

# **The Coronavirus: How Employers Can Manage the Outbreak**

*Prepared for Members of the Illinois Manufacturers'  
Association*

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# **EMERGENCY PAID SICK LEAVE ACT (EPSLA)**

# Emergency Paid Sick Leave Act

- **Effective date:**
  - April 1, 2020
- **Covered employers:**
  - Private employers with less than 500 employees (full-time, part-time, on leave, temporary, and day laborers)
    - » Does not include employees laid off and not rehired.
  - All public employers

# Emergency Paid Sick Leave Act

- **Small Business Exception**

- Employs less than 50 employees; and
- Leave is requested to care for a child whose school/daycare is closed for reasons related to COVID-19; and
- Authorized officer of the business has determined that *at least **one** of the following applies* and documents the determination, retains it in the employer's files:
  - » Providing paid sick leave or expanded FMLA leave would result in the expenses and financial obligations of the business exceeding available business revenues and cause the small business to cease operating at a minimal capacity; or
  - » Employees' absences from work for either of these leaves would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  - » There are not sufficient workers who are able, willing and qualified to perform the work provided by the employee(s) requesting paid sick leave or expanded FMLA leave, and this work is needed for the business to operate at a minimal capacity.

# Emergency Paid Sick Leave Act

- **Joint Employment: (when will two separate entities be considered a single employer?)**
- Fair Labor Standards Act provisions likely govern – **Focus is on Control.**
  - Hires or fires the employee;
  - Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
  - Determines the employee's rate and method of payment; and
  - Maintains the employee's employment records.
- No single factor is dispositive
- Second employer must *actually* exercise — directly or indirectly — one or more of the four control factors.

# Qualifying Reasons for Leave

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

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
  - Clarified that this does include Governor Pritzker's (or other States) Shelter in Place/Stay at Home Order. **HOWEVER** . . .
  - The question is, *if work is available*, would the employee be able to work or telework, but for being required to comply with a the shelter in place/stay at home orders.

# Qualifying Reasons for Leave

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

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

- Advice to self-quarantine must be based on the healthcare provider's belief that:
  - the employee has COVID-19 (tested positive or symptoms; or
  - Is particularly vulnerable to COVID-19
- Self-diagnosing and unilateral decision to self-quarantine = ineligible.
- HOWEVER, for “unable to work or telework” . . . Must be work available to perform; employer permits the employee to do from where the employee is self-quarantining; and the employee is unable to do the work due to the self-quarantine.

# Qualifying Reasons for Leave

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

(3) The employee is experiencing symptoms of COVID-19 and is **seeking a medical diagnosis**.

- Limited to time the employee is unable to work because he or she is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for or attending an appointment for a test for COVID-19.
- Note that an employee may not take paid sick leave to self-quarantine without seeking a medical diagnosis.
  - Self-diagnosing and unilateral decision to self-quarantine = ineligible.
- An employee who is waiting for the results of a test AND is able to telework, is not eligible for paid sick leave if the employer has work available for the employee to perform and the employer permits the employee to perform the work from where the employee is waiting for the test results (e.g. employee's home).



# Qualifying Reasons for Leave

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

- (4) The employee is caring for an individual who is subject to a quarantine order as described above or has been advised by a health care provider to self-quarantine.
- “Individual” means an employee’s *immediate* family member; a person who regularly lives in the employee’s home (e.g. a roommate); or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined.
  - This does not include those with whom the employee has no personal relationship or an expectation that the employee will care for the person during the quarantine or self-quarantine.

# Qualifying Reasons for Leave

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

(5) The employee is caring for a son or daughter whose school or place of daycare has been closed or the child's child care provider is unavailable due to COVID-19 precautions.

- Must be **no other suitable person**, such as a **co-parent**, co-guardian or the usual provider, is available to care for the child during the period of such leave.
- Thus, an employee may take paid sick leave to care for his or her child only when the **employee needs to, and actually is**, caring for the child.

# Qualifying Reasons for Leave

- Definition of “child care provider” includes a family member (e.g. **grandparent**) or friend (e.g. neighbor) who regularly cares for the employee’s child, even if that person is not licensed or paid for providing the child care services.
- “Place of care” means a physical location where care is provided for the employee’s child while the employee works. It can include schools, homes, summer camps, summer enrichment programs and respite care programs.
- Can include disabled child 18 or older who is incapable of self-care
- Broad definition of “son or daughter” – biological, adopted, foster child, stepchild, legal ward or standing in loco parentis.
- Schools are considered closed if the physical facility is closed. This is true even if some or all instruction is being provided online or through another format and the child is still required to complete assignments.

# Qualifying Reasons for Leave

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

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

— No other condition has been identified.

- **For reasons (1)-(3), the amount is capped at \$510 per day and \$5,110 in the aggregate for each employee taking leave for these reasons**
- **For reasons (4)-(6), the amount is capped at \$200 per day and \$2,000 in the aggregate for each employee taking leave for these reasons**

# Unable to Work or Telework

- What does it mean to be unable to work, including telework for COVID-19 related reasons?
- Employees are unable to work if the employer has work for the employee to perform, and one of the six COVID-19 qualifying reasons prevents the employee from being able to perform that work, either under normal circumstances at the employee's place of work or by means of telework.
- If an employee is **able to work or telework**, notwithstanding COVID-19 reason, then paid sick leave and expanded family and medical leave, **is not available.**

# Amount of Leave

- **Full-time employees (works 40 or more hours per week):** 80 hours (capped, can't double dip)
- **Part time employees (works less than 40 hours per week):** Number of hours employee works on average over a 2-week period, includes overtime hours
  - For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.
- **Variable Schedules** (*i.e.* hours differ from week to week): 14x's the average number of hours that the employee was scheduled per day over a 6-month period ending on the day the employee takes sick leave.
- **New(er) employees:** use the "reasonable expectation of the employee at the time of hiring."

# Amount of Leave

- If the employee no longer has a qualifying reason for taking paid sick leave before exhausting the paid sick leave, the employee can take any remaining leave at a later time, *if another qualifying reason occurs*, until December 31, 2020.
- Unless the employee is teleworking, which permits intermittent leave, once an employee begins taking paid sick leave for qualifying reasons 1-6, the employee must continue to take paid sick leave each day thereafter, until either:
  - The employee uses the full amount of paid sick leave; or
  - No longer has a qualifying reason for taking paid sick leave.
    - Qualifying reason #5 permits intermittent leave, if the employer agrees.

# Intermittent Leave (teleworking)

- The employer and employee may agree that the employee may take paid sick leave intermittently while teleworking.
- Intermittent leave may be taken in any increments, so long as the employer and employee agree.
- For example, if the employer/employee agree on a 90-minute increment, the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.



# Intermittent Leave (Workplace)

- Cannot take intermittent EPSL for qualifying reasons 1-5. Must be taken in full-day increments.
- However, if the employee and the employer agree, the employee may take paid sick leave and FMLA paid leave intermittently to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons.
- For example, if the employee's child is at home because the child's school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the employee's child, but work at the employee's normal worksite on Tuesdays and Thursdays.

# Rate of Pay

- **Employee who is sick or directed to isolate, (1-3) *greater of:***
  - Regular Rate of Pay: total non-overtime rate of pay, which includes base pay, tips, non-discretionary bonuses, shift premiums, commissions, and incentive compensation; or
  - FLSA Minimum Wage (\$7.25/hour); or
  - State (Illinois \$8.25) or local (Chicago \$13.00) minimum wage
- **Caring for a child/another individual (4-6) *greater of:***
  - 2/3 regular rate of pay or 2/3 the applicable minimum wage.
  - Employer and employee can agree to permit the employee to supplement paid sick leave or FMLA leave with employer provided paid leave, up to the employee's normal earnings.

# Emergency Paid Sick Leave Act

- Employees are immediately eligible as of April 1, 2020.
- Paid leave, *in addition* to any other leave provided by employers (e.g. PTO, vacation, sick leave, etc.)
- Employees may first use paid sick time, but employers may not require employees to use other paid leave **before** the employee uses paid sick time under the Act
- No payout on termination; no carryover to next year
- Expires December 31, 2020

# Employer Prohibitions

- No discrimination or retaliation.
  - **Be careful – \*constructive notice\***
- Employers may not require employees who take leave to find a replacement for their shifts
- Enforced under the FLSA
  - Employee lawsuits
  - DOL action
  - Back wages, liquidated damages, attorney fees
  - Statutory penalties

# Employee Notice Requirements

- **Employee Notice Requirements under PSLA:**
  - When seeking leave under PSL, employees are required to provide appropriate documentation, including:
    - The employee's name; **and**
    - Qualifying reason for the requesting leave; **and**
    - Statement that the employee is unable to work, including telework, for that reason; **and**
    - The dates for which leave is requested; **and**
    - A copy of the federal, state or local quarantine or isolation order related to COVID-19; **or**
    - A copy of the directive from the healthcare provider advising the employee to self-quarantine due to COVID-19; **or**
    - A copy of the doctor's note stating that employee is experiencing symptoms and is seeking or has sought a diagnosis (*See IRS Q&A #44*); **and**

# Employer Notice Requirements

## Employer:

- DOL has published required workplace poster in English and Spanish.
- Must be posted in the workplace by April 1, 2020.
- Also recommended that it be emailed to employees working remotely and posted on the company intranet.
- Even employers under 50 employees must post.
- Must be provided to all new hires through December 31, 2020

# **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)**

# EFMLEA Effective Date and Employer Coverage

- **Effective date:** April 1, 2020
- **Covered employees:** (not the 12-month, 1,250 hour rule)
  - Employed for **30 calendar days prior to April 1, 2020** or 30 days prior to the date the employee wishes to begin leave.
  - Includes employee who was “laid off” March 1, 2020 or later who had worked for employer for not less than 30 of the last 60 calendar days prior to layoff, and was rehired.
- **Covered employers:**
  - Private employers with less than 500 employees
  - All public employers
- **Joint Employment**
  - Multiple entities/single employer - focus on “control” factors



# Reason for EFMLEA Leave

- The employee is **unable to work (or telework)** due to a need for leave to care for the employee's son or daughter under 18 years of age, if:
  1. the child's school or place of care has been closed for COVID-19 related reasons; or
  2. The child care provider of such son or daughter is unavailable, due to a COVID-19 emergency declared by a federal, state, or local authority.
- ❖ Can include disabled child 18 or older who is incapable of self-care.
- ❖ Broad definition of "son or daughter" – biological, adopted, foster child, stepchild, legal ward or standing in loco parentis.

# Amount of EFMLEA Leave and Pay

- 12 weeks of job protected leave, from April 1, 2020, until December 31, 2020.
  - **DOES NOT expand 12-week FMLA entitlement if employee has exhausted.**
- 1<sup>st</sup> 10 days → unpaid (employee can elect to use other paid leave available).
- After 1<sup>st</sup> 10 days →
  - 2/3 regular rate x's the number of hours the employee would ordinarily be scheduled.
  - Employer may require the employee to use provided or accrued paid leave under the employer's policies concurrently with EFMLEA.
  - EFMLEA for each employee is capped at \$200/day; \$10K total.
- If the leave is taken concurrently, the employer must pay the employee the full amount to which the employee is entitled under the pre-existing paid leave policy for the period of leave taken.

# Reinstatement Rights

- **Same as regular FMLA**
  - Reinstated to same or equivalent position with respect to pay, benefits, terms and conditions)
  - Not job protected from a layoff that would have affected the employee regardless of whether the employee took the FMLA leave .
- **Small employer exception:** Fewer than 25 employees, but only if:
  - Position is eliminated due to economic or operating conditions that effect employment and due to COVID-related reasons.
  - Employer makes reasonable efforts to reinstate employee to same or equivalent position; and
  - Employer makes a reasonable effort to contact a displaced employee about an equivalent position if such position becomes available within 1 year after employee's need for leave ends (or 12 weeks after start of leave).

# Emergency Family and Medical Leave Act Expansion

- **Employer Prohibitions**
  - No discrimination or retaliation
  - Employers may not require employees who take leave to find a replacement for shifts
  - Employee lawsuits (if over 50 employees); DOL action; Back wages, liquidated damages, attorney fees
- **Employer Notice Requirements**
  - DOL published poster.
- **Employee Notice Requirements**
  - When need for leave is foreseeable, the employee must provide as much notice as is practicable. (i.e. constructive notice).

# What Must Employee Provide for Any FFCRA Leave?

- Employees are required to provide appropriate documentation, which includes a signed statement containing the following:
  1. The employee's name; and
  2. COVID-19 qualifying reason for the leave; and
  3. Oral or written statement that the employee is unable to work, including telework because of a qualifying COVID-19 reason; and
  4. The date(s) for which leave is requested

# What Must Employee Provide for Leave for School Closing or Child Care Need?

- Employees must provide documentation as follows:
  1. the name of the child (children) being cared for;
  2. the name of the school or place of care that closed or is a care provider who is unavailable;
  3. a representation that no other suitable person will be caring for the child during the period of leave; and
  4. with respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care. (Note this item only referenced by IRS.)
- ❖ <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- ❖ <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

# Interplay between EPSL, EFMLEA and Other Forms of Leave

- An employee receiving workers' compensation or temporary disability benefits is generally **not** eligible for paid sick leave or expanded family and medical leave **because the employee is unable to work**, unless the employee is released for light duty, the employer has light duty available, and a qualifying reason prevents the employee from performing the light duty.
- Where an employee is on an **employer-approved leave of absence**, the employee is **not** eligible for paid sick leave or expanded family and medical leave.
- However, if the leave of absence is **voluntary**, the employee may terminate the leave and begin taking paid sick leave or expanded family and medical leave where a qualifying reason exists.
- If the leave of absence is mandatory, then the employee is unable to work for reasons other than a qualifying reason and is not eligible for paid sick leave or expanded family and medical leave.

# Employee Status Changes and Eligibility for PSL and FMLA Pay

- **Reduction of Hours** - *Not eligible for PSL or FMLA leave because the employee is not prevented from working or teleworking.*
- **Temporary Layoff/Furlough exempt and non-exempt due to a lack of work** *before or after 4/1/20 – Not eligible for PSL or FMLA.*
- **Temporary Layoff/Furlough only non-exempt workers, mandatory work at home policy, and exempt employees still performing work:** *Non-exempt workers not eligible for PSL or FMLA; Exempt employees are eligible.*
- **Termination** *before or after 4/1/20 –Not eligible for PSL or FMLA.*
- **Employer shut downs end of day on e.g. 4/3/20, and furloughs exempt and non-exempt** –*eligible employees are entitled to benefits for 4/1-4/2.*



# Non-enforcement Period

- DOL has issued a temporary non-enforcement policy that provides a 30-day window, from **March 18, 2020 through April 17, 2020**, for employers to come into compliance with the Act.
- DOL will not file a lawsuit against an employer for violations of the Act, so long as the employer has acted *reasonably and in good faith* to comply with the Act.
- DOL will instead focus on *compliance assistance* during this time period.
- Employer must commit to make “all effected employees whole as soon as practicable” and make a “written commitment . . . to comply with the act in the future.”

# Tax Credits for Paid Sick and Paid Family and Medical Leave

- Tax credits – Employer receives an immediate tax credit for amounts paid for EPSLA and EFMLEA.
- 941- Report qualified leave wages and related credits on federal employment tax returns.
- BUT – Employer can immediately withhold qualified leave wages (and allocable qualified health plan expenses as well as the employer's share of Medicare tax on the qualified leave wages) from employment taxes, including withheld taxes that would need to be deposited with the IRS.
- Can seek prompt refund of any excess payments.

# Record Keeping Requirements

- Employers must keep the following records for four years:
  - All documentation provided by the employee requesting EPSLA or EFMLEA regardless if leave was granted or denied, including documentation of verbal statements from employees regarding leave.
  - Documentation from an authorized officer of denial of any request for leave under EPSLA or EFMLEA.

# Record Keeping Requirements

- Documentation to support a claim for tax credits, including:
  - how the employer determined the amount of paid sick leave and expanded family and medical leave paid to employees who are eligible for the credit, including records of work, telework and paid sick leave and expanded family medical leave;
  - how the employer determined the amount of qualified health plan expenses that the employer allocated to wages;
  - copies of any completed IRS Forms 7200 that the employer submitted to the IRS;
  - copies of the completed IRS Forms 941 that the employer submitted to the IRS or records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on IRS Form 941; and
  - any other documents needed to support its request for tax credits pursuant to IRS applicable forms, instructions and information for the procedures that must be followed to claim a tax credit.

# Wage and Hour Considerations

- **Non-exempt (hourly workers)**
  - Must be paid for all time worked, but only for time worked.
  - Does not matter where the work is performed – home or office
  - Must be paid at least the minimum wage and are entitled to overtime.
  - Still entitled to a meal period: 7/12 continuous hours, permitted to take a meal period of 20 minutes – which may be unpaid. **If they do not, must notify you in writing, potential overtime issues!!**
  - Must still track hours!!! (**non-exempt and exempt** [as of 2/19/19]).
  - Consider specific, written instructions as to when non-exempt employees are permitted to start/end day (e.g. 9-5).

# Wage and Hour Considerations

## Exempt (salaried workers)

- Exempt employees entitled to full salary so long as they perform a *de minimus* amount of substantive work.
- Courts have held just checking work email likely not considered work requiring payment.

# Wage and Hour Considerations

- **Reduction in Exempt Employee's Salary**
  - Has to be prospective and in writing *i.e.* the next pay period, not the existing period.
  - Has to be for a “bona fide” reason. An economic downturn likely qualifies.
  - Most importantly, it CANNOT reduce the employee below the exempt salary threshold of \$684/week. If the reduction brings the employee BELOW \$684/week, the employee is now non-exempt.
  - Duties must remain the same.

# Wage and Hour Considerations

- **Reducing an Exempt Employee's Days of Work**
  - Exempt employees who work less than an entire work week because of a furlough or reduction of work still must be paid a guaranteed salary.
  - However, an employer can require that the exempt employee use vacation/PTO **on days when the employee does not work.**
  - For example, an exempt employee works Monday and Tuesday, but not Wednesday through Friday. An employer would still comply with the salary requirement by paying the exempt employee for Monday and Tuesday and “dock” the employee's vacation/PTO bank to pay them for Wednesday through Friday.



# Wage and Hour Considerations

- **Temporary Reclassification of Pay Status**
  - An employer can reclassify the exempt employee to non-exempt and pay the employee by the hour.
  - Employee is now entitled to overtime, however.
  - After things settle down, an employer can change the status to exempt again by paying the guaranteed salary.

# Employment Expenses

- Under the Illinois Reimbursement Law (1/1/19), if the employer requires employees to work from home (based on shelter in place or otherwise), the employer must reimburse the employee for all necessary and reasonable business expenses incurred in working from home.
- For example, if the employee is required to make business calls on his/her cell phone, may seek reimbursement for the costs of the calls, or cell phone bill. Likely have to reimburse for internet usage to connect to the employer's platform and perform work.
- If the employee is required to install additional electronic equipment to work from home, then the employee may seek reimbursement for the cost of that equipment.

# Unemployment Benefits

- IDES has created a Q&A for employers/employees answering questions related to unemployment benefits.  
<https://www2.illinois.gov/ides/Pages/COVID-19-and-Unemployment-Benefits.aspx>
- Employment contribution rate increase for each claim.
- 7-day waiting period is waived. Employees can file as soon as they are laid off.
- When workers are laid off for a period of 7 days or more, or separated from the payroll for any reasons, Illinois employers are required to provide employees with a copy of an IDES publication that provides some basic information regarding unemployment benefits.

# Unemployment Benefits

- Receiving PSL and/or FMLA pay – **not eligible**.
- Receiving paid sick leave under company policy – **not eligible**.
- Temporarily laid off/furlough because of temporary closure – **eligible**, so long as the employee is prepared to return to work as soon as the employer reopens
- Employee refuses to come to work for fear of contracting COVID-19.; **depends**, on whether employee has a good faith basis, reason was attributable to the employer, and tried to get it resolved before quitting.
- Confined to home because (a) doctor imposed self-quarantine; (b) care for a family member who has been diagnosed with COVID-19; or (3) government imposed quarantine – **depends**, on whether employee is able and available to work from home.
- School closure: **depends**, on whether employee is able and available to work from home.
- Reduction in hours: **depends**, if reduced salary is equal or less than weekly benefit amount.

# Federal Pandemic Unemployment Benefits/Insurance

- Coverage for individuals normally not covered by unemployment, such as those who are self-employed, independent contractors and gig workers.
- **\$600 payment per week on top of the normal unemployment benefit to be paid by the state. This amount is regardless of how much the individual earns.**
- Expires July 31, 2020.
- 39 weeks of coverage (an extension of 13 weeks), including retroactive coverage back to Jan. 27, 2020.

# Federal Pandemic Unemployment Benefits

- An individual must certify that the individual is able and available to work but is unemployed, partially unemployed, or unable or unavailable to because:
  - the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  - a member of the individual's household has been diagnosed with COVID-19;
  - the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
  - a child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
  - the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

# Federal Pandemic Unemployment Benefits

- the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19;
- the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- the individual meets any additional criteria established by the Secretary for unemployment assistance.

# IL Mini-WARN Act

- IL WARN Act also requires employers to provide advance notice to affected employees if there is a “plant closing” or a “mass layoff.”
- IL WARN applies to employers with 75 or more employees.
- Under Illinois WARN, a **mass layoff** means a reduction in force that **is longer than 6 months** and:
  - at least 33% of the employees (excluding part-time employees) and at least 25 employees (excluding part-time); or
  - at least 250 employees (excluding part-time)
- **Plant closing** - if the shutdown results in an employment loss at the single site of employment during any 30-day period for **25 or more employees** excluding part-time employees.
- Under Illinois WARN, an employer is not required to provide 60 days’ notice if the mass layoff was necessitated by a physical calamity



# OSHA

- **Do employers need to record COVID-19 illnesses on our OSHA 300 logs?**
  - In some cases, yes.
  - OSHA requires employers to record work-related illnesses, which, unlike the flu or the common cold, could include COVID-19, if the employee was exposed to the virus while working.
  - Employers are required to assess whether an employee contracted the illness while at work based on the circumstances.

# OSHA and SOCIAL MEDIA

- OSHA Employee Rights and COVID-19
  - OSHA Section 11(c) – prohibits retaliation against employees for raising concerns about safety and health conditions.
- Social Media –
  - Employee complains on social media that employer is falsifying that it is an “essential business” and putting the lives of its employees at risk.
  - Employer wants to discipline/terminate.
  - Protected concerted activity under Section 7 of the National Labor Relations Act (applies to non-union employers, too) because the employee is discussing terms and conditions of employment.
  - Terminate – unfair labor practice charge

# COVID-19 Resources

- Greensfelder's COVID-19 resources page is a source for continuing updates:  
<https://www.greensfelder.com/covid-19-resources.html>



The screenshot shows the top portion of the Greensfelder website's COVID-19 resources page. At the top is a dark navigation bar with the Greensfelder logo (a 2x2 grid of squares) and the name 'GREENSFELDER' in white. Below the logo are navigation links: 'People', 'Practices', 'Industries', 'News & Insights', 'About', 'Careers', and 'Offices'. The main content area has a white background. On the left, the heading 'COVID-19 RESOURCES' is displayed in bold black text. To the right of this heading are two icons: a PDF icon and an 'ADD TO PACKET' button. Below the heading is a paragraph of text explaining that the team aims to help businesses and organizations with coronavirus-related issues. Below this paragraph is a line of text: 'Click the headings below to jump to a specific section:'. At the bottom of this section is a horizontal list of links: 'Construction | Consumer Protection | Contracts | Employment & Labor | Environmental | Franchising & Distribution | Health Care | Firm Updates'. On the right side of the page, there is a pink sidebar titled 'HELPFUL RESOURCES'. It contains three sections: 'Situation Summary' (updates from the CDC), 'COVID-19 in the U.S.' (daily statistics from the CDC), and 'OSHA/HHS Guidance' (guidance on preparing workplaces).

# Questions?



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# THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.