



COVID-19: Employee Laws and FMLA

The webinar will begin at 1PM.

A recording will be posted at: <https://www.ima-net.org/covid-19/>

Please email questions to ima@ima-net.org.

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COVID-19: Employee Laws and FMLA

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COVID-19 & Employment Considerations

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Introduction & Opening Remarks

Purpose of today's presentation:

- Don't panic
- Build awareness
- Educate
- Organizations can assist in mitigation efforts
- Preparedness

The screenshot shows a news article from the New York Post. At the top right, there are social media sharing icons for Facebook, Twitter, Facebook Messenger, Email, and Print. The article title is "Coronavirus conference canceled in New York because of coronavirus" in a large, bold, black font. Below the title, it says "By Yaron Steinbuch" and "March 11, 2020 | 7:34am | Updated". A video player is embedded in the article, showing a subway car interior with people wearing masks. The video title is "A coronavirus conference in NYC was canceled — because of the coronavirus". Below the video player, there is a "MORE ON: CORONAVIRUS IN NY" section with two links: "New Yorkers wary of subways take up cycling to avoid coronavirus" and "Knewz.com launches NYC-focused coronavirus page". To the right of the video player, there is a text snippet: "A Big Apple conference about the coronavirus has been canceled — because of the coronavirus, according to a report." Below this, another text snippet reads: "The Council on Foreign Relations was due to hold a roundtable titled 'Doing Business Under Coronavirus' on Friday, but decided to cancel it amid fears that it could lead to a spread of the deadly bug, Bloomberg News reported." At the bottom of the screenshot, there are browser navigation icons for back, forward, and search.

OVERVIEW

- COVID-19 declared pandemic by WHO on March 11
- US has previously experienced outbreaks of “new” infectious diseases:
 - SARS (2002)
 - H1N1 (2009)
 - MERS (2012)
- Governmental response to COVID-19 is happening hour-by-hour

NEW SICK LEAVE LAW

- Effective April 1, 2020 to December 31, 2020
- Establishes emergency paid leave for companies with fewer than 500 employees

NEW SICK LEAVE LAW CONT'D

- Full time employees will be paid for 80 hours of sick time and part time employees will be paid for the average number of hours they work in a 2-week period
- Employers must provide paid sick time to an employee who is absent for any of the following reasons:
 1. The employees are subject to a federal, state, or local quarantine of isolation order related to COVID-19
 2. The employees have been advised by a health care provider to self-quarantine due to COVID-19- related concerns
 3. The employees are experiencing COVID-19 symptoms and seeking medical diagnosis
 4. The employees are caring for individuals experiencing symptoms of and seeking diagnosis for COVID-19 or are subject to a governmental order or medical recommendations to quarantine or self-isolate
 5. The employees are caring for children whose schools or places of care have been closed or whose care providers are unavailable due to COVID-19
 6. The employees are experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services, except employers of health care providers or emergency responders who can elect to exclude those employees from receiving paid sick leave

NEW SICK LEAVE LAW CONT'D

- Amount of Payment:
 - Employers will provide full-time employees with 80 hours of paid time off at their regular rate of pay and eligible part-time employees with paid time off equivalent to the average number of hours they work in a two week period, subject to the following limitations:
 - If leave is taken for reasons 1-3 listed above, the maximum amount of paid leave shall be no more than \$511 per day or \$5,110 in the aggregate
 - If leave is taken for reasons 4-6, the maximum amount of paid leave shall be no more than \$200 per day or \$2,000 in the aggregate
 - Employees are not required to first use any other accrued paid time off before taking Emergency Paid Sick Leave

NEW SICK LEAVE LAW CONT'D

- Notice:
 - Paid sick time under this emergency provisions needs to be made available to any employee, regardless of how long they have been employed. Employers cannot require employees to use other sick time or paid time off for Covid-19 related reasons, or before accessing this paid sick leave benefit. A notice of this Act will be made available by the Department of Labor and needs to be posted in the workplace. Notice is here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Tax Credit:
 - Employers will receive a tax credit for qualified paid sick leave up to \$511 per day for the employee's own conditions and \$200 per day for an employee caring for another individual. The tax credit is used to offset the employer's portion of Social Security tax and any excess will be refunded
- Read more here: <https://www.btlaw.com/en/insights/blogs/coronavirus-response-act-includes-emergency-paid-sick-time-and-paid-family-leave>

EXPANDED FMLA

- The Emergency Family Medical Leave Expansion Act requires that employers with fewer than 500 employees provide twelve (12) weeks leave for an employee who is unable to work or telework in order to care for a child whose school or daycare is closed for Covid-19 related reasons
- This expanded leave is available to any employee who has been employed 30 or more days. The first ten (10) days of this leave may be unpaid, although other employer paid leave time can be used to provide pay for that ten (10) days
- Any employee returning from FMLA under these emergency measures shall have the same job restoration rights as set forth in in a company's FMLA policy

EXPANDED FMLA

- Weeks 1-2 (10 days): Leave is unpaid but employees may use any paid time off they have accrued or to which they are entitled, such as Emergency Paid Sick Leave
- The additional 10 weeks of leave under this Emergency Family Medical Leave Expansion Act is paid as stated as follows:
 - The paid portion of leave is paid at two-thirds of the employee's regular rate of pay based on the number of hours an employee would otherwise normally be scheduled to work, up to a maximum of \$200 per day (and \$10,000 in aggregate)
 - This 12 week period does not extend any time under the FMLA act, it simply adds another reason for leave and specifies payment
 - The Labor Department will have the authority to exempt from the paid family leave requirement small businesses with fewer than 50 employees if the requirement to provide leave would jeopardize the viability of the business
 - FMLA has been expanded under the new law. Please consult with your Human Resources Business Partner to discuss how the change effects your business
- Read more here: <https://www.btlaw.com/en/insights/blogs/coronavirus-response-act-includes-emergency-paid-sick-time-and-paid-family-leave>

New DOL Guidance

- <https://www.dol.gov/agencies/whd/pandemic>
- Fact Sheets on FFCRA Paid Leave Rights and Requirements
- Q&As – FFCRA, COVID-19: FLSA & FMLA
- Poster and FAQs about Notice

Questions

- What is effective date of the FFCRA?
 - April 1, 2020 to December 31, 2020
- Is the FFCRA retroactive?
 - No. If an employer grants paid leave prior to 4/1/20, no tax credit and EE still gets 10 paid days if qualified
- Does the expanded FMLA create a new 12 week entitlement?
 - No. It just creates a 6th reason to take leave
 - If an employee has already used up his/her FMLA entitlement prior to 4/1 (rolling calendar year), then only eligible for 2 weeks of Emergency Paid Sick Leave

Plant Layoff or State Stay at Home Order

- If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?
 - No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.
 - Same answer is closed on or after 4/1/20

What if ER Closes While EE on Leave?

- If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?
 - If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State, or local directive

Intermittent Paid Leave?

- Can employees take FFCRA family leave on an intermittent basis?
 - Yes. But ONLY with the employer's consent
 - Teleworkers – if part of the time at home is spent caring for kids, then that portion is paid pursuant to the FFCRA (i.e., 2/3 pay up to \$200/day)
 - DOL encourages companies to collaborate and agree
 - Working on site –
 - Paid sick leave for any reason other than caring for kids out of school/daycare, has to take full 2 weeks to prevent exposure
 - To care for kids – full day increments

Documentation for Paid Sick Leave for Expanded FMLA

- Paid Sick Leave
 - Document employee name, qualifying reason for leave, statement employee is unable to work (including telework and dates of leave
 - Quarantine order or isolation order
 - Name of doctor for advice of self-quarantine
 - Need for tax credit
- Expanded FMLA
 - Notice or proof that school or daycare is closed
 - Same for 1st two weeks of paid sick leave
 - Need for tax credit

Illinois “Stay-At-Home” Order

- Executive Order 2020-10 is effective from March 21, 2020 at 5 p.m. through April 7, 2020
- Among other things, the Executive Order (1) requires all individuals currently living in the State of Illinois to stay at home, (2) requires non-essential businesses and operations to cease, and (3) prohibits travel unless such travel is to maintain “Essential Businesses” or “Minimum Basic Operations,” or to engage in “Essential Activities”
- For the full Executive Order, *see* <https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>

Illinois “Stay-At-Home” Order Cont’d

- Generally permits manufacturing companies to continue producing and supplying essential products for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations

Illinois “Stay-At Home” Order Cont’d

- Examples of what business may remain open:
 - Essential Infrastructure:
 - Food production, distribution and sale; construction; building management & maintenance; airport operators; public transportation
 - Essential government functions:
 - First responders, emergency management personnel, military, and all other governmental employees working for or to support Essential Business and Operations
 - Essential Businesses and Operations:
 - Stores that sell groceries and medicine; food and beverage manufacturing, production processing, and cultivation; gas stations; financial institutions; hardware and supply stores; laundry services; businesses that sell, manufacture, or supply other Essential Businesses and Operations; transportation; manufacture, distribution, and supply chain for critical products and industries

Illinois “Stay-At-Home” Order Cont’d

- U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency issued a memorandum on identification of essential critical infrastructure workers during COVID-19 response, which is meant to encompass the workers in the Illinois Executive Order:
 - <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>
 - <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>

Federal Critical Infrastructure Sectors

- 16 critical governmental sectors that will remain functioning:
 - Chemical
 - Communications
 - Dams
 - Emergency
 - Financial
 - Government Facilities
 - Information Technology
 - Transportation Systems
 - Commercial Facilities
 - Critical Manufacturing
 - Defense Industrial Base
 - Energy
 - Food & Agriculture
 - Healthcare and Public Health
 - Nuclear Reactors, Materials, and Waste
 - Water and wastewater Systems
- For further information, see <https://www.cisa.gov/critical-infrastructure-sectors>

Illinois “Stay-At-Home” Order Cont’d

- Businesses exempt from the Order must take proactive measures to ensure compliance with social distancing requirements, where possible, including: designating six foot distances; making hand sanitizer and sanitizing products available; separating operating hours for vulnerable populations; and posting information online about whether the facility is open, how best to reach the facility and continue services by phone or remotely

Other States Orders

Current states with “Stay-At-Home” orders:

- California
- Connecticut
- Delaware
- Hawaii
- Illinois
- Indiana
- Louisiana
- Massachusetts
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- New Mexico
- New York
- Ohio
- Oregon
- Pennsylvania
- Washington
- West Virginia
- Wisconsin

EMPLOYER Q & A

- Q: Can I ban employee travel to affected locations?
- A: Yes, employers may ban any business-related travel to areas of high community spread
 - Employers generally do not inquire into employees' lawful off-duty travel, but can inform them of the consequences of undertaking such travel, including periods of quarantine (14 days is the current guidance) and apply any such practice on a non-discriminatory basis

EMPLOYER Q & A

- Q: Can I force a sick employee to go home or stay home?
- A: Likely yes. Employees with obvious symptoms of acute respiratory illness, including flu-like symptoms, may be required to stay at home or leave work and go home

EMPLOYER Q & A

- Q: What should I tell other employees if we have a confirmed instance of an employee infected by corona virus?
- A:
 - An infected employee should not be identified due to medical privacy considerations, and confidential medical information about the employee should not be shared
 - The employer may inform the workforce that there has been a reported case of COVID-19, and identify steps being taken to address the issue

EMPLOYER Q & A

- Q: If we have a furlough or temporary layoff due to coronavirus, are employees entitled to receive unemployment compensation?
- A: Generally, yes

EMPLOYER Q & A

- Q: May I require employees to use paid-time off for self-quarantine or in the event they are sent home due to illness?
- A: Yes, an employer generally may require employees to use PTO so long as it is consistent with:
 - 1) its policy provisions and application,
 - 2) previous administration of the policy under the Family and Medical Leave Act, and
 - 3) for unionized employees, permitted by the PTO provisions of any applicable collective bargaining agreement

EMPLOYER Q & A

- Q: May I ask an employee why they have been absent for work if I suspect it is due to a medical reason?
- A: Yes, asking why an employee has not been at work is not a disability-related inquiry, and therefore, an employer may ask the reason(s) for the employee's absence

EMPLOYER Q & A

- Q: Are workers that contract COVID-19 eligible for workers' compensation?
- A: Only if the employee can show COVID-19 was contracted in the workplace

EMPLOYER Q & A

- Q: How should I handle an employee who is concerned about reporting to work where remote work is not an option (e.g., retail, manufacturing, etc.)?
- A:
 - Employers should reassure workforce it is taking all practical steps to protect employee safety. Employers should reinforce social distancing (6 feet apart) on the work floor as practical, and consider implementing staggered shifts to assist with social distancing, as needed
 - If an employee still expresses concerns about reporting for work despite these steps, discuss with the employee his or her options for paid and unpaid leave during the current situation

Human Resources/Policy Issues

- Employee Communication/Education
- International travel issues
- Leave policies
- Attendance policies
- Other benefits tied to attendance - bonuses etc.
- Working remotely
- Social distancing
- Customer/visitor policies at the facility

COVID-19 Resources at B&T



Visit our Resources Page

Visit the link that sits on the homepage of [btlaw.com](https://www.btlaw.com) to get updated information about how the firm is supporting its clients during the pandemic.

Resource List

- www.dol.gov/agencies/whd/pandemic (guidance on expanded FMLA and paid sick leave and required poster)
- www.cdc.gov (updates and links to Interim Guidance for Businesses and Employers)
- www.who.int (World Health Organization)
- www.osha.gov (links to Guidance on Preparing Workplaces for COVID-19)
- www.cdc.gov/niosh
- https://www.eeoc.gov/facts/pandemic_flu.html (EEOC Pandemic Preparedness in the workplace and the ADA)
- B&T COVID-19 website: <https://www.btlaw.com/en/work/practices/covid-19-coronavirus-resources#?section=insights-and-events>
- Most state health organizations and state governors have active websites with additional resources.



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