COVID-19 REOPENING:

Developing A Plan, Employer Forms, Policies & Procedures for the COVID-19 Workplace

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Overview of Webinar Topics

1. Developing Your Plan - Considerations

2. Social Distancing and Employee Hygiene Policies

3. Protocol for Responding to a Positive Test Case

4. Employee Medical Screening Forms and Policies

5. Request for Leave and Accommodation Request Forms

6. Advice from an Expert in Infectious Diseases – Dr. Neva Ciftcioglu Banes

The Landscape – Plan Your Work And Work Your Plan

- CDC Guidelines:

    - See https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf

- Gradual Phases – To Reopen or Not to Reopen (Enclosure 1):

    - CDC Workplace Decision Tree: https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/workplace-decision-tree.pdf

- State/Local Restrictions (Enclosure 2)

    - Texas Protocols: https://www.dshs.texas.gov/coronavirus/opentexas.aspx

- Anticipate Significant Anxiety and Reluctance

- Be Flexible, Adaptive, and Innovative (e.g., update telework, leave and work policies, staggered shifts, dedicated or isolated smaller teams, nondiscriminatory application)

- Consider Professional Risk Assessment - Mitigation Is Necessary

Employee and Customer Safety

- This is a moving target!

- Creating a safe—and compliant—work environment (OSHA, 29 U.SC. 654(a)(1))
  - Changes to physical layouts and structures ("engineering controls")
  - Changes to policies and practices ("administrative controls")
  - Personal Protective Equipment ("PPE")
  - Hygiene, Cleaning and Disinfecting: https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/ReOpening_America_Cleaning_Disinfection_Decision_Tool.pdf (Enclosure 3)

- "At the front door"—inquiries and testing
  - Options (see https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws)
  - Privacy
  - Procedures

- When something goes wrong—notifications

To-Do List

- Review OSHA Guidance for COVID-19
  - https://www.osha.gov/Publications/OSHA3990.pdf (p. 7 – "Develop an Infectious Disease Preparedness and Response Plan")

- Post FFCRA Notice
  - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

- Develop FFCRA Leave Request Form
  - https://www.dwt.com/blogs/employment-labor-and-benefits/2020/04/ffcra-leave-documentation

- Be Prepared to Extend FFCRA Leave
  - **"Southern California Tire Company to Pay Back Wages After Denying Paid Sick Leave To Worker Whose Doctor Ordered Coronavirus Quarantine"**
  - https://www.dol.gov/newsroom/releases/whd/whd20200429

Wage/Hour Considerations

Reduction in Pay	Increase in Pay: "Special" or "Hazard Pay" or Bonus Payments	Compensable Time Issues	Expense Reimbursement Health Screening/PPE
• Agreements • Exempt versus nonexempt issues (exempt employees must be paid in full for any week they work) • Notice may be required • Union issues	• "Patriot Pay" not here (yet) • Regular rate issues • Bonuses to salaried employees should not appear to be withheld wages • PPP Loan Issues	• Pre-shift health screenings • Donning and doffing PPE • Washing hands	• Remote work expenses

Litigation: Flashpoints

Discrimination

- Who keeps working from home?
- Remote work—a reasonable accommodation?
- Is pandemic pretext for terminations and selective re-hiring?
- Disciplining employees who take leave (NLRB/ULP Issues)?

Harassment & Retaliation

- Misdirected fear may lead to hostility or unreasonable expectations re workplace health & safety

Wage & Hour

- Monitoring overtime and breaks
- Extra time getting to work
- Extra equipment and reimbursements
- Misclassification

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Litigation: Pandemic Lawsuits

- ***Jones v. Eastern Airlines LLC*** (Pennsylvania). Executive alleges she was fired for trying to take   time off under the Families First Coronavirus Response Act to care for her school-aged child
- ***Kristopher King v. Trader Joe's East, Inc.*** (Kentucky). Employee alleges he was fired for voicing concerns on a private Facebook page about his employer not doing enough to protect him   from the COVID-19 exposure
- ***Verhines v. Uber Technology, Inc. & Rogers v. Lyft, Inc.*** (California). Uber and Lyft drivers allege they are being unlawfully denied benefits available to employees because they have been   misclassified as independent contractors
- ***Siers v. Velodyne Lidar*** (California). Employees allege violation of federal and state WARN Acts because employer had planned to eliminate jobs before pandemic but used it as pretext to fail to provide proper notice
- ***Burr v. Carnival Corp.*** (Florida).   Performers demand payment, per a written contract, for all performance gigs cancelled with less than two-weeks' notice

COVID-19 Human Resources Toolkit:
Model Forms, Policies, and Templates for Employers

Workplace Policies/Forms Related to COVID-19

- COVID-19 employee distancing, hygiene and mask policy
- Employee travel policy
- Work from home/telecommute policy
- Work letter for essential employee
- Return to work post-coronavirus checklist

Responding to COVID-19 Exposure in Workplace

- Protocol for COVID-19 case in workplace/contact tracing
- Protocol for return to work for positive COVID-19 case
- Notice to potentially exposed employees
- OSHA reporting protocol
- Safety complaint/whistleblower policy

Employee Medical Screening/Testing

- Employee screening policy
- Employee health self-screening form
- Temperature check log
- Temperature check authorization
- Temperature check failure/accommodation form
- COVID-19 testing protocol

Furloughs & Recalls

- Recall letter
- Return to work from furlough policy
- Benefits checklist for return to work
- Medical questionnaire for returning employees
- Notification to unemployment for employee refusal to return from furlough
- Reduction in force checklist
- PPP loan forgiveness – FTE reduction exception memorandum

Accommodation Requests

- Interactive process checklist/protocol for ADA accommodation requests
- Letter to employee regarding request
- Letter granting or denying request

Families First Coronavirus Response Act (FFCRA)

- FFCRA policy
- Paid leave request form
- Employee letter granting or denying request

Social Distancing and Employee Hygiene Policies

Distancing Policies

❑No one-size-fits-all solution

❑Will be dynamic in nature depending on the nature of your workforce, facilities, and return to work plan

❑Communicate changes in writing

❑Include the following elements:
  ❑Individual work spaces;
  ❑Meeting and shared spaces;
  ❑Circulation spaces;
  ❑Work practices.

Employee Hygiene

❑Personal Protective Equipment (face coverings);

❑Respiratory Etiquette;

❑Hand hygiene;

❑Avoiding surface touches.

Masks and Face Coverings:

❑**Mask:** A filtering respirator (such as N95 respirators) or a specialized medical grade or surgical mask worn by healthcare personnel, first responders, and workers in other industries.

  ❑ due to supply issues, the CDC recommends that masks be reserved for healthcare workers and other medical first responders.

❑**Face Covering:** A cloth, bandana, handmade mask that covers the wearers mouth and nose. The CDC states that cloth face coverings should:

  ❑ fit snugly but comfortably against the side of the face

  ❑ be secured with ties or ear loops

  ❑ include multiple layers of fabric

  ❑ allow for breathing without restriction

  ❑ be able to be laundered and machine dried without damage or change to shape

https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html

Masks and Face Coverings:

1. Can you require employees to wear a face covering?

❑Yes, An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

❑However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an **undue hardship** on the operation of the employer's business under the ADA or Title VII.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Masks and Face Coverings:

2. What can you do if the employee refuses?

❑Is it for a medical or religious reason? Yes, the employer should engage in the interactive process to determine if the employee can be accommodated.

❑Is it for a non-medical reason? Yes, the employer should still engage with the employee to determine why there is a concern:
- ❑ Make sure there are no underlying protected reasons (for example, the mask is in conflict with dress or grooming requirements of a religion).
- ❑ Address the employee's concerns.
- ❑ Discipline if the employee is not raising any medical or otherwise protected objection.

Hygiene - High Touch Surfaces

- Light and power switches;
- Doors and drawers;
- Collaboration tools;
- Chairs;
- Shared equipment;
- Supply storage;
- Kitchen and meal preparation areas;
- Personal work areas.
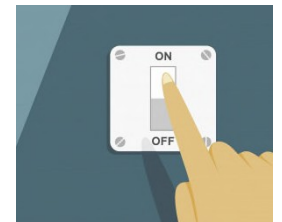
Hygiene and Environmental Safety Practices

❑ Cleaning of visibly dirty surfaces followed by disinfection is the best practice measure for prevention of COVID-19.

❑ Perform additional environmental cleaning on all frequently touched areas, such as front desk, elevator banks, coffee stations, doorknobs, etc.

❑ CDC – No additional disinfection beyond routine cleaning is recommended at this time.

❑ Products with EPA-approved emerging viral pathogens claims are expected to be effective against COVID-10 based on data for harder to kill viruses. Ensure use for linens / laundry.

DIRTIEST SURFACES IN THE OFFICE

Protocol for Responding to a Positive Test Case

COVID-19 Tests

May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

❑ Yes. Under ADA, a mandatory medical test must be "job related and consistent with business necessity." Employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

❑ Employer must:
- ❑ Make sure the tests are accurate and reliable.
- ❑ Monitor the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates.
- ❑ Consider the incidence of false-positives or false-negatives associated with a particular test.
- ❑ Recognize that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#A.2

OSHA Reporting Requirements

❑Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19, if:
  ❑The case is a confirmed case of COVID-19, as defined by the CDC;
  ❑The case is work-related as defined by 29 CFR § 1904.5; and
  ❑The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

❑In assessing efforts to determine work-relatedness, OSHA will consider:
  ❑The reasonableness of the employer's investigation;
  ❑The evidence available to the employer; and
 ❑The evidence that the COVID-19 was contracted at work.
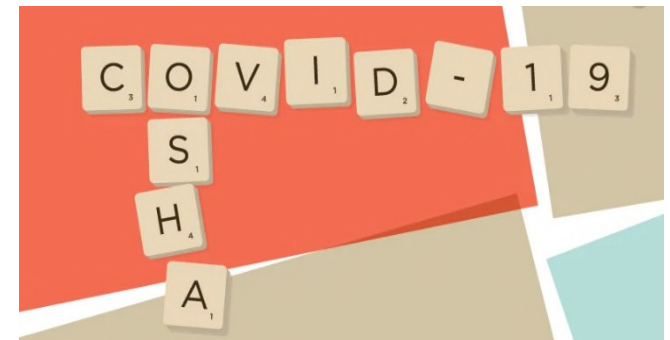
Disclosure and Reporting Issues

❑ An employer *should* disclose to co-workers that employee has tested positive for COVID-19.

❑ An employer *should* ask the employee who tested positive to provide a list of individuals (employees, clients, contractors, vendors) with whom the employee came in contact in the last 14 days in connection with their employment, as well as areas of the workplace that were visited.

❑ An employer *should* notify all individuals identified by the employee that someone they were in contact with tested positive, and that they should take appropriate measures.

Protecting Others

❑ **Identify contacts**: Interview the likely infected employee to understand who their co-workers are and with whom he or she has been in close contact with in the workplace.

❑ **Locate and notify contacts**: Inform all potentially contacted employees of their potential exposure. If the employee has been in close contact with the probable positive employee, he or she should be asked to isolate or self-quarantine for 14 days.

❑ **Monitor contacts:** Periodically check in with individuals in self-quarantine to determine if he or she has developed symptoms.

❑ **Protect privacy:** Ensure that any investigation and contract tracing methods are done so in a way that protects the privacy of individuals and that information about an employee's medical condition is shared only on a need to know basis.
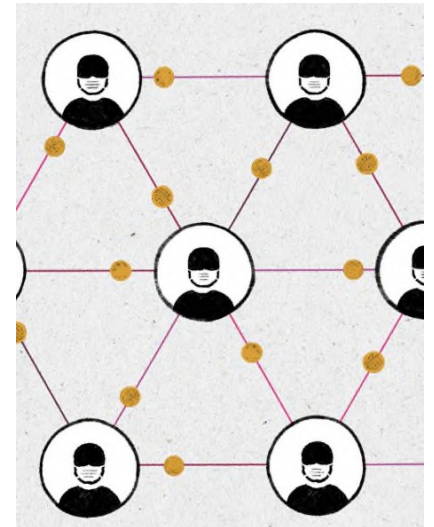
Additional Issues

❑An employer *should* identify all work locations for the infected employee and temporarily close those areas of operations. Either engaging an outside company to thoroughly clean and disinfect the area or utilize in-house expertise. Use chemical solutions sufficient to eliminate the virus, as identified in the CDC website.

❑Consider Enhanced Screening Protocols and Distancing for Affected Work Areas

    ❑If not already implemented, consider temperature screening or enhanced symptom screening process.

    ❑Review distancing arrangements and consider further opportunities to increase distancing between employees in work areas, break rooms, and common areas to at least 6 feet at all times.

    ❑Review company policies on personal protective equipment and facial coverings and consider increasing such requirements in affected work areas for at least 14 days

Return to Work

❑ Determining what steps an employees must take in order to return after he or she has tested positive is not once size fits all and could depend on the location where the employee works.

❑ Factors to consider:

   ❑ Local law – Do any local orders or ordinances dictate a specific procedure?

   ❑ Burden on the healthcare system- Has the area been acutely effected, making doctor visits difficult?

   ❑ Availability of COVID-19 testing – Would it be realistic to require employees to be tested before returning?

Return to Work Approaches

Symptom Based Approach – A symptom based approach asks employees to self-isolate and monitor their symptoms over a period of time, only allowing the employees to return after meeting certain milestones.

❑ **Time-Since-Illness Approach**
  - ❑ Some employees contract the virus but never show symptoms.
  - ❑ Require employees to certify that it has been at least 10 days following a positive test and that he or she has not exhibited symptoms of COVID-19.

❑ **Time-Since-Recovery Approach**
  - ❑ Employee shows physical symptoms such as fever, cough, shortness of breath.
  - ❑ Require employee to certify that he or she has been fever free, without medication for at least 72 hours.
  - ❑ More than 10 days have passed since symptoms appeared.
  - ❑ At least 10 days have passed since positive test.

❑ **Require a return to work certification from healthcare professional if possible.**
  - ❑ May require employer to pay.
  - ❑ May clock the healthcare system.

Return to Work Approaches

Test Based Approach- Requires a negative COVID-19 test prior to returning to work after testing positive

❑ Contingent on availability of testing, which is still sporadic at best in most places.

❑ If requiring negative tests, employees should provide a copy of his or her results to the employer.

❑ In most states, requiring employees to be tested likely requires employers to pay for testing and time spent being tested.

❑ If testing is widespread and the employer has the financial ability to pay for employees tests, then this method will likely provide the most certainty and help ensure employees returning to work cannot help spread the virus.

Return to Work

May an employer require a doctor's note certifying fitness for duty before allowing an employee to return to work?

❑ Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

Employee Medical Screening Forms and Policies

EEOC Guidance on Health Screening

❑Temperature scans, COVID-19 tests, and symptom monitoring during the COVID-19 pandemic are not improper medical exams under the ADA because they are job related and consistent with business necessity to protect employees in the workplace.

❑EEO laws apply during the COVID-19 pandemic, but do not interfere with or prevent employers from following CDC or state/local public health guidance

Two Common Types of Screening

1.	2.
Temperature Scanning of Employees At Start of Shift	Screening of Employees for COVID-19 Symptoms (Either Self-Screen or by Company or Third Party)

One or both types of screening may be required in some jurisdictions or industries.
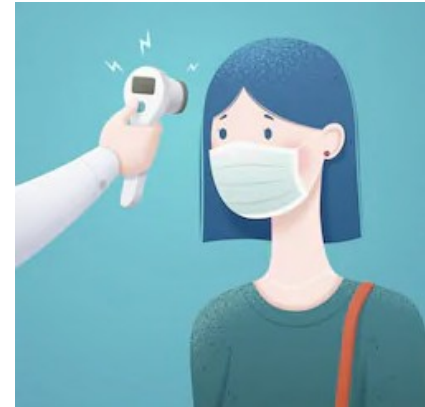
Temperature Checks

Allowed:

❑ **EEOC guidance**: "Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever." https://www.eeoc.gov/facts/pandemic_flu.html#q7

Required under some State/Local ordinances:

❑ San Diego: Effective May 27, 2020, essential businesses and those opened under California's Resilience Roadmap *must* conduct daily temperature screenings of employees, as well as develop and post specific plans for health screenings and to maintain social distancing and sanitation

https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID1_9.pdf

Temperature Check Policy Contents

❑ Confirm policy complies with state and local orders

❑ Describe process –screening area, safety measures, social distancing

❑ Set threshold – 100.4 degrees Fahrenheit

❑ Describe consequences of failing test. Sent home? Retest Allowed?

❑ Address recordkeeping. Do you keep record of a failure?

❑ Who should the employee contact about next steps? What is the return to work protocol for employee who fails temp scan?

❑ What is the procedure if an employee refuses to take the test, or needs an accommodation?

❑ Obtain written authorization

Sample Language - Accommodation

Accommodation. You have been advised that you have a right to request a reasonable accommodation if there is a legitimate medical reason why you cannot participate in the health screening, or if you have a non COVID-19 related health condition that might cause you to exhibit symptoms similar to COVID-19, like a fever.

Sample Language – Refusal to Test

- Any employee who refuses a temperature screen will be treated as a failure of the screening process and denied entry to the facility.

- Any employee who refuses a temperature screen will not be paid for the day they reported to work unless required by any applicable federal or state law.

Employee Temperature-Screening Record

If an employee's body temperature is at or above 100.4 degrees Fahrenheit, the employee must be sent home immediately and the following record completed.

Employee name: _____

Job title: _____

Supervisor's name: _____

Recorded temperature: _____

Does the employee have any explanation for the fever other than Covid-19 infection? If so, document reasons provided by the employee.

_____

_____

_____

Are visible signs of respiratory illness present? _____ Yes _____ No

If so, describe symptoms _____

_____

An employee sent home with a fever shall be advised as to the following:

- The employee should immediately contact the Company's Human Resources Department to discuss next steps and any return-to-work requirements. Contact information should be provided, if necessary.
- If there is any non Covid-19 related reason why the employee has a fever, the employee should provide that information to the Human Resources Department (if not already provided).
- The employee will be paid for the shift in accordance with the Company's sick leave policy and any applicable local, state or federal laws.

The employee will not be discriminated against based on the failure of the temperature screening, and the company will take reasonable steps to protect the confidentiality of the screening results.

_____ _____
Screened By: Date

_____ _____
Employee Acknowledgment   Date

Employee Health Screening Inquiries

In addition to requiring that employees self-report symptoms, employers may want or be required to monitor employees' health.

This may be done on a regular basis using a formal process such as a health questionnaire, or as a result of the employer having a reasonable belief based on objective evidence, that the employee may be exhibiting COVID-19 related symptoms.

❑ Employers must ensure that all screening and decisions related to screening are done in a consistent manner, to avoid claims of disparate treatment based on protected classifications.

Employee Health Screening Inquiries

❑Employers must treat documentation relating to the results of all inquiries/screening as confidential medical records.

❑At all points of collecting, storing, transmitting, using, and disclosing the screening results, the employer must carefully safeguard this information.

Health Screening Policy Issues

As employers evaluate screening and testing requirements and recommendations, they will need to work through several issues including:

❑ Who will perform the screening (*e.g.*, company nurse, HR, employees self-screen);

❑ Whether or not the screening results will be recorded;

❑ If recorded, how will the information be recorded (*e.g.*, a daily log sheet listing all employees, a separate log sheet per employee);

❑ How and where will the screening information be stored, and for how long must it be maintained by the employer; and

❑ How much time will the screening/testing process take, and will the time be paid.

Sample Supervisor Screening Log

COVID-19 Employee Health Screening Log for Onsite Screening

Person Completing Form _____ **Date** _____

Screen each employee for symptoms before they start their shift. Circle an answer (y=yes, n=no) for each symptom for each employee. If an employee reports any of the symptoms:

1. Send employee home immediately.
2. Notify the Human Resources Department.

EMPLOYEE NAME	CHECK SYMPTOMS DAILY, BEFORE STARTING SHIFT						
	Fever 100.4°F or above	Cough	Shortness of breath or difficulty breathing	Chills	Muscle aches	Sore throat	New loss of taste or smell
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N
	Y N	Y N	Y N	Y N	Y N	Y N	Y N

COVID-19 EMPLOYEE SELF-SCREENING FORM

Employee Name:	
Date:	Time:

1. **In the past 24 hours, have you experienced** (please mark a check in either the "yes" or "no" column):

SYMPTOM	YES	NO
Cough		
Shortness of Breath		
Fever (100.4° F or above)		
Chills		
Fatigue		
Muscle Aches and Pains		
Sore Throat		
Headaches		
New Loss of Taste or Smell		

If you answer "yes" to any of the symptoms listed above, or your temperature is 100.4° F or higher, do not go into work. Immediately contact Human Resources for further instruction. You may also be asked to self-isolate at home and contact your primary care physician's office for direction.

2. **Within the past 7 days, have you:**

Had close sustained contact (within 6 feet for more than fifteen minutes) with an individual who had symptoms of, tested positive for, or was diagnosed with COVID-19?

☐Yes ☐No

If you answer "yes" to this questions, please contact Human Resources before going to work.

3. **Self-Administered Temperature Check (Optional)**

Please provide the readings of two self-administered temperature screenings taken within last 12 hours:
Screening#1: Time: _____ Temperature: _____
Screening #2:Time: _____ Temperature: _____

FFCRA Requests for Leave & Accommodation Request Forms

Families First Coronavirus Response Act

The **Family First Coronavirus Response Act** (FFCRA)

▶ **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**

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

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

2. has been advised by a health care provider to self-quarantine related to COVID-19;

3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or

6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

Emergency COVID-19 Leave Policy

❑ State purpose of policy is to maintain a safe and health workplace

❑ Identify the qualifying reasons for leave under the FFCRA

❑ Summarize the paid and partially-paid leave benefits available

❑ Identify notice requirements for obtaining leave

❑ Provide guidelines for returning to work

❑ Explain retaliation is strictly prohibited

EMERGENCY PAID SICK LEAVE

Sample Policy for Returning from Leave

Return to Work Employees are required to follow guidelines established by the Centers for Disease Control and Prevention and local public health authorities as it relates to ceasing home isolation practices. Employees returning to work after using the leave described above will be restored to the same or equivalent position, unless in the interim they would have been subject to an employment action regardless of leave usage. If an individual has exhausted all leave under this policy and is still unable to return to work, the situation will be reviewed on a case- by-case basis to determine what rights and protections might exist.

Requesting Leave Under FFCRA

IRS

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

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

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

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

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

FFCRA Request for Leave Form

❑ The DOL has not issued a standard form

❑ An FFCRA Request for Leave form *should* include:

  ❑ Employee name

  ❑ Date form submitted

  ❑ Date leave is requested to begin and end

  ❑ Reason for leave request and supporting reason for leave

    ❑ E.g., Child name, age, child care provider, certification no other person caring for child, special circumstances if child is over 14

  ❑ Option to substitute other available paid leave benefits

  ❑ Additional information the Company may request and timeliness of employee's response

Granting or Denying Leave

Notify employee whether:
- ❑ Leave is granted
- ❑ Additional information is needed
- ❑ Leave is denied

We have reviewed your request for leave under the FFCRA and any supporting documentation that you have provided. We have received your most recent information on _____ and decided:

- ☐ **Your FFCRA leave request is approved**
  - ☐ You are eligible for up to ___ weeks or ____ hours of FFCRA leave beginning on _____ and ending on _____
  - ☐ Your leave may / may not (circle one) be taken intermittently on the following schedule: _____
  - ☐ Your leave shall be paid or partially-paid as follows:
    _____
    _____

- ☐ **Additional information is needed to determine if your FFCRA leave request can be approved**
  - ☐ The documentation you have provided is insufficient to determine whether you are eligible for FFCRA leave. Please provide the following additional information no later than 7 calendar days of this notice. If more time is needed, please let us know, or your leave request may be denied.
  - ☐ Specify additional information needed:
    _____
    _____
    _____

- ☐ **Your FFCRA leave request is not approved for the following reason:**
  - ☐ You have not set forth a qualifying reason for leave under the FFCRA
  - ☐ You have exhausted your FMLA leave entitlement in the applicable 12-month period
  - ☐ You have not been employed for at least 30 calendar days or you are otherwise excluded from the FFCRA because you are an emergency responder and/or health care worker
  - ☐ Your position has been impacted by a temporary or permanent layoff, furlough, or workplace closure
  - ☐ We have fewer than 50 employees and leave under the FFCRA would jeopardize the viability of the business

Accommodation Requests Under ADA

1. Determine whether the employee has made a request for an accommodation.

2. Recognize who is seeking an accommodation under the ADA.

3. Determine whether the employee has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

4. If the impairment and/or need for accommodation is not obvious, ask for reasonable documentation to establish the employee's right to receive accommodation under the ADA.

5. Determine what accommodation is the employee seeking, and discuss possible reasonable accommodations with employees.

6. Prepare a response to requests for accommodation based upon essential functions

Accommodation Requests Under ADA

7. Determine and document whether requested accommodations create undue hardship

8. Identify and document reasonable accommodations offered or the reason why accommodations are not needed or not offered.

9. Discuss with affected employees reasonable accommodations offered or the reason why accommodations are not needed or not offered.

10. Document all communications between the employer and the employee regarding the request for reasonable accommodations.

11. Obtain employee's signature acknowledging decision.

12. Protect confidentiality of reasonable accommodations made for employees and applicants with disabilities.

Reasonable Accommodation Forms

❑ Request for accommodation requests can be made in multiple ways:
- ❑ can be in plain English
- ❑ can be made orally or in writing
- ❑ need not mention ADA or use the phrase "reasonable accommodation"
- ❑ can be made at any time during the period of employment

❑ Reasonable Accommodation Request Forms should include:
- ❑ The employee's statement of the specific requested accommodation
- ❑ Statement regarding the limitations interfering with ability to perform essential functions of the job
- ❑ How the accommodation will allow the employee to perform the job
- ❑ Expected duration of the requested accommodation

❑ Communicate whether accommodation has been granted, denied, or whether an alternative accommodation is more suitable

Additional Resources

- PPP Loan Forgiveness Calculator, by AICPA: https://www.aicpa.org/content/dam/aicpa/interestareas/privatecompaniespracticesection/qualityservicesdelivery/ussba/downloadabledocuments/ppp-forgiveness-calculator.xlsx

  NOTE: The Paycheck Protection Program Flexibility Act (PPPFA), Signed into Law June 5, 2020, relaxed PPP Rules to allow up to 24 weeks to use the loan with 60% for payroll to gain forgiveness.

- CARES Act Section 3610 Guidance: https://www.acq.osd.mil/dpap/dars/early_engagement_opportunity/guidance_on_section_3610_cares_act.html

- *Texas Tries a Pandemic First: A Jury Trial By Zoom*, by Nate Raymond, Technology News (May 18, 2020): https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-tries-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN22U1FE
  - Quote from Texas Supreme Court Justice Nathan Hecht: "You can't drag people down to the courthouse and make them sit together for days at a time. …It's just too dangerous."

QUESTIONS

Contact

Bryant S. Banes

Managing Shareholder
Neel, Hooper & Banes, P.C.
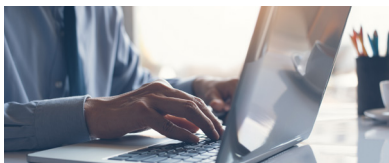
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Counsel Leaders Trust

Enclosure 1

WORKPLACES DURING THE COVID-19 PANDEMIC

The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

Should you consider opening?

✓ Will reopening be consistent with applicable state and local orders?

✓ Are you ready to protect employees at higher risk for severe illness?

ALL YES →

ANY NO ↓

DO NOT OPEN

Are recommended health and safety actions in place?

✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible

✓ Intensify cleaning, disinfection, and ventilation

✓ Encourage social distancing and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible

✓ Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible.

✓ Train all employees on health and safety protocols

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

Is ongoing monitoring in place?

✓ Develop and implement procedures to check for signs and symptoms of employees daily upon arrival, as feasible

✓ Encourage anyone who is sick to stay home

✓ Plan for if an employee gets sick

✓ Regularly communicate and monitor developments with local authorities and employees

✓ Monitor employee absences and have flexible leave policies and practices

✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

OPEN AND MONITOR

CDC

cdc.gov/coronavirus

Enclosure 2

The following are the minimum recommended health protocols for all businesses choosing to operate in Texas. Employers may adopt additional protocols consistent with their specific needs and circumstances to help protect the health and safety of all employees, contractors, and customers.

The virus that causes COVID-19 can be spread to others by infected persons who have few or no symptoms. Even if an infected person is only mildly ill, the people they spread it to may become seriously ill or even die, especially if that person is 65 or older with pre-existing health conditions that place them at higher risk. Because of the hidden nature of this threat, everyone should rigorously follow the practices specified in these protocols, all of which facilitate a safe and measured reopening of Texas. The virus that causes COVID-19 is still circulating in our communities. We should continue to observe practices that protect everyone, including those who are most vulnerable.

Please note, public health guidance cannot anticipate every unique situation. Employers should stay informed and take actions based on common sense and wise judgment that will protect health and support economic revitalization. Employers should also be mindful of federal and state employment and disability laws, workplace safety standards, and accessibility standards to address the needs of both workers and customers.

Health protocols for your employees and contractors:

☐ Train all employees on appropriate cleaning and disinfection, hand hygiene, and respiratory etiquette.

☐ Screen employees and contractors before coming into the business:

　☐ Send home any employee or contractor who has any of the following new or worsening signs or symptoms of possible COVID-19:

- Cough
- Shortness of breath or difficulty breathing
- Chills
- Repeated shaking with chills
- Muscle pain
- Headache

- Sore throat
- Loss of taste or smell
- Diarrhea
- Feeling feverish or a measured temperature greater than or equal to 100.0 degrees Fahrenheit
- Known close contact with a person who is lab confirmed to have COVID-19

　☐ Do not allow employees or contractors with new or worsening signs or symptoms listed above to return to work until:

- In the case of an employee or contractor who was diagnosed with COVID-19, the individual may return to work when all three of the following criteria are met: at least 3 days (72 hours) have passed *since recovery* (resolution of fever without the use of fever-reducing

medications); and the individual has *improvement* in symptoms (e.g., cough, shortness of breath); and at least 10 days have passed *since symptoms first appeared*; or

- In the case of an employee or contractor who has symptoms that could be COVID-19 and does not get evaluated by a medical professional or tested for COVID-19, the individual is assumed to have COVID-19, and the individual may not return to work until the individual has completed the same three-step criteria listed above; or

- If the employee or contractor has symptoms that could be COVID-19 and wants to return to work before completing the above self-isolation period, the individual must obtain a medical professional's note clearing the individual for return based on an alternative diagnosis.

☐ Do not allow an employee or contractor with known close contact to a person who is lab-confirmed to have COVID-19 to return to work until the end of the 14 day self-quarantine period from the last date of exposure (with an exception granted for healthcare workers and critical infrastructure workers).

☐ Have employees and contractors wash or sanitize their hands upon entering the business.

☐ Have employees and contractors maintain at least 6 feet separation from other individuals. If such distancing is not feasible, other measures such as face covering, hand hygiene, cough etiquette, cleanliness, and sanitation should be rigorously practiced.

☐ If an employer provides a meal for employees and/or contractors, employers are recommended to have the meal individually packed for each individual.

☐ Consistent with the actions taken by many employers across the state, consider having all employees and contractors wear cloth face coverings (over the nose and mouth). If available, employees and contractors should consider wearing non-medical grade face masks.

Health protocols for your facilities:

☐ If 6 feet of separation is not available between employees, contractors, and/or customers inside the facility, consider the use of engineering controls, such as dividers between individuals, to minimize the chances of transmission of COVID-19

☐ Regularly and frequently clean and disinfect any regularly touched surfaces, such as doorknobs, tables, chairs, and restrooms.

☐ Disinfect any items that come into contact with customers.

☐ Make hand sanitizer, disinfecting wipes, soap and water, or similar disinfectant readily available to employees, contractors, and customers.

☐ Place readily visible signage at the business to remind everyone of best hygiene practices.

☐ For employers with more than 10 employees and/or contractors present at one time, consider having an individual wholly or partially dedicated to ensuring the health protocols adopted by the employer are being successfully implemented and followed.

Enclosure 3

GUIDANCE FOR CLEANING & DISINFECTING

PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

SCAN HERE FOR MORE INFORMATION

1 DEVELOP YOUR PLAN

DETERMINE WHAT NEEDS TO BE CLEANED. Areas unoccupied for 7 or more days need only routine cleaning. Maintain existing cleaning practices for outdoor areas.

DETERMINE HOW AREAS WILL BE DISINFECTED. Consider the type of surface and how often the surface is touched. Prioritize disinfecting frequently touched surfaces.

CONSIDER THE RESOURCES AND EQUIPMENT NEEDED. Keep in mind the availability of cleaning products and personal protective equipment (PPE) appropriate for cleaners and disinfectants.

Follow guidance from state, tribal, local, and territorial authorities.

2 IMPLEMENT

CLEAN VISIBLY DIRTY SURFACES WITH SOAP AND WATER prior to disinfection.

USE THE APPROPRIATE CLEANING OR DISINFECTANT PRODUCT. Use an EPA-approved disinfectant against COVID-19, and read the label to make sure it meets your needs.

ALWAYS FOLLOW THE DIRECTIONS ON THE LABEL. The label will include safety information and application instructions. Keep disinfectants out of the reach of children.

3 MAINTAIN AND REVISE

CONTINUE ROUTINE CLEANING AND DISINFECTION. Continue or revise your plan based upon appropriate disinfectant and PPE availability. Dirty surfaces should be cleaned with soap and water prior to disinfection. Routinely disinfect frequently touched surfaces at least daily.

MAINTAIN SAFE PRACTICES such as frequent handwashing, using cloth face coverings, and staying home if you are sick.

CONTINUE PRACTICES THAT REDUCE THE POTENTIAL FOR EXPOSURE. Maintain social distancing, staying six feet away from others. Reduce sharing of common spaces and frequently touched objects.

MAKING YOUR PLAN TO CLEAN AND DISINFECT

Cleaning with soap and water removes germs, dirt, and impurities from surfaces. It lowers the risk of spreading infection.

Disinfecting kills germs on surfaces. By killing germs on a surface after cleaning, it can further lower the risk of spreading infection.

Is the area indoors?

YES

It is an indoor area.

NO

Maintain existing cleaning practices.

Coronaviruses naturally die in hours to days in typical indoor and outdoor environments. Viruses are killed more quickly by warmer temperatures and sunlight.

Has the area been occupied within the last 7 days?

YES

Yes, the area has been occupied within the last 7 days.

NO

The area has been unoccupied within the last 7 days.
The area will need only routine cleaning.
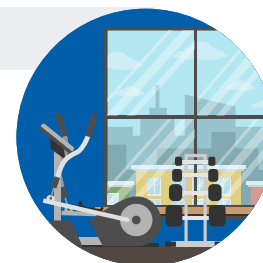
Is it a frequently touched surface or object?

YES

Yes, it is a frequently touched surface or object.

NO

Thoroughly clean these materials.
Consider setting a schedule for routine cleaning and disinfection, as appropriate.

What type of material is the surface or object?

Hard and non-porous materials like glass, metal, or plastic.

Visibly dirty surfaces should be cleaned prior to disinfection.

Consult EPA's list of disinfectants for use against COVID-19, specifically for use on hard, non-porous surfaces and for your specific application need. More frequent cleaning and disinfection is necessary to reduce exposure.

Soft and porous materials like carpet, rugs, or material in seating areas.

Thoroughly clean or launder materials.

Consider removing soft and porous materials in high traffic areas. Disinfect materials if appropriate products are available.
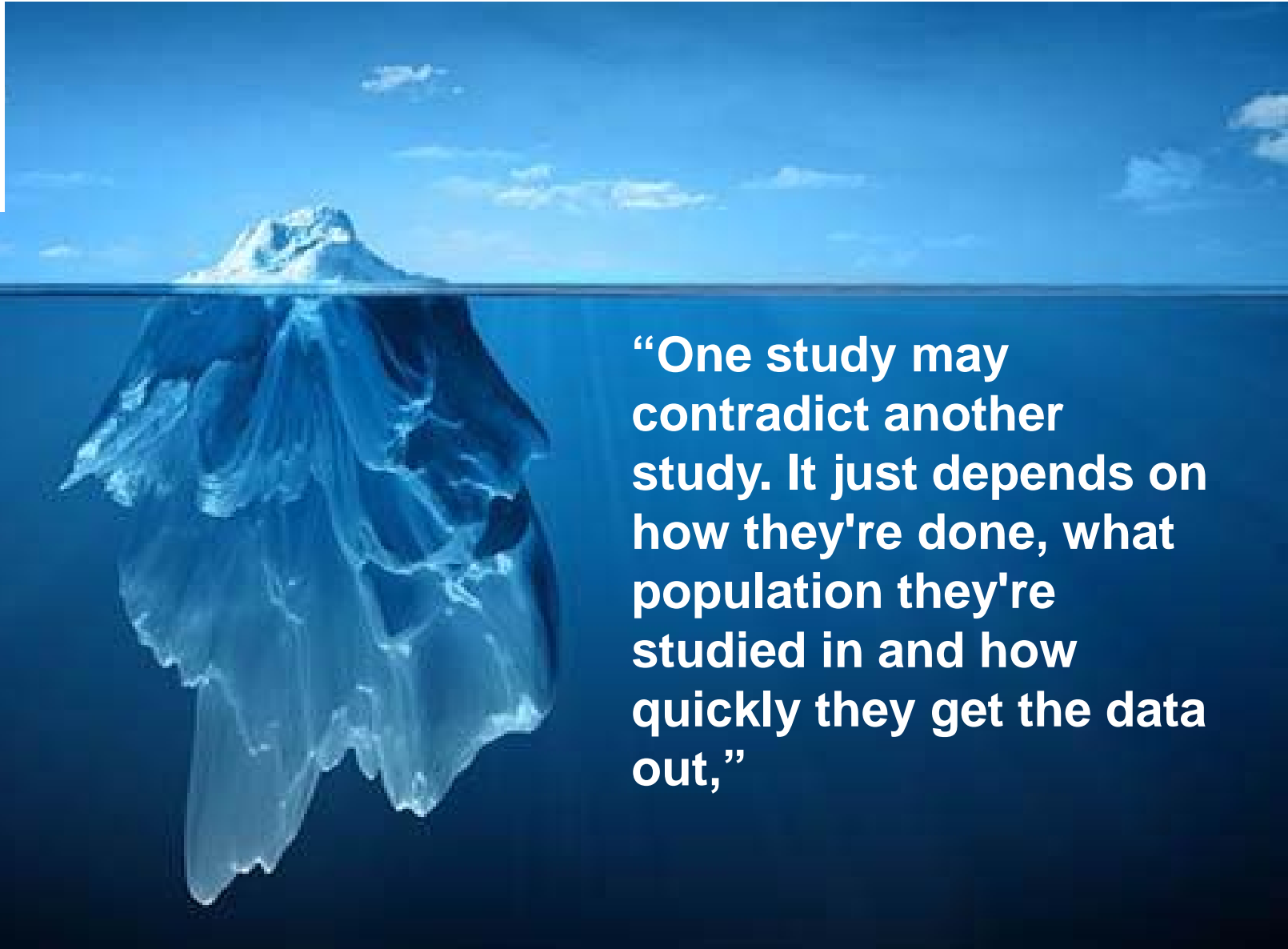
Americans remain wary of the coronavirus's threat, and are worried about going back to work too soon.

There are so many stories swirling about the coronavirus, it's hard to tell what's fact or fiction.

"One study may contradict another study. It just depends on how they're done, what population they're studied in and how quickly they get the data out,"

You know the old saying about how you don't want to see how sausage is made?
This is how science is made.

Time for a reality check...

The most credible authorities:
1. The World Health Organization
2. The Centers for Disease Control and Prevention
3. The National Institute of Allergy and Infectious Diseases

— know and are still learning about the virus every single day.

QUESTIONS WITH NO ANSWERS

- Are distinct strains of the coronavirus more dangerous?
- Does a patient's blood type affect the severity of the illness?
- Do other genetic factors play a role?
- Are some people partially protected from covid-19 because they've had recent exposure to other coronaviruses?
- Why do some people get sick? Why do some people have no problem at all?

Six months into a pandemic that has infected more than 8 million and killed more than 450,000 people globally, scientists are still trying to understand the wildly variable nature of covid-19, the disease caused by the virus.

CORONA-VIRUS

FAKE NEWS

SHADI GHANIM

DON'T PUT YOUR FINGERS IN SOCKETS

Even if all governments/employers were taking efficient action, but individuals didn't also do their share by following the safety regulations, the crisis would not be averted.

We all already know the following safety regulations for staying healthy during Covid-19

- Social distancing (6 feet apart).
- Wash hands often
- Wear mask
- Avoid touching face
- Leave clean bathrooms, break rooms, and kitchens after each use.
- Clean high-touch surfaces in your work area (keyboards, phones, etc).
- Do not got to work if yourself or a family member gets sick. Learn sick leave policies and the symptoms that would require you to stay home.

Well applied safety regulations at work does not protect us from Covid-19 unless applied in every daily action!

RESTROOMS

 Coronavirus, can be shed in feces for up to a month **after the illness. Viral particles on the toilet bowl, sink, and bathroom door handle of a COVID-19 patient's isolation room, strengthening the case for potential coronavirus spread through the fecal-oral route as well.**
Flushing the Toilet May Fling Coronavirus Aerosols All Over!

- **Do not wait your turn in the restroom.**
- **Do not go to restroom without mask**
- **Close the lid before flushing**
- **Do not apply makeup in the toilet**
- **Wash your hands**
- **Do not use hand air dryer**

Handwashing

[CDC recommends](#) washing your hands with water and soap for a duration of 20 seconds, rubbing and lathering the backs of the hands, between your fingers and under your nails. In order to effectively time out 20 seconds while washing your hands, you can hum or sing the "Happy Birthday" song twice from beginning to end.

Perform Routine Environmental Cleaning

Routinely clean and disinfect all frequently touched surfaces in the workplace, such as workstations, countertops and doorknobs. The CDC recommends that workers use cleaning agents that are usually used in these areas and follow the directions on the label. It is best to provide employees with disposable wipes so that commonly used surfaces can be wiped down before each use.