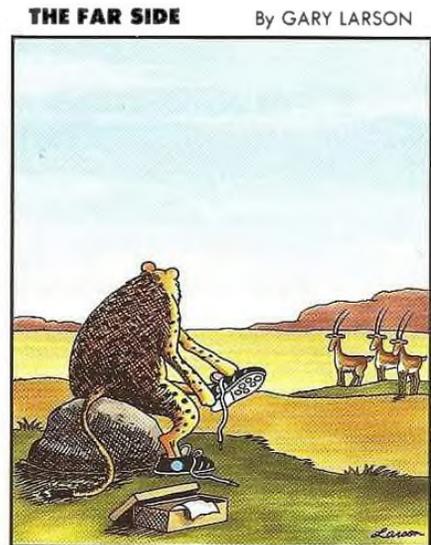
Law360 (April 16, 2020, 8:26 PM EDT) -- A former director at Eastern Airlines hit the company with a suit in Pennsylvania federal court Thursday, claiming she was fired for trying to take time off under the Families First Coronavirus Response Act, a law Congress recently passed to address the COVID-19 outbreak.

Attached Documents

[Complaint](#)

Useful Tools & Links

[Add to Briefcase](#)



Managing Your Workforce: *New Problems to Consider*

A NEW ERA OF REASONABLE ACCOMMODATION REQUESTS:

- Requests for PPE
- Requests for extended leave
- Mental/emotional disabilities
- Requests for continued telework



Managing Your Workforce: *Extended Leave*

- Not as much a new problem as a new strain of a classic problem – akin to COVID itself
- Employers retain obligation to provide extended leave where reasonable under ADA
- The definition of “reasonable” may have changed in situations where employees have been furloughed and/or placed on extended leave by the employer
 - Does employee work in essential position that remained open during COVID?
 - Does employee work in non-essential position & didn’t provide services during COVID?



Managing Your Workforce: *Continued Teleworking*

- Significant shift of most business operations to remote work during the pandemic takes away many of these concerns. Now employers should be evaluating:
 - Is regular attendance an essential job function? For which roles?
 - Does the employee's reason for requesting telework even matter going forward?
 - How to achieve consistency under anti-discrimination laws while complying with interactive process?



Best Practices to Avoid Discrimination Claims

- Train managers on permissible subjects for job interviews – it will be hard to avoid discussion of COVID-19 and that can lead down a dangerous path.
- Any and all testing or medical inquiries should be done in accordance with ADA guidelines, be job related, and applied consistently. Create a written policy with guidelines.
- No good deed goes unpunished – Don't presume an older or disabled person does not want a job or an assignment (like traveling).
- Be open to reasonable accommodation requests - religion, disability, pregnancy.
- Wherever possible, base policies on CDC and government recommendations or guidelines, and be ready to change policies if recommendations or situation on the ground changes.

Thank you to our In-House Presenters!

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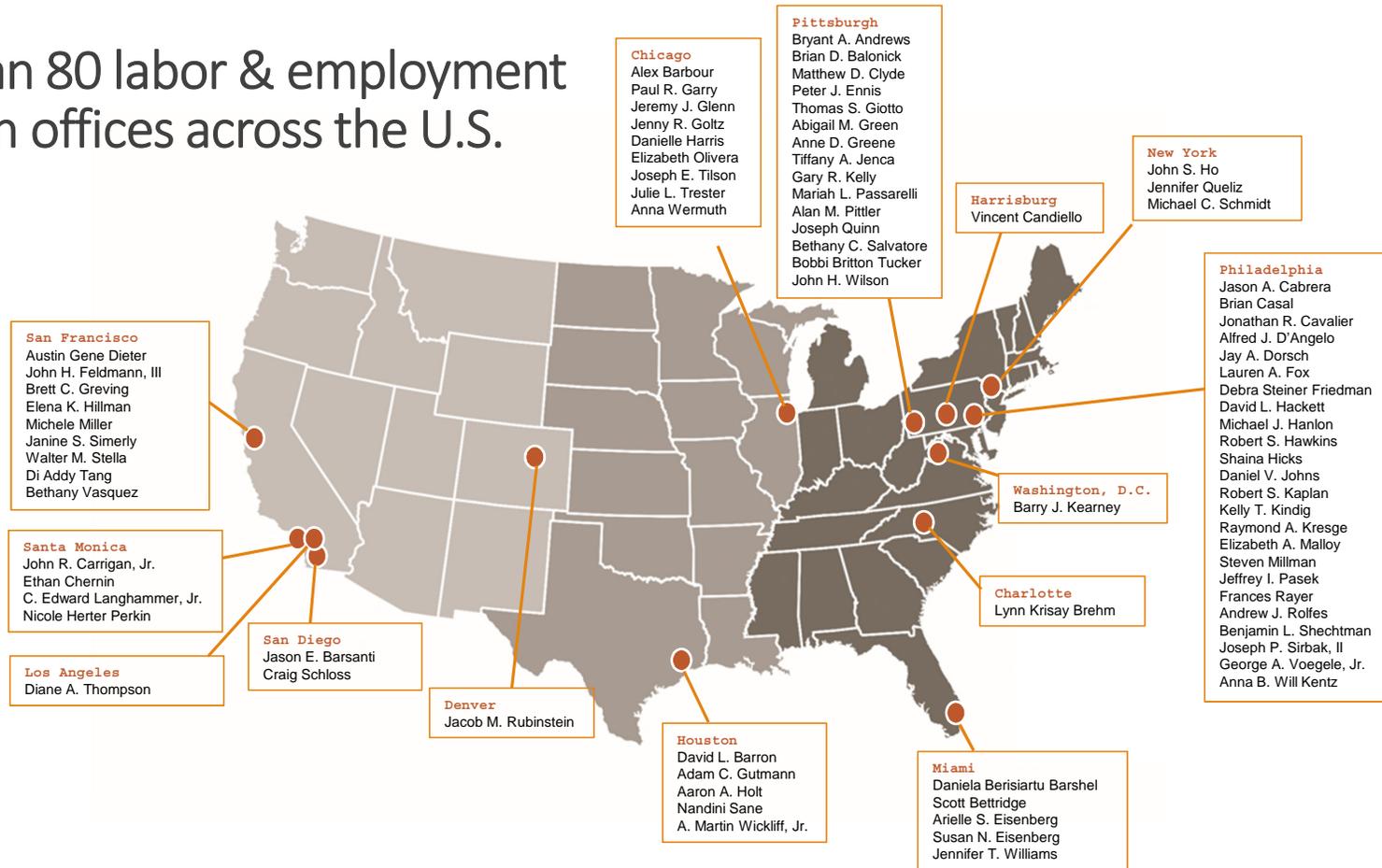
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More than 80 labor & employment lawyers in offices across the U.S.





EMPLOYER BACK TO SCHOOL GUIDE

Frequently Asked Questions

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Table of Contents

Emergency Paid FMLA	3
What leave is available under the Families First Coronavirus Response Act (“FFCRA”) to assist parents whose kids are out of school for COVID-19 related reasons?	3
Is leave available if a child’s school is not “closed,” but has simply moved online?	3
If a child’s school has a hybrid model, with parents doing some home-based learning, can the parent employee take intermittent leave?	3
What leave is available to an employee who decides to home-school their child, even though the child’s school is open?	3
Some schools are allowing parents to decide whether their child does home-based learning or in person learning. In such a circumstance, where the employee elects home-based learning, rather than in person learning, is FFCRA leave available?	3
What if the employee has already exhausted some or all of their Emergency Paid FMLA leave earlier in the year?	4
What documentation are companies allowed to request from the parent/employee taking leave under the FFCRA?	4
Alternative Options	4
What options are available for companies looking to support working parents, who might not otherwise be eligible for leave?	4
What should employers be doing right now to get prepared for the school year?	4
Working from Home	4
How can employers ensure that non-exempt employees who are working from home for child care reasons are adequately tracking and reporting their time?	4
Is an employer required to pay employees who are working from home or working reduced hours the same hourly rate or salary?	4
Are businesses required to cover the additional costs that an employee may incur if they work from home (internet access, computer, additional phone line, etc.)?	4
Other State and Federal Leave Rights	5
If an employee’s child is a high-risk individual for COVID-19, is the employee entitled to any additional protections?	5
Are there any state and local laws that provide school-related parental leave?	5

EMPLOYER BACK TO SCHOOL GUIDE: FREQUENTLY ASKED QUESTIONS

Employees with school-aged children are quickly learning that back to school will not be a return to normalcy. Most schools are implementing modified education plans to provide for student and teacher safety in light of COVID-19 concerns. Plans include mandatory and optional remote learning and hybrid models of in-person and remote learning. This practical summary is intended to help employers understand their obligations under the law and provide strategies for meeting business needs during the Fall semester.

Emergency Paid FMLA

What leave is available under the Families First Coronavirus Response Act (“FFCRA”) to assist parents whose kids are out of school for COVID-19 related reasons?

- Employers with less than 500 employees must allow employees up to 12 weeks of Paid Family Leave if they are unable to work (or telework) because their child’s school has been closed or the child care provider is unavailable due to the coronavirus and they must provide care for a child. To be eligible, employees must have worked for at least 30 days and the child must generally be under 18 years old. Although the first 10 days of leave may be unpaid, the remainder of this leave (up to 10 weeks) must be paid at a rate of at least two-thirds (2/3) the employee’s regular rate of pay (not to exceed \$200 per day and \$10,000 in the aggregate). During the initial 10 days, an employee may elect to use emergency paid sick leave under the FFCRA or substitute any accrued vacation leave, personal leave, medical or sick leave for unpaid leave. Additionally, certain employers with fewer than 50 employees may be exempt from these FFCRA requirements if providing employees such leave would jeopardize the viability of the business as a going concern.

Is leave available if a child’s school is not “closed,” but has simply moved online?

- Yes. So long as the physical location where the child received instruction or care is now closed, the school or place of care is “closed” for purposes of leave under the FFCRA. This is true even if some or all instruction is being provided online, or through another format such as “distance learning,” where the child is still expected or required to complete assignments.

If a child’s school has a hybrid model, with parents doing some home-based learning, can the parent employee take intermittent leave?

- Under the FFCRA, intermittent leave may only be taken if the employer allows it. In such cases, the employee and employer should agree upon an intermittent leave schedule in advance. Importantly, if the employer has a history of allowing intermittent leave in other situations, denying intermittent leave for parents without a good business reason may be construed as interference with protected leave under the FFCRA. Employers should also review state and local law on this topic. Recently, a New York federal judge brought into question whether an employer can deny intermittent leave for this purpose.

What leave is available to an employee who decides to home-school their child, even though the child’s school is open?

- If the child’s school is otherwise open, an employee would not be eligible for leave under the FFCRA to home-school their child. In fact, the Department of Labor has stated that FFCRA leave is not available if a co-parent, co-guardian, or the usual child care provider is available to provide the care for the child needs.

Some schools are allowing parents to decide whether their child does home-based learning or in person learning. In such a circumstance, where the employee elects home-based learning, rather than in person learning, is FFCRA leave available?

- The Department of Labor has not yet provided clear guidance on whether a school would be considered “closed” under these circumstances. Accordingly, employers should be cautious about denying FFCRA leave under this scenario. Although there may be a technical statutory argument that the school is not “closed,” the broad intent of the FFCRA appears to allow leave for parents who are needing time off while schools are dealing with COVID-19.

What if the employee has already exhausted some or all of their Emergency Paid FMLA leave earlier in the year?

- If the employee has only used some of their Emergency Paid FMLA leave earlier in the year, they can use the remainder of their paid leave through December 31, 2020. If, on the other hand, the employee has used all of their Emergency Paid FMLA earlier in the year, they are not entitled to any additional time under the FFCRA. Those employees may be entitled to other leave under state and local laws or company policies.

What documentation are companies allowed to request from the parent/employee taking leave under the FFCRA?

- If an employee requests leave to care for a child, the employer may request the following information: (1) the name and age of the child or children needing care; (2) the name of the school or place of care; (3) a representation that no other suitable person is available to care for the employee’s child/children; and, (4) if the child is older than 14, a statement describing any special circumstances which make it necessary for the employee to be absent to care for the child.

Alternative Options

What options are available for companies looking to support working parents, who might not otherwise be eligible for leave?

- The Department of Labor has encouraged employers and employees to collaborate to find solutions that meet mutual needs. In light of this pandemic, more and more employers are being flexible with respect to employees who have exhausted all available leave. Options employers may want to consider include temporary unpaid leave, temporary job reassignment, opportunities to telework, and/or allowing intermittent leave. If the employer has no legal obligation to accommodate an employee’s absence from work due to child care needs related to COVID-19 but decides to accommodate the employee, the employer must ensure that it is providing such options to similarly situated employees and consider its compliance with the Americans with Disabilities Act in a non-COVID-19 scenario.

What should employers be doing right now to get prepared for the school year?

- Employers should proactively communicate with employees and determine what adjustments might need to be made. Additionally, we recommend employers revisit their leave policies and forms for requesting and approving leave to ensure they are up to date.

Working from Home

How can employers ensure that non-exempt employees who are working from home for child care reasons are adequately tracking and reporting their time?

- Because of the increased number of employees working from home, the Department of Labor has reminded employers of the need to accurately record and pay non-exempt employees for all hours worked. We recommend employers clearly communicate with non-exempt employees about their work hours and schedule, including any lunch or rest breaks, and taking into account any alternative schedules which may be necessary for child care. Employers should continue to follow their regular policies with respect to time-reporting and overtime.

Is an employer required to pay employees who are working from home or working reduced hours the same hourly rate or salary?

- No. Generally, employers have the ability to reduce an employee’s hourly rate or salary, provided the rate paid is at least the minimum wage or meets the minimum salary threshold. Before doing so, however, employers should also review state and local laws, as many jurisdictions require employers to give advance notice of any pay reduction in writing.

Are businesses required to cover the additional costs that an employee may incur if they work from home (internet access, computer, additional phone line, etc.)?

- Although federal law only requires reimbursement of business-related expenses if doing so would cause the employee’s rate of pay to fall below minimum wage, many state and local laws require reimbursement of an employees’ necessary business expenses. For example, employees in California, Illinois, Iowa, New Hampshire, and Pennsylvania may be entitled to such a reimbursement. We recommend all employers carefully review applicable local and state laws to determine what expenses, if any, must be reimbursed.

Other State and Federal Leave Rights

If an employee's child is a high-risk individual for COVID-19, is the employee entitled to any additional protections?

- The FMLA allows for up to 12 weeks of job protected leave to care for a child with a serious health condition. The Department of Labor has made clear, however, that caring for a child being held out of school because of a fear of COVID-19 infection does not ordinarily trigger coverage under the FMLA. Individual circumstances should be considered and there may be cases where FMLA leave may be applicable for children with serious health conditions who require extra care because of pandemic related reasons. In addition, an employee may otherwise qualify for FFCRA leave because the child has been directed to self-quarantine by a health care provider for a COVID-19 related reason.

Are there any state and local laws that provide school-related parental leave?

- It is important to consider applicable local and state laws, as many jurisdictions provide broader entitlements than those available under federal law. For example, both New York and California have laws mandating that employers provide time off to employees in the event of a school closure or emergency.