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Employment Law

COVID-19: FAQs on Federal Labor and Employment Laws

March 22, 2020

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The recent spread of the novel coronavirus (COVID-19) in the United States has caused employers to be increasingly concerned and uncertain regarding the future of their workforces. Below are some answers to frequently asked questions (FAQs) about the latest developments on the virus and guidance from federal agencies.

Note that the virus to which individuals are exposed is SARS-CoV-2. The disease it causes is COVID-19. For readability, these FAQs use the term "COVID-19." Where appropriate, readers should read COVID-19 as the SARS-CoV-2 virus.

This general guidance is based on U.S. federal employment law and the current medical assessment of COVID-19. State and local laws may apply, and medical assessments may change, resulting in different conclusions.

Sending Employees Home; Excluding Employees From Work; Requiring Employees to Work From Home; Returning Employees to Work

Question 1. May an employer send home an employee involuntarily who has or is exhibiting symptoms of COVID-19?

Answer 1. Yes. In response to the current COVID-19 outbreak, the Equal Employment Opportunity Commission has **cited** its 2009 pandemic H1N1 flu guidance, which states that advising workers with symptoms to go home either (a) is not a disability-related action if the illness is akin to seasonal influenza or (b) is permitted under the Americans with Disabilities Act (ADA) if the illness is serious enough to pose a direct threat to the employee or coworkers. Further, the Centers for Disease Control and Prevention's (CDC)'s Interim **Guidance for Business and Employers** advises that employees with symptoms of acute respiratory illness and a fever (greater than 100.4 degrees Fahrenheit or 37.8 degrees Celsius, using an oral thermometer) should stay home. Of course, employers should apply this type of

policy uniformly and in a manner that does not discriminate based on any protected characteristic (e.g., national origin, gender, race, etc.).

Q2. May an employer send home or require to work from home an asymptomatic employee who has been in close contact with someone with COVID-19 (e.g., a family member, close friend, etc.)?

A2. Yes, if the asymptomatic employee fits within certain exposure risk categories established by the CDC's **Interim U.S. Guidance for Risk Assessment and Management** (last updated on March 7, 2020), which categorizes employees based on (a) symptoms (i.e., symptomatic or asymptomatic) and (b) risk (i.e., High, Medium, Low, or No Identifiable, which takes into account both (1) travel destinations and (2) level and type of contact with symptomatic individuals).

Under the **CDC guidance**, employees who are asymptomatic may be excluded from the workplace, if they:

1. have close contact with,
2. sat on an aircraft within 6 feet (two airline seats) of, or
3. live in the same household as, are an intimate partner of, or are caring for at home, **while consistently using recommended precautions** [see **here** and **here** for home care and home isolation precautions]," for

a symptomatic individual with laboratory-confirmed COVID-19.

CDC defines "**symptomatic**" as subjective or measured fever, cough, or difficulty breathing. CDC defines "**close contact**" as:

4. a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case

– or –

5. b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on).

There are different standards and CDC guidance for **healthcare employees**.

The CDC **reminds** employers that in order to prevent **stigma** and discrimination in the workplace, employers should use its guidance to determine the risk of COVID-19. Employers also should consider reviewing pertinent guidance from state and local **public health authorities** on appropriate responses to exposure risks, especially as situations change. Employers considering actions beyond the CDC's guidance (e.g., additional go home/work from home requirements) may want to consider the basis for those and consult with legal counsel.

Q3. May an employer send home or require to work from home an asymptomatic employee returning from travel to an area with "widespread sustained" transmission? (Updated March 15, 2020)

A3. Yes, if the employee falls into certain CDC risk categories (as explained in the answer to question 2 above). Among the considerations for these risk categories is travel to certain areas with "widespread sustained" transmission (i.e., covered by a **CDC Level 3 Travel Health Notice**). As of March 14, 2020, **those areas** include China, Iran, South Korea, and most of Europe. In the United States (and in other parts of the globe not designated as Level 3 Travel Notice areas), there currently is "sustained (ongoing)" community spread—which is covered by Level 2 Travel Notice. Employers may monitor updates from the CDC and state and local public health authorities. The CDC has advised that determinations should not be made based on race or country of origin.

Q4. May an employer require an asymptomatic individual with no known exposure to COVID-19 to telework from home for a certain period of time as a preventive or precautionary measure? (Updated March 11, 2020)

A4. Generally yes, as long as the employee's duties allow telework. Permitting employees to telecommute may be particularly useful if there are documented cases of COVID-19 in the geographic area. Employers may want to continue consulting **public health authorities** in the applicable jurisdiction for additional recommendations and assessments as the virus spreads and situations change. The DOL **recently** reiterated that requiring or encouraging employees to telework based on current information from public health authorities can be a useful infection-control or prevention strategy and may also be an appropriate ADA accommodation.

Q5. When may an employee who was sent home for exhibiting symptoms (subjective or measured fever, cough, difficulty breathing) return to work?

A5. The CDC has **indicated** that in general business settings (i.e., non-healthcare settings where individuals in the workplace are not at a greater risk of contracting COVID-19), employees may return to work at least 24 hours after no longer having or exhibiting (a) a fever (defined by the CDC as a temperature greater than 100.4º F or 37.8º C), (b) signs of a fever [what the CDC means is unclear], and (c) any other symptoms, without the aid of fever-reducing medicines (e.g., anything containing ibuprofen or acetaminophen) or other symptom-masking medicines (e.g., cough suppressants).

The return-to-work standards and time periods may be different for an individual with a confirmed COVID-19 diagnosis. Employers should consult the CDC's and other public health authorities' guidance.

Employers considering implementation of policies beyond the CDC's guidance (e.g., a longer "return to work" time period) should consider the basis for those and consult with legal counsel.

An employer may want to meet with any returning employees to remind them to practice good respiratory etiquette and hand hygiene, avoid close contact with individuals who appear to be sick, and stay home if they begin to feel sick, for the health and safety of those employees and their coworkers, as well as the continued operations of the employer.

The CDC also has issued **specific guidance** for healthcare employees relating to risk assessment and management, which in certain respects provides more specific and expansive guidance regarding when to send healthcare workers home and when they may return to work based on

their specific exposures or potential exposures. For example, based on certain categories of potential exposure, the guidance recommends sending a healthcare worker home for 14 days while monitoring for symptoms in coordination with state or local public health authorities. Healthcare employers should carefully review this guidance, consult with their state and/or local public health authorities, and consider changes to company policies regarding covered healthcare workers.

Q6. If an employee does not feel well enough to return to work at least 24 hours after no longer having a fever or exhibiting signs of a fever (without the aid of fever-reducing medications) or other symptoms, may he or she remain out of work?

A6. Yes. First, employers should follow current guidance from the **CDC** and public health authorities as it is updated. If an employee is given specific restrictions or instructions by a public health authority or a medical provider, it may prove helpful for the health of the workplace for employers to make all reasonable efforts to accommodate those instructions, including by providing additional leave as necessary. Second, employers should continue to exercise sound discretion in taking proactive steps to minimize the risk of spreading the virus at work, such as the consideration of accommodations within reason of employee requests for additional time off from work. Third, employers should remain mindful of potential existing leave obligations under the Family and Medical Leave Act (FMLA) for serious health conditions or accommodations (including additional leave) under the ADA in which an employee's illness might constitute an ADA disability. As a practical matter, during this outbreak, many employers may wish to encourage employees to stay home until they feel better, up to a reasonable point. Employers should make these decisions uniformly and be on the lookout for potential abuse.

Q7. May an employer require a return-to-work doctor's note for an employee to return to work after exhibiting COVID-19 symptoms?

A7. A doctor's note should not be a prerequisite for returning to work, **according to the CDC**. This is in part because this requirement would place a high burden on the healthcare system and healthcare provider offices and medical facilities may not be able to provide documentation in a timely fashion. If an employee's situation meets the ADA's "direct threat" standards, however, an employer may require a return-to-work doctor's note (see question 8). Though the **CDC's guidance** urges against requiring a return-to-work note, if the employee's illness is a "serious health condition" under the FMLA (see questions 23 and 24), the employer would be able to require a return-to-work note if the employer complies with the FMLA's guidelines for requiring such documentation, including, among others, notifying the employee in the initial determination that fitness-for-duty notes will be required and consistently applying the requirement to all FMLA leaves.

Q8. If an employee says he or she is ready to return to work and has a doctor's return-to-work note, but the employer is concerned the employee will not be able to safely perform his or her duties, may an employer refuse to allow the employee to return to work?

A8. Yes, if the employee would create an unsafe or unhealthful work environment or is a direct threat to him- or herself or others. Often, having a one-on-one conversation with the employee

will reveal the reason for his or her desire to return to work (e.g., he or she has exhausted all paid leave, has an important project to finish, etc.) and perhaps result in a shared conclusion that he or she is or is not ready to return to work.

Vacation, Paid Time Off, and Paid Sick Leave

Q9. May an employer require an employee with COVID-19 to use his or her vacation time and/or other paid time off for the absence? (Updated March 20, 2020)

A9. Yes, subject to (a) the provisions of the employer's current vacation time, paid time off (PTO), and other applicable policies, and (b) any state laws (e.g., implied contract of employment) restricting an employer's ability to interpret or amend those policies. Employers with fewer than 500 employees should review obligations under the **"Families First Coronavirus Response Act** (FFCRA).

Q10. May an employer require an employee who is not exhibiting COVID-19 symptoms but who has been in contact with an individual with COVID-19 or is in a potential incubation period (e.g., after returning from travel to an area of risk, as noted by the CDC) to use his or her vacation time and/or other PTO for the absence?

A10. Yes, subject to (a) the provisions of an employer's current vacation time, PTO, and other applicable policies, and (b) any state laws (e.g., implied contract of employment) restricting an employer's ability to interpret or amend those policies. Employers should carefully consider the employee relations implications of such a policy.

Q11. May an employer advance any vacation time and/or paid time off to employees to cover COVID-19 absences?

A11. Yes, which some employers are already doing. Employers that do so should consider drafting policies and agreements so that employees are required to repay advanced time off first from newly earned vacation time/PTO. Where not otherwise prohibited by state law, employers may be able to deduct any advanced time off from a departing employee's vacation time/PTO payout or final paychecks.

Q12. May an employer set up a plan to excuse or otherwise not count absences related to COVID-19, whether for an actual illness or a quarantine period?

A12. Yes. Employers should determine any deviation from their normal policies, including how and when it will apply. Employers should ensure that any such policy is consistently applied.

Q13. May an employer opt to pay an asymptomatic employee who has been quarantined, even if the employer's policy does not provide for paid leave?

A13. Yes. Employers should clearly establish any deviation from their normal pay policies and be specific as to how and when it will apply. Employers should ensure that any such policy is consistently applied. Further, employers also should determine if there is any overlap with state or local paid sick leave laws (see question 14).

Q14. Are COVID-19 absences covered by applicable state or local paid sick leave laws?

A14. Possibly, depending on (a) the jurisdiction and (b) the reason for the absence (e.g., the employee's own illness, the employee was required to stay at home by public health authorities, the employee was required by the company to stay at home, or the employee stayed at home to care for the COVID-19 condition of a family member). Some paid sick leave laws may not apply to situations in which an employee (or a covered family member) is not actually exhibiting symptoms, while some states have specific provisions providing sick leave coverage when an employee is not actively sick but is directed to stay home by public health officials. It is unclear in many jurisdictions whether a paid sick leave law would apply if an employee does not have symptoms and is not directed by public health officials to stay at home, but the company directs him or her to do so.

Wage and Hour

Q15. May an employer require a non-exempt employee to use vacation time/PTO in less than full-day increments?

A15. Yes, as long as the policy and applicable state and local laws allow it.

Q16.May an employer require an exempt employee to use vacation time/PTO in less than full-day increments? (Updated March 11, 2020)

A16. Yes, as long as the policy and applicable state and local laws allow it, and the exempt employee's overall salary/pay is not docked, pay can be taken from the PTO category in less than full-day increments. The DOL recently acknowledged the permissibility of these practices under federal law in its **pandemic guidance** posted on March 9, 2020.

Q17. Must an employer pay a non-exempt employee during office, plant, or facility closures or other time spent away from work due to COVID-19? (Updated March 11, 2020)

A17. The DOL Wage and Hour Division recently **reminded** employers that they are required to pay non-exempt employees only for hours worked. Thus, if you are forced to close your business temporarily due to COVID-19 issues, you are not required to pay **non-exempt employees** for hours the non-exempt employees do not work, even though they may have been scheduled to work. However, employers should evaluate any applicable state wage and hour laws to ensure they do not contain different or additional requirements or provisions. In addition, employees may be entitled to unemployment compensation or other state benefits during closures or other periods away from work necessitated by COVID-19.

Q18. May an employer dock an exempt employee's salary during office, plant, or facility closures or other time spent away from work due to COVID-19 if he or she has exhausted all applicable vacation time/sick leave/PTO (including under any applicable paid sick leave laws)?

A18. For exempt employees, it depends on whether the absence is initiated by the employer or by the employee.

- If the absence is initiated by the employee (including for his or her own illness or that of someone for whom he or she is caring), the employer may dock the exempt employee for full-day absences only.
- If the absence is initiated by the employer (e.g., the employee must stay home for a mandatory quarantine period, even though he or she is asymptomatic and willing to come to work), the employer may dock the exempt employee only for full seven-day absences that coincide with the employer's pay week.

Employers should consider the impact docking exempt employees' pay may have on whether employees will continue to voluntarily stay at home when they feel sick, disclose that they feel sick, or disclose that they have traveled to a high-risk area, if there is a perception that they will suffer a financial consequence for doing so.

Q19. How should an employer handle expenses, such as internet or phone service costs, for employees who are asked or required to telework? (Updated March 11, 2020)

A19. If an employer requires an employee to work remotely who is not normally set up to do so, the employer may need to reimburse employees for any *additional* phone, internet, or other expenses incurred (beyond what the employee would otherwise have paid for their personal use) to enable the employee to telework at the company's request. While not directly addressing whether employers *must* reimburse home expenses used in the course of telework, the DOL **advised** that if employers require a non-exempt employee to work from home, employers may not require the non-exempt employee to pay for business expenses, where doing so reduces the non-exempt employee's earnings below the required minimum wage or overtime compensation. For exempt employees not subject to required minimum wage or overtime requirements, *additional* phone, internet, or other expenses may be viewed as impermissible deductions under the FLSA "salary" basis test. Employers should evaluate any applicable state wage and hour laws to ensure they do not contain different or additional requirements or provisions.

Attendance

Q20. May an employer count an employee's time away from work due to the employee's own COVID-19 illness against the employee in terms of the employer's attendance policy?

A20. Yes, as long as the illness is not an FMLA-qualifying **serious health condition** (see the section covering FMLA-related questions below), in which case the employer should comply with the FMLA's prohibition on counting these types of absences against an employee. Note that there may be times when complications arising from COVID-19 (or COVID-19's effects on a preexisting medical condition) could be considered a disability, in which case the ADA may be implicated and a reasonable accommodation may be required, such as a modification to the employee's attendance requirements. Here again, though, employers may wish to consider the implications of doing something that might be perceived as creating a financial penalty for staying away from work while sick (see questions 10, 11, and 12).

Q21. Should an employer discipline employees who are away from work because of COVID-19 for violating its attendance policy?

A21. One of the main reasons that employers may want to refrain from disciplining employees under these circumstances is the large number of employees whose attendance records will be adversely impacted. Having a large percentage of the workforce subject to termination because of attendance issues would be extremely disruptive to an employer's continued business operations and would have a negative effect on employee relations. Additionally, applying discipline for taking time away from work because of COVID-19 might encourage employees who already have attendance issues not to reveal their COVID-19 symptoms rather than risk termination.

Q22. Does an employer's waiver of strict compliance with its attendance policy regarding COVID-19 set a negative precedent, opening the door for employees with other serious illnesses to argue that their absences should not be counted against them in terms of the attendance policy?

A22. No, as long as that waiver is consistently applied to all COVID-19 absences, and to COVID-19 absences only. If employers make clear to employees that the waiver of strict compliance with the attendance policy is for COVID-19 only, employers should be able to distinguish between an absence related to COVID-19 and any other type of absence, based on the serious, widespread, non-recurrent nature of the current COVID-19 outbreak.

FMLA

Q23. Is COVID-19 an FMLA-covered serious health condition?

A23. Not necessarily. If COVID-19 does not satisfy the regulatory definition of a "**serious health condition**," employers should not count the absence against the employee's 12 weeks of FMLA leave. An example of a situation in which the leave may not be FMLA-qualifying is when an employee is required by the employer to stay home but is asymptomatic. Employers should evaluate any applicable state mini-FMLAs to ensure they do not contain different or additional requirements or provisions.

Q24. What are the requirements for an FMLA-covered serious health condition?

A24. The regulatory definition sections that most likely apply in the COVID-19 context (assuming a mild case) are the following:

1. More than three calendar (not work) days of incapacity plus two treatments by a healthcare provider (the first of which must occur within seven days of the first day of incapacity and the second within 30 days of the first day of incapacity)
2. More than three calendar (not work) days of incapacity plus one treatment by a healthcare provider (which must occur within seven days of the first incapacity) plus continuing treatment (including prescription medication) under the supervision of a healthcare provider

Because some individuals will not seek health care treatment unless they need urgent medical attention or they are at a higher risk for complications from COVID-19, some cases of COVID-

19 will not qualify as a serious health condition simply because the employees will not have visited a doctor/healthcare provider for any treatment.

ADA

Q25. Is COVID-19 considered a "disability"?

A25. Normally, no. Even under the amended (2009) ADA, the duration of COVID-19 will likely not be long enough to qualify as an ADA disability. Complications from COVID-19 (e.g., pneumonia) may qualify as an ADA disability, triggering certain obligations for the employer (e.g., reasonable accommodation, etc.). Employers should evaluate any applicable state mini-ADAs to ensure they do not contain different or additional requirements or provisions.

Q26. If an employer treats an employee as if he or she possibly has COVID-19 (e.g., by forcing him or her to stay home until an incubation period has passed), is that a valid basis for a "regarded as disabled" claim?

A26.Likely not. The amended ADA makes clear that "regarded as" claims may not be brought for conditions that are "**transitory and minor**." If COVID-19 in a specific case is not transitory and minor, then COVID-19 would become a different condition or complication, which might be considered an ADA disability. That different condition or complication could, of course, give rise to a "regarded as disabled" claim.

Confidentiality

Q27. Is an employer's knowledge that an employee has COVID-19 subject to HIPAA's privacy restrictions? (Updated March 16, 2020)

A27. Not usually. The Health Insurance Portability and Accountability Act (HIPAA) regulates the use and disclosure of health information of patients held by health care providers, health plans or insurers, and organizations that support these entities. It is not applicable for most employers (even if they are within the health care industry) as long as they are not actually treating (e.g., a provider) or paying for the costs of treating (e.g., insurers and plans), medical care, or providing services to companies that do these things. Because most employers will learn of a COVID-19 diagnosis from the employee or his or her family in the employer's role as an employer, HIPAA usually will not be implicated.

Q28. May an employer disclose an employee's actual or probable COVID-19 diagnosis to others? (Updated March 11, 2020)

A28. Yes, **according to the CDC**, employers should inform fellow employees of their potential workplace exposure, but only to the extent necessary to adequately inform them of their potential workplace exposure, while maintaining confidentiality under the ADA (i.e., **without revealing the infected individual's name** unless otherwise directed by the CDC or applicable public health authority). Employers may communicate to non-exposed employees generally that there has been a potential COVID-19 exposure, without sharing additional identifying information. Employers also may be able to communicate to appropriate non-employees (e.g., customers, vendors, and others with whom the employee may have come in contact while working) that there was a potential COVID-19 exposure, again without sharing identifying information. In all

cases, time and circumstances permitting, employers may find it helpful to coordinate with state or local health authorities for guidance and direction regarding the scope and content of disclosures.
Employers also should evaluate any applicable state privacy law or state "mini-ADA" laws to ensure they do not contain different or additional requirements or provisions.

Q29. May an employer share with other employees the name of an employee who has tested positive for COVID-19? (Updated March 16, 2020)

A29. No, not based on current guidance. The ADA requires employers that collect medical information from employees to keep such information confidential. EEOC and CDC coronavirus guidance indicate that, while it may be necessary to collect medical information from employees about their conditions, employee confidentiality must be maintained. Communications with employees exposed because of contact with an employee who tests positive or is displaying symptoms should be sufficient to indicate to the exposed employees the heightened risk, without violating confidentiality and without divulging the name of the person who tested positive.

NLRA

Q30. If employees refuse to come to work due to a fear of becoming infected with COVID-19, does that qualify as protected-concerted activity? (Updated March 20, 2020)

A30. Potentially. Under the National Labor Relations Act (NLRA), nonsupervisory employees in unionized and non-unionized settings may have the right to refuse to work in conditions they believe to be unsafe. (This is considered an outgrowth of concerted activity for the mutual aid and protection of coworkers.) To refuse to work, employees should have a "reasonable, good-faith belief" that working under certain conditions would not be safe. Notably, the NLRA protects employees if they are "honestly mistaken." There is a separate analysis under Section 502 of the NLRA for unionized employees. In that context, a concerted refusal to work over safety concerns is protected if the assignment is "abnormally dangerous." Unionized employees must have a "good faith belief" supported by "ascertainable" and "objective evidence" that there is an "abnormally dangerous" working condition. Refusal to work in this context is protected, even if there is a "no strike" clause in the relevant collective bargaining agreement and such employees may not be permanently replaced.

Q31. With everything changing so fast, do employers have a duty to bargain over new policies or other changes with a union that represents their employees? (Updated March 20, 2020)

A31. Maybe. Employers should first check their collective bargaining agreements (CBAs) to see if the contract covers the issue. That includes checking if the CBA gives the employer the right to decide and/or proceed on the particular issue under consideration. If yes, then the National Labor Relations Board's (NLRB) *MV Transportation* contract coverage standard likely gives the employer the right to make a decision and implement it without bargaining. Even in those situations, the employer may have a duty to bargain over the effects of the decision. For example, if a contract gives an employer the right to shut down a particular division, the employer can do so in response to COVID-19 without bargaining, but may have to bargain upon

request with the employees' bargaining representative over issues such as whether employees will be redeployed, laid off, provided with any leave options, and the like.
Employers should review "savings" language in CBAs, which may permit employers to make changes unilaterally in order to comply with changes in law. Arguably, depending on the specific language, compliance with governmental directives may be covered by such clauses.

If a contract does not give the employer the right to proceed unilaterally, then the employer likely has a duty to bargain over changes to mandatory subjects of bargaining (i.e., wages, hours, terms and conditions of employment), subject to an economic exigency, discussed below.

Q32. How can an employer bargain if it has to proceed immediately? (Updated March 20, 2020)

A32. An employer may be privileged to act unilaterally where "economic exigencies" compel "prompt action." The employer bears the burden of proof, but the NLRB has applied this exception in cases involving "extraordinary events" that:

- Have a "major economic effect;"
- Require the employer "to take immediate action;" and
- Are "caused by external events," "are beyond the employer's control," and/or are "not reasonably foreseeable."

The NLRB has found such an economic exigency to exist when an employer closed its facility and laid off employees in response to a government-ordered mandatory evacuation. In the case of COVID-19, the employer may be able to carry this burden where, for example, a governor shuts down the employer's type of business.

If an employer has notice—even as little as 48 hours—of the upcoming change, dependent upon the circumstances, it may have a duty to provide notice to the union and an opportunity to bargain. In that case, the employer may notify the union of the deadline for action and expect to conclude bargaining—to agreement or impasse—within that deadline. The shortened deadline should be based on a reasonable assessment of the need for quick action.

Q33. If an employer gets information requests from the union that represents its employees demanding a lot of information in a short timeframe, is the employer required to respond? (Updated March 20, 2020)

A33. Many of the information requests employers are getting are related to the employer's plans for providing paid time off, employee safety at work, and potential layoffs. These types of issues involve mandatory subjects of bargaining, so employers probably have a duty to provide the relevant information, but keeping the following considerations in mind:

- The duty is to provide information that already exists. Employers do not have to speculate or create information they do not have.
- If the request involves specific questions, and a document or policy provides the answers, then providing the document or policy to the union satisfies the employer's duty to respond.

- For information that remains in development, such as a policy relating to whether and/or how the employer plans to pay employees who cannot come to work due to an exposure or other quarantine, there may be a continuing duty to provide the policy to the union when it becomes available.
- Some requests include a very fast turnaround time. There often is a tension between a fast response and a complete response. There are no hard and fast rules on how quickly employers must respond. Consider the reasonableness of any requested timing based on the circumstances, the amount of information requested, and competing responsibilities of those who are required to gather the information.

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Q34. Are employers required to provide unions with a list of employees who have been exposed to COVID-19 and/or who have tested positive? (Updated March 20, 2020)

A34. This is confidential employee medical information, and employers must handle it with care. Employers may be prohibited from releasing such information to third parties under state privacy laws and/or the Americans with Disabilities Act. Employers should carefully explore a union’s explanation for why it wants this information, notify employees that the union has asked for it, and request a release. If an employee is not willing to release the information to the union, that employee reaction should be clearly communicated in an objection to the union’s information request. Statistical data without employee-identifying information, such as the number of employees who have tested positive, is not confidential medical information.

Q35. If a union makes a request to inspect a workforce to review the health and safety of employees, is an employer required to let the union in? (Updated March 20, 2020)

A35. Unions may have a right to enter a workplace to inspect it to review health and safety issues. If an employer receives such a request, it has the right to request from the union the reason for the request and the qualifications of the individuals performing the inspection. It also can propose to limit the number of union representatives who participate. Union representatives may not be disruptive during the inspection. The employer and the union should follow any external government orders and health authority recommendations regarding access to workplaces, how many people can be in close proximity, and the like.

Q36. What if an employer has been in contract negotiations? Does it have to continue those negotiations? (Updated March 20, 2020)

A36. Employers in contract negotiations should review all of the government directives and health authority guidance related to person-to-person contact and proceed accordingly. While bargaining is often best conducted in person, that may not be an option—or safe—during the current pandemic. If an employer wants to continue bargaining, it should explore virtual options, such as exchanging proposals by email and conducting meetings through phone or video conference. These options are similar to other types of procedural bargaining issues and typically should be discussed with the union representatives.

Another option to consider is entering into an extension agreement and resuming bargaining after the current crisis is over. That may be especially appropriate in certain industries where management and bargaining team members will not be available for bargaining, either because of their workload or because of layoffs.

Q37. Given the new economic realities facing many industries, may an employer change a proposal it made before the current situation arose? (Updated March 20, 2020)

A37. Generally, yes. An employer (or union) may modify previous proposals based on changed circumstances that have arisen since the proposal was made. What constitutes changed circumstances should be carefully reviewed, and any tentative agreements the parties have made in bargaining need to be considered carefully.

Q38. Is the NLRB continuing to operate during this pandemic? (Updated March 20, 2020)

A38. The NLRB announced agency-wide telework requirements through April 1, 2020. Some Regional Offices are closed temporarily and others will remain open to the public from 10:00 a.m. until 2:00 p.m. each business day. Even for those that remain open, there will be minimal staffing in each. The Board indicated it intends to continue actively enforcing the federal labor laws.

Q39. Will there continue to be NLRB-held elections and hearings? (Updated March 20, 2020)

A39. The NLRB issued a press release on March 19, 2020, suspending all representation elections, including mail ballot elections, through April 3, 2020. In its release, it stated that it will continue to monitor the situation to determine if it will extend this suspension. The NLRB also has postponed or delayed scheduling representation case hearings, presumably for the same time period. Employers with pending cases before the NLRB should monitor the NLRB's website for further developments and confirm any delays or pending deadlines with the assigned Region or labor counsel.

Q40. Have unions adjusted their organizing activity? (Updated March 20, 2020)

- A40. This is hard to know. Some unions have discontinued signature gathering as a result of the social distancing and government orders, while others have used the crisis as a way to try to generate interest and/or collect employee contact information.
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Workplace Safety

Q41. May an employee refuse to come to work due to a fear of becoming infected with COVID-19?

A41. Potentially. Employees may be protected from retaliation under the Occupational Safety and Health Act (OSH Act) in certain circumstances when they refuse to perform work as directed. Specifically, an employee may refuse an assignment that involves "a risk of death or serious physical harm" if all of the following conditions apply : (1) the employee has "asked the employer to eliminate the danger and the employer failed to do so"; (2) the employee "refused to

work in 'good faith'" (a genuine belief that "an imminent danger exists"); (3) "[a] reasonable person would agree that there is real danger of death or serious injury"; and (4) "[t]here isn't enough time, due to the urgency of the hazard, to get it corrected the hazard through regular enforcement channels, such as requesting an OSHA inspection." While each situation is different, and a generalized fear of contracting COVID-19 is not likely to justify a work refusal in most cases, employers may want to conduct a thorough review of the facts before any disciplinary action is taken against an employee who refuses to perform his or her job for fear of exposure to COVID-19 (see question 30).
Even if the employee's refusal is deemed justified, the OSH Act does not require that the employer be paid for any time he or she is not at work due to his or her refusal.

Q42. What are the requirements when respirators are provided by employers for voluntary use? What if the employer mandates respirator use?

A42. For most categories of workers, the CDC **advises** that it "does not recommend that people who are well wear a facemask to protect themselves from respiratory illnesses, including COVID-19." However, providing facemasks may be appropriate or even required for certain categories of workers, such as health workers, as well as required by applicable Occupational Safety and Health Administration (OSHA) standards. If an employer provides respirators, certain OSHA requirements will apply.
If an employer provides respirators (including N95 masks) and allows employees who may be worried about exposure to use them voluntarily, then the employer must provide a copy of **Appendix D** of OSHA's Respiratory Protection Standard to the employees. The employer must also verify that the masks do not pose an additional hazard to employees. For example, the use of dirty masks may inhibit breathing, or the masks may not be appropriate if employees are exposed to other substances, such as airborne chemicals.

If the employer requires respirators (including dust masks or N95 masks), then OSHA's standard requires a written respiratory protection program that includes training, fit-testing, and other provisions. For example, an employer that requires employees who may have been exposed to COVID-19 or who may have been diagnosed with COVID-19 to wear dust masks must have a written **respiratory protection program** (see 29 C.F.R. § 1910.134).

OSHA does not classify surgical masks as "respirators," and employers that require or permit employees to wear them do not have any compliance obligations under OSHA's Respiratory Protection Standard. Surgical masks are generally used as a physical barrier to protect against large droplets or splashes of blood or bodily fluids, and will generally not prevent a healthy person from inhaling droplet contaminants like COVID-19. Surgical masks for people infected with COVID-19 may limit the spread of the illness to others.

Q43. May an employer refuse an employee's request to wear self-provided respiratory protection and/or gloves?

- A43. Yes, if such measures are not otherwise required by the CDC's guidance or OSHA's standards, or if the employer determines that the employee's use of respiratory protection or gloves in and of themselves presents a hazard to the employee (e.g., if they interfere with the employee's ability to work safely).

The **CDC** and **U.S. Surgeon General** state that respirators are not required and are not protective for the general public working in non-healthcare settings. Given that, employers in non-healthcare settings with no infected employees have no need to require respirators. This means that OSHA's Respiratory Protection Standard (**29 C.F.R. § 1910.134**) does not apply, as respirators are not being used to protect employees. Instead, employees are asking to wear respirators because they are concerned about a public health issue.

Employers are permitted to bar employees from wearing self-provided respirators, because there is not a work-related hazard in this scenario. If an employer decides to allow employees to wear self-provided respirators, the employer has no obligations under the Respiratory Protection Standard because it does not apply. As a practical matter, employers may want to consider communicating the following to employees who ask to wear respirators:

(1) The employer has assessed the situation and determined that respirators are not required to protect employees. Further, both the CDC and the Surgeon General have confirmed that masks are not necessary.

(2) If employees wish to wear self-provided respirators, the employer will allow them to do so, but it recommends that they consult with their personal physicians to make sure they are physically able to use respirators safely.

A44. Yes, if such measures are not otherwise required by the CDC's guidance or OSHA's standards, or if the employer determines that the employee's use of respiratory protection or gloves in and of themselves presents a hazard to the employee (e.g., if they interfere with the employee's ability to work safely).

The **CDC** and **U.S. Surgeon General** state that respirators are not required and are not protective for the general public working in non-healthcare settings. Given that, employers in non-healthcare settings with no infected employees have no need to require respirators. This means that OSHA's Respiratory Protection Standard (**29 C.F.R § 1910.134**) does not apply, as respirators are not being used to protect employees. Instead, employees are asking to wear respirators because they are concerned about a public health issue.

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Q44. When is an employer required to provide respiratory protection, and what are the OSHA compliance implications?

A44. OSHA does not have a specific standard or regulation that requires employers to take any particular actions with regard to COVID-19. Employers are, however, required to comply with Section 5(a)(1) of the OSH Act (**the general duty clause**), which requires employers to maintain a "workplace that is free from recognized hazards." In addition, OSHA's Respiratory Protection Standard requires employers to provide appropriate respirators to control exposure to "occupational diseases caused by breathing air contaminated with" [harmful" substances] (**29 C.F.R. § 1910.134(a)(1)**).

OSHA has issued **guidance** for employers regarding COVID-19, which divides employers into risk categories. Most job sectors have a low risk of exposure. However, some workers may have exposure to infectious people, including travelers who contracted COVID-19 abroad. Workers with an increased risk of exposure include those involved in "[h]ealthcare (including pre-hospital and medical transport workers, healthcare providers, clinical laboratory personnel, and support staff)"; "[d]eathcare (including coroners, medical examiners, and funeral directors)"; "[a]irline operations"; "[w]aste management"; and "[t]ravel to areas, including parts of China, where the virus is spreading."

OSHA provides **guidance** for workers and employers of workers unlikely to have occupational exposure to COVID-19 and to those in the specific worker groups of healthcare, deathcare, laboratories, airlines, border protection, solid waste and waste management, and business travelers. The employer's compliance obligations depend in large part on the risk category of the facility.

General guidance for all U.S. workers and employers:

For all workers, regardless of specific exposure risks, it is always a good practice to:

1. Frequently wash your hands with soap and water for at least 20 seconds. When soap and water are unavailable, use an alcohol-based rub with at least 60% alcohol. Always wash hands that are visibly soiled.
2. Avoid touching your eyes, nose, or mouth with unwashed hands.
3. Avoid close contact with people who are sick.

Interim guidance for most U.S. workers and employers of workers unlikely to have occupational exposures to COVID-19:

OSHA recommends that "employers should assess the hazards to which their workers may be exposed; evaluate the risk of exposure; and select, implement, and ensure workers use controls to prevent exposure. Control measures may include a combination of engineering and administrative controls, safe work practices, and PPE."

"In all workplaces where exposure to the COVID-19 may occur, prompt identification and isolation of potentially infectious individuals is considered a critical first step in protecting workers, visitors, and others at the worksite."

Q45. Are there any OSHA requirements that must be followed when an employee is diagnosed with COVID-19?

A45. Yes, in some cases. First, employers must ensure that the infected employee stays away from the workplace. OSHA may cite an employer under the general duty clause if the employer allows or directs a known infected employee to come to work and expose other employees to the risk of infection.

If an employee in the workplace is suspected of having COVID-19 (i.e., someone displaying symptoms of COVID-19), that employee must be quarantined immediately. For example, employers may want to move such an employee to an isolation room and close the doors or, if an isolation room is not available, to a location away from workers, customers, and other visitors. Employers may want to take steps "to limit spread of the employee's infectious respiratory secretions," including providing the employee with a surgical mask and asking him or her to wear it, if he or she can tolerate doing so. Employers may also want to restrict contact with the potentially infectious employee and contact the CDC and/or local health authorities for further guidance.

Second, employers are required under OSHA's recordkeeping regulation (**29 C.F.R. Part 1904**) to record illnesses that are "work related" and meet one of the recording criteria, which include days away from work, job transfer, and medical treatment. A work-related illness that meets these criteria must be recorded on the employer's OSHA Form 300, and a Form 301 must also be completed. "An illness is work-related if it is more likely than not that a factor or exposure in the workplace caused or contributed to the illness." An employee who contracts COVID-19 from a family member or while on a personal trip has not experienced a work-related illness. If, however, that employee infects a coworker, the coworker has suffered a work-related illness if one of the recording criteria (e.g., medical treatment or days away from work) is met.

OSHA's recordkeeping regulation exempts the "common cold and flu" from the recordkeeping requirements. COVID-19, however, is not a common cold or flu. OSHA's current guidance states that "COVID-19 is a recordable illness when a worker is infected on the job."

Third, employers may be required to report an employee's coronavirus infection to OSHA. If the infection is work related (e.g., the infection was contracted on the job or during business travel), and the infected employee is hospitalized as an in-patient, the hospitalization must be reported to OSHA within 24 hours of the incident. If the infected employee is not hospitalized as an in-patient but dies from the infection, the death must be reported to OSHA if it occurred within 30 days of the work-related incident.

Some state plans have different requirements. In California, for example, if an employee contracts the COVID-19 on the job or during business travel, it would be reportable to Cal/OSHA if the employee suffers a "serious injury or illness" as a result of the infection. A COVID-19 infection would be considered a "serious injury or illness" in California if it "requires inpatient hospitalization for more than 24 hours for other than medical observation, or in which a part of the body is lost or a serious degree of permanent disfigurement occurs."

Workers' Compensation

Q46. Could COVID-19 be covered by workers' compensation?

A46. Workers' compensation claims and procedures are based on state laws, which vary from state to state. Therefore, employers may want to consult with workers' compensation counsel on this question. Generally, however, state workers' compensation laws require an employee to prove that he or she contracted the illness in the course and scope of employment and that the illness is caused by a hazard recognized as peculiar to a particular employment. Some states specifically exclude from coverage contagious diseases resulting from exposure to fellow employees or from a hazard to which the ill employee would have been equally exposed outside of his or her employment.

Reduction in Force/WARN

Q47. If an employer has to lay off employees temporarily due to COVID-19, is the federal WARN Act implicated? (Updated March 16, 2020)

A47. Maybe. Assuming the company is an employer (as defined by the **federal Worker Adjustment and Retraining Notification (WARN**) Act, a layoff exceeding 6 months is an "employment loss" and requires notice if the employment loss constitutes a "mass layoff" or "plant closing" (also as defined by the federal WARN Act). Additionally, a reduction in hours of work of an individual employee of more than 50 percent during each month of any 6-month period could be an employment loss, triggering notice under the WARN Act if the employment loss results in a mass layoff (as defined by the WARN Act).

Q48. Will employment reductions as a result of COVID-19 qualify for a federal WARN Act exception and allow less than 60 days' notice? (Updated March 16, 2020)

A48. Maybe, depending on the specific circumstances. There are three general exceptions when notice is not required, but otherwise would be: (1) "Faltering Company" (which applies to plant closings only); (2) "Unforeseeable Business Circumstances" (which applies to plant closings and mass layoffs), and (3) "Natural Disaster" (which applies to plant closings and mass layoffs). Each exception is extremely fact dependent. Under the Unforeseeable Business Circumstances exception, the inquiry is whether an event or business circumstance precipitating the employment loss is "reasonably foreseeable" at the time notice should have been given. If the event/circumstance is caused by a sudden, dramatic, and unexpected action or condition outside the employer's control, that may satisfy the "unforeseeable" definition. Notably, even if an employer qualifies under any of these exceptions, it still should give as much notice as is practicable, including a brief statement of its basis for reducing the notification period.

Q49. Is federal WARN the only notice requirement employers should be analyzing? (Updated March 16, 2020)

A49. No. Employers also should consider state mini-WARN acts, as well as state, county, and local laws and ordinances that may require notices for certain workforce reductions or changes.

Q50. What is the impact on employee-health coverage during a reduction in force (RIF)? (Updated March 16, 2020)

A50. Any employee who loses eligibility for health coverage due to a termination in employment or reduction in hours should be offered coverage under the Consolidated Omnibus Budget

Reconciliation Act (COBRA), generally for up to 18 months. This obligation generally applies to employers with 20 or more employees and applies to medical, dental, vision, and prescription drug coverage, as well as to health reimbursement arrangements, health flexible spending accounts, wellness plans, employee assistance programs, and on-site/off-site clinics that are governed by the Employee Retirement Income Security Act (ERISA).

Q51. What is the impact on continued health coverage if an employer must close its business? (Updated March 16, 2020)

A51. If an employer must close its business and ceases to provide a group health plan to any employees in the company or any affiliated businesses, then COBRA coverage may end earlier than the mandatory minimum 18-month period. In that case, employees may be left to pursue coverage options through private individual policies, a spouse's employer, or public programs, such as the Affordable Care Act exchanges, Medicare, or Medicaid.

Q52. May an employer subsidize health coverage even though the employees are no longer eligible as active employees? (Updated March 16, 2020)

A52. Yes, an employer may choose to subsidize health coverage, either by subsidizing the cost of COBRA coverage or by relaxing eligibility requirements so that employees who may no longer meet the minimum hours requirement can continue to be treated as eligible for coverage. If an employer chooses to do so, it should carefully consider the amendments needed to its plan, and coordinate in advance with any insurance companies, particularly any stop loss or reinsurance providers, to ensure continuity of coverage.

Q53. Is an employer required to pay severance if it discharges employees in a RIF? (Updated March 16, 2020)

A53. Usually not. It depends upon the presence of and, if applicable, terms of the employer's severance plan. If an employer has a written severance plan, the employer should review its terms prior to conducting the RIF and consider the procedure required to amend the plan if it intends to make any changes before the RIF. When an employer considers establishing a new severance plan in conjunction with a RIF, it should consider whether ERISA will apply to the plan. If so, the plan will be subject to a number of requirements relating to participant notices, claims procedures, and the application of ERISA rights to the benefits.

Q54. Will a RIF impact retirement benefits? (Updated March 16, 2020)

A54. In some cases, a RIF can cause a partial termination of a retirement plan. This can occur when there is a significant reduction in participation in the plan due to a company-initiated event. The general rule of thumb is that a reduction of 20 percent or more in plan participation triggers a partial plan termination, requiring full vesting of the affected participants.

Short-term disability coverage

Q55. Will an employee be entitled to short-term disability coverage if they are unable to work due to a voluntary or mandatory quarantine without a diagnosis of COVID-19 or positive test for the coronavirus? (Updated March 20, 2020)

A55. That depends upon how the employer's short-term disability policy defines "disability." Many employers are choosing to interpret their policies broadly to provide this coverage and/or to amend the terms of their policy to provide this coverage. Some are waiving the mandatory waiting period or elimination period and some are increasing disability benefits coverage in this context. If the employer's program is fully-insured, the employer will want to vet any such changes with the insurance company prior to providing them to employees. If the employer uses an outside administrator, the employer will want to confirm that its administrator can support those changes. Any changes should be documented in writing, with formal plan amendments to follow for any plans governed by ERISA.

Q56. Will the employer's short-term disability coverage satisfy any federal mandate to provide covered leave? (Updated March 20, 2020)

A56. It is unclear whether employer-provided paid leave will satisfy any federal mandate to provide covered leave. The new Families First Coronavirus Response Act, which became law on March 18, 2020 and applies to employers with fewer than 500 employees, would require those employers to provide additional mandated leave, on top of what the employer might already be providing. Employers should continue to monitor the legislative developments in this area.

Health coverage

Q57. May an employer waive deductibles and co-pays in its health plan for testing and medical treatment relating to COVID-19? (Updated March 20, 2020)

- A57. Yes, in fact, the new Families First Coronavirus Response Act, which took effect on March 18, 2020, requires all group health plans (including grandfathered health pans) to provide coverage for novel coronavirus testing without any cost-sharing charges or plan limitations. In addition, an employer may choose to waive out-of-pocket expenses for its employees relating to medical treatment related to COVID-19. The Internal Revenue Service (IRS) has confirmed that doing so in a high-deductible health plan will not make employees ineligible to contribute to a health savings account. Many plans are offering this waiver, as well as waiving pre-certification and pre-authorization requirements for hospital stays relating to the virus. To the extent the plan is insured, the employer will want to vet any such changes with the insurance company prior to announcing those changes to employees. For self-funded plans, employers will want to confirm the administrator can support the changes and vet any changes with its stop-loss insurer. Any changes should be documented in writing, with formal plan amendments to follow for plans governed by ERISA.
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Q58. How should an employer communicate health plan changes to employees during this crisis? (Updated March 20, 2020)

A58. All communications should be made to employees in the manner most likely to ensure actual receipt of the information under the circumstances. In addition, the employer should always offer the employees a paper copy of any plan information upon request, and upon receipt of any such request, providing such paper copy. While ERISA would allow 30 days to respond to such a request, many employers are trying to respond to any plan document requests as soon as administratively feasible. Plan changes in this context could be material changes to the Summary of Benefits and Coverage, so in addition to communicating with employees through the normal

course, employers will want to consider updates that will be needed to their plan documents, Summary Plan Descriptions (SPDs), and Summary of Benefits and Coverage (SBCs).

Q59. What is the impact on an employee's health coverage if the employee's hours are reduced during this period? (Updated March 20, 2020)

A59. For employers that use the Affordable Care Act look-back rule to determine eligibility for coverage, a reduction in hours will not immediately trigger a loss in coverage for employees who remain in the current stability period. A reduction in hours would be factored into the current lookback period that includes this period of time, and may cause an otherwise full-time employee to have hours below the 30-hour per week threshold during the current lookback period. In that case, unless the employer adopts a different eligibility rule to apply to this situation, the reduction in hours may cause a loss of coverage at the end of the current stability period. If the reduction in hours causes a loss of health care coverage, that is a COBRA event, triggering a COBRA notice obligation and opportunity for the employee and covered family members to continue coverage for up to 18 months.

Q60. May an employer encourage employees to use telemedicine or subsidize those services? (Updated March 20, 2020)

A60. An employer could encourage or induce employees to use telemedicine for treatments where that is appropriate. Employers should consider whether their health plans currently cover telemedicine services, and if not, what changes need to be made in order to provide that coverage. It is administratively difficult if not impossible for telemedicine vendors to sort visits based upon whether they are coronavirus-related in this context, so employers that are considering covering telemedicine and/or waiving fees relating to those services should discuss with their administrators how best to accomplish that. Note that waiving co-pays for treatments not related to COVID-19 treatment or testing may jeopardize an employee's eligibility to contribute to a health savings account, without further IRS guidance. Employers will also want to consider whether similar coverage will be provided for mental health uses of telemedicine in order to remain in compliance with mental health parity laws.

Q61. Does the new Families First Coronavirus Response Act provide tax credits for wages? (Updated March 22, 2020)

A61. Yes, employers with fewer than 500 employees are eligible for tax credits on amounts paid to employees who go out on qualified sick leave or qualified family leave. For a detailed analysis, please see our article, "**COVID-19 Relief Bill Provides Payroll Tax Credits for Emergency Paid Leave**." In addition to the tax credits available for payment of wages, eligible employers (again, employers with fewer than 500 employees) are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for employees during the period of leave for qualified sick leave or qualified family leave. On March 20, 2020, the Internal Revenue Service (IRS) announced that employers can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form. The IRS stated that it will be issuing guidance during the week of March 23, 2020, on the process for claiming these tax credits.

Q62. May employees access hardship withdrawals from their 401(k) plan due to issues relating to COVID-19 hardships? (Updated March 20, 2020)

A62. Maybe. Whether an employee may access a hardship withdrawal from their 401(k) account depends upon how the plan document defines "hardship." Employers will need to review their plan documents and coordinate with their plan administrators.

Q63. May an employee make an in-service withdrawal from the 401(k) plan? (Updated March 20, 2020)

A63. Maybe. Some 401(k) plans permit in-service withdrawals (i.e., withdrawals for no reason or without demonstrating a hardship) from certain vested accounts in the plan. Employers should review their plan documents to determine whether in-service withdrawals are available, and if so, work with their administrators to provide those to employees who are requesting them.

Q64. May an employee access a plan loan from their 401(k) plan? (Updated March 20, 2020)

A64. Yes, 401(k) plans that offer plan loans generally permit them for any reason, so the employee need not demonstrate any particular financial need or harm. It is important, however, for employers to consider how their plan loan policy may impact employees in this context. Some plan loan policies limit employees to only having one loan at a time. Others limit loans to only certain portions of their account. Some policies require a terminated employee to repay the loan in full or suffer a forced default, while others permit the employee to continue making periodic payments. Employers should coordinate any changes to their loan policy with their administrators.

Compensation and Tax Issues

Q65. Will a furlough trigger deferred compensation payments? (Updated March 20, 2020)

A65. If a furlough meets the definition of a payment triggering event under a deferred compensation arrangement (e.g., "separation from service" under the Internal Revenue Code Section 409A rules), it would trigger a deferred compensation payout.

Q66. May an employer make changes in the timing or form of distributions to executives and others? (Updated March 20, 2020)

A66. Employers should carefully consider any tax implications of accelerating any payments of deferred compensation or changing the time or form of payment of deferred compensation. Those types of changes can trigger adverse tax consequences under Internal Revenue Code Section 409A.

Q67. Could events surrounding COVID-19 trigger payments under employment agreements, executive compensation arrangements, and/or severance agreements? (Updated March 20, 2020)

A67. It is possible that the events surrounding COVID-19 may impact an employer's ongoing business in such a way to trigger payments under employment agreements, executive compensation arrangements, and/or severance agreements. Employers should carefully review

these agreements and consider the potential for these impacts and address these issues with counsel.

Q68. How does COVID-19 affect income tax reporting and withholding? (Updated March 20, 2020)

A68. For employees who normally live in one state and work in another and who begin telecommuting, the employer will need to coordinate with its payroll provider to change the income tax withholding to the state where the employee performs the services. Employers should consult a payroll tax advisor on these issues.

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