Frequently Asked Questions for HR issues related to COVID-19 Coronavirus

Major sources:
Fisher Phillips LLP
OSHA Guidance on Workplaces
CDC Guidance to Employers

Note: Given the large quantity of information, we have highlighted some of the main points below.

Contents:

HEALTH AND HIPAA QUESTIONS

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu?

According to the CDC, employers should "actively encourage sick employees to stay home." Employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace.

During the 2009 H1N1 pandemic, the Equal Employment Opportunity Commission (EEOC) stated that advising workers to go home is not disability-related if the symptoms present are akin to the seasonal influenza or the H1N1 virus. Therefore, an employer may require workers to go home if they exhibit symptoms of the COVID-19 coronavirus or the flu. (3/19/20)

An employee of ours has tested positive for COVID-19. What should we do?

You should send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (less than six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. **When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws.** You may also want to consider asking a cleaning company to undertake a deep cleaning of your affected workspaces. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

One of our employees has a suspected but unconfirmed case of COVID-19. What should we do?

Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.

How can we distinguish between a "suspected but unconfirmed" case of COVID-19 and a typical illness?

There is no easy way for you to make this determination, but you should let logic guide your thinking. The kinds of indicators that will lead you to conclude an illness could be a suspected but unconfirmed case of COVID-19 include whether that employee traveled to a restricted area that is under a Level 2, 3, or 4 Travel Advisory according to the U.S. State Department, whether that employee was exposed to someone who traveled to one of those areas, or similar facts. You should err on the side of caution but not panic.

If an employee's possible COVID-19 symptoms become severe, inquiries into an employee's symptoms, even if disability-related, are considered justified by the EEOC as a "reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat." You must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Inquiries into an employee's symptoms should attempt to distinguish the symptoms of COVID-19 from the common cold and the seasonal flu. This should include inquiries into whether an employee is experiencing:

- Fever
- Fatigue
- Cough
- Sneezing
- Aches and pains
- Runny or stuffy nose
- Sore throat
- Diarrhea
- Headaches

- Shortness of breath

The most common symptoms of COVID-19 are fever and a dry cough. This helpful chart can help you and your employees distinguish between the COVID-19 coronavirus, the seasonal flu, or a common cold.

Can we require an employee to notify us (the organization) if they have been exposed, have symptoms, and/or have tested positive for the COVID-19 coronavirus?
Yes, you should require any employee who becomes ill at work with COVID-19 coronavirus symptoms to notify their supervisor. Employees who are suffering from symptoms should be directed to remain at home until they are symptom-free for at least 24 hours.
While outside of work, if an employee begins experiencing symptoms, has been exposed to someone that is exhibiting symptoms, or has tested positive, the employee should contact your company by telephone or email and should not report to work.

One of our employees self-reported that they came into contact with someone who had a presumptive positive case of COVID-19. What should we do?
Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee is asymptomatic for the virus but you are acting out of an abundance of caution.

One of our employees has been exposed to the virus but only found out after they had interacted with clients and customers. What should we do?
Take the same precautions as noted above with respect to coworkers, treating the situation as if the exposed employee has a confirmed case of COVID-19 and sending home potentially infected employees that he came into contact with. As for third parties, you should communicate with customers and vendors that came into close contact with the employee to let them know about the potential of a suspected case.

If we learn or suspect that one of our employees has COVID-19, do we have a responsibility to report this information to the CDC?
There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

What steps can we take now to minimize risk of transmission?
Repeatedly, creatively, and aggressively encourage employees and others to take the same steps they should be taking to avoid the seasonal flu. For the annual influenza, SARS, avian flu, swine flu, and now the COVID-19 coronavirus, the best way to prevent infection is to avoid exposure. The messages you should be giving to your employees are:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with others, especially those who are sick.

- Refrain from shaking hands with others for the time being.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Perhaps the most important message you can give to employees: stay home when you are sick.

As an employer, you should be doing the following:

- Ensure that employees have ample facilities to wash their hands, including tepid water and soap, and that third-party cleaning/custodial schedules are accelerated.
- Evaluate your remote work capacities and policies (see later section on Remote Work for more information). Teleconference or use other remote work tools in lieu of meeting in person if available.
- Consider staggering employee starting and departing times, along with lunch and break periods, to minimize overcrowding in common areas such as elevators, break rooms, etc.
- Have a single point of contact for employees for all concerns that arise relating to health and safety.
- Follow updates from the CDC and the World Health Organization (WHO) regarding additional precautions.

You may refer to OSHA's Guidance on Preparing Workplaces for an Influenza Pandemic for additional information on preparing for an outbreak.

Is COVID-19 a recordable illness for purposes of OSHA Logs?

OSHA recently published guidance on this issue. OSHA recordkeeping requirements mandate that covered employers record certain work-related injuries and illnesses on their OSHA 300 log. You must record instances of workers contracting COVID-19 if the worker contracts the virus while on the job. The illness is not recordable if the worker was exposed to the virus while off the clock. You are responsible for recording cases of COVID-19 if:

1. The case is a confirmed case of COVID-19;
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

Does the COVID-19 coronavirus emergency trump HIPAA privacy rules?

No. The government recently sent a stern reminder to all employers, especially those involved in providing healthcare, that they must continue to comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 coronavirus outbreak. The Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) issued a reminder after the WHO declared a global health emergency. In fact, the Rule includes provisions that are directly applicable to the current circumstances.

Can an employee refuse to come to work because of fear of infection?

Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act." OSHA discusses imminent danger as where there is "threat of death or serious physical harm," or "a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency."

The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

In addition, Section 7 of the National Labor Relations Act (NLRA) extends broad-based statutory protection to those employees (in union and non-union settings alike) to engage in "protected concerted activity for mutual aid or protection." Such activity has been defined to include circumstances in which two or more employees act together to improve their employment terms and conditions, although it has been extended to individual action expressly undertaken on behalf of co-workers.

On its own website, the National Labor Relations Board (NLRB) offers a number of examples, including, "talking with one or more employees about working conditions," "participating in a concerted refusal to work in unsafe conditions," and "joining with co-workers to talk to the media about problems in your workplace." Employees are generally protected against discipline or discharge for engaging in such activity.

Can I take an employee's temperature at work to determine whether they might be infected?

The Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee's medical status, and the EEOC considers taking an employee's temperature to be a "medical examination" under the ADA. The ADA prohibits employers from requiring medical examinations and making disability-related inquiries unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a "direct threat" to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

Taking an employee's temperature may be unlawful if it is not job-related and consistent with business necessity. The inquiry and evaluation into whether taking a temperature is job-related and consistent with business necessity is fact-specific and will vary among employers and situations. The EEOC's position is that during a pandemic employers should rely on the latest CDC and state or local public health assessments to determine whether the pandemic rises to the level of a "direct threat." The assessment by the CDC as to the severity of COVID-19 will provide the objective evidence needed for a medical examination. If COVID-19 coronavirus becomes widespread in the community, as determined by state or local health authorities or the CDC, then employers may take an employee's temperature at work.
However, as a practical matter, an employee may be infected with the COVID-19 coronavirus without exhibiting recognized symptoms such as a fever, so temperature checks may not be the most effective method for protecting your workforce.

Can an employee refuse to work without a mask?
OSHA has addressed the common question of whether an employee can simply refuse to work in unsafe conditions. The safety agency provides the following guidance, which wouldn't require the use of a mask or respirator in most situations. An employee's right to refuse to do a task is protected if all of the following conditions are met:

1. Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so;
2. You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists;
3. A reasonable person would agree that there is a real danger of death or serious injury; and
4. There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Given the consensus that face masks are only necessary when treating someone who is infected with the COVID-19 coronavirus or influenza, masks are likely not necessary to protect the health of most employees. Therefore, most employers do not have to provide, or allow employees to wear, a surgical mask or respirator to protect against the spread of the COVID-19 coronavirus or influenza. The use of the word "may" in OSHA's respiratory protection standard makes it clear that when a respirator is not necessary to protect the health of an employee, it is within the discretion of the employer to allow employees to use a respirator. Accordingly, you are well within the applicable OSHA standard to deny an employee's request to wear a surgical mask or a respirator in almost all situations.

Absent a legally recognized disability, unique physical condition, or an occupation where employees work directly with those impacted by a condition such as the COVID-19 coronavirus or flu, you are generally not required to allow workers to wear masks at work.

During a pandemic, may an ADA-covered employer ask employees who do not have symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to complications?

Generally, no. However, if the pandemic becomes severe or serious according to local, state, or federal health officials, ADA-covered employers may have sufficient objective information to reasonably conclude that employees will face a direct threat if they contract COVID-19. Only then may ADA-covered employers make disability-related inquiries or require medical examinations of asymptomatic employees to determine which employees are at a higher risk of complications.

How should we treat medical information?
The privacy restrictions mandated by HIPAA only apply to "covered entities" such as medical providers or employer-sponsored group health plans, and then only in connection with individually identifiable health information. Employers are not covered entities, so if you have medical information in your employment records, it is not subject to HIPAA restrictions. Nevertheless, disclosures should be made only to authorized personnel, and care should be taken even in disclosures to government personnel or other groups such as the Red Cross. Further, you should be careful not to release information to someone until you have properly identified them.

We recommend you treat all medical information as confidential and afford it the same protections as those granted by HIPAA in connection with your group health plan.
In certain circumstances, if you have plan information, you can share it with government officials acting in their official capacity, and with health care providers or officially chartered organizations such as the Red Cross. For example, you can share protected health information with providers to help in treatment, or with emergency relief workers to help coordinate services.

In addition, you can share the information with providers or government officials as necessary to locate, identify, or notify family members, guardians, or anyone else responsible for an individual's care, of the individual's location, general condition, or death. In such a case, if at all possible, you should get the individual's written or verbal permission to disclose.
However, if the person is unconscious or incapacitated, or cannot be located, information can be shared if doing so would be in the person's best interests. In addition, information can be shared with organizations like the Red Cross, which is authorized by law to assist in disaster relief efforts, even without a person's permission, if providing the information is necessary for the relief organization to respond to an emergency.

Finally, information can be disclosed to authorized personnel without permission of the person whose records are being disclosed if disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public.
These restrictions remain in effect, even after the outbreak has been declared a pandemic.

May covered entities share protected health information with public health authorities?
When there is a legitimate need to share information with public health authorities and others responsible for ensuring public health and safety, covered entities may share PHI to enable them to carry out their public health responsibilities. This may arise with the current outbreak of

COVID-19. The key, as always, is to limit disclosures to the *minimum necessary* to the purpose, strictly in accordance with these parameters.

For example, covered entities may share information *as necessary* with the Centers for CDC, as well as health departments authorized by law to receive such information, to prevent or control disease or injury. You may even disclose PHI to foreign government agencies that are working with authorized public health authorities.

What steps should we take if we use chemicals to combat the COVID-19 coronavirus?
Be mindful of the specific requirements of OSHA's Hazard Communication standard if new chemicals, or temporary employees, are introduced into work areas to combat the COVID-19 coronavirus. You are required to provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area. A comprehensive hazard communication program should include labeling and other forms of warning, safety data sheets, and employee training. Now is also a good time to retrain employees under OSHA's bloodborne pathogens standard, including revisiting and communicating the elements of your exposure control plan.

PAID LEAVE QUESTIONS

Can we charge time missed to vacation and leave balances?
The Fair Labor Standards Act (FLSA) generally does not regulate the accumulation and use of vacation and leave. The salary requirements for exempt "white collar" employees can implicate time-off allotments under various circumstances. The Department of Labor has provided some guidance on this topic in an opinion letter that is accessible here. Again, however, what an employer may, must, or cannot do where paid leave is concerned might be affected by an employment contract, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law.

If staff does not want or feel comfortable to work due to covoid-19, is it acceptable to ask them to use their sick or vacation time?
Employers should reference the Families First Coronavirus Response Act and consider the new FMLA provision before advising staff to use sick or vacation leave. Here is a summary of key details of the Coronavirus Response Act.

Does family and medical leave apply to this situation?
See the summary of key details of the Coronavirus Response Act.

What are some best practices that you all recommend to support part-time staff during this time, since they seem to be excluded from a lot of these federal policy changes?
Under the Families First Coronavirus Response Act, the new FMLA provision and the new emergency sick leave provision both account for part-time employees. Under the emergency sick leave provision, part-time employees receive payment for the average number of hours worked in a two week period; under the FMLA provision, part-time employees receive two-thirds of a lesser amount in payment. Part-time employees are likely not exempt from overtime, in which case employers only need to pay for those hours worked.

WAGE AND HOUR QUESTIONS

Must we keep paying employees who are not working?
While the answer to this question may be "no" (see below), we encourage employers to consider the ethical dimensions of this question and consider supporting employees as much as possible during this time. We also caution employers to consider the public relations aspect of not paying employees who may not be working if they have contracted or are avoiding the COVID-19 coronavirus. Given the publicity surrounding this outbreak, it is possible that situations involving these kinds of issues could reach the media and damage your reputation and employee morale. Consider the big picture perspective when making decisions regarding paying or not paying your employees.

Under the FLSA, for the most part the answer is "no." FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires.

One possible difference relates to employees treated as exempt FLSA "white collar" employees whose exempt status requires that they be paid on a salary basis. Generally speaking, if such an employee performs at least some work in the employee's designated seven-day workweek, the salary basis rules require that they be paid the entire salary for that particular workweek. There can be exceptions, such as might be the case when the employer is open for business but the employee decides to stay home for the day and performs no work. A U.S. Department of Labor (USDOL) opinion letter addressing these matters can be accessed here.

Also, non-exempt employees paid on a "fluctuating-workweek" basis under the FLSA normally must be paid their full fluctuating-workweek salaries for every workweek in which they perform any work. There are a few exceptions, but these are even more-limited than the ones for exempt "salary basis" employees.

Of course, an employer might have a legal obligation to keep paying employees because of, for instance, an employment contract, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law.

TRAVEL

Can we prohibit an employee from traveling to a non-restricted area on their personal time?

You generally cannot prohibit otherwise legal activity, such as travel abroad by an employee. While a federal court of appeals recently held that it is not necessarily a violation of the ADA to terminate an employee who refuses to cancel personal travel to an area of the world with a high risk of exposure to a deadly disease, you still could risk legal exposure, reduced employee morale, and negative publicity if you do so. This includes pregnant employees or those with medical conditions. However, you should educate your employees before they engage in travel to risky environments to try and work out a solution, and you can – and should – monitor those employees returning from such travel for signs of illness.

What should I do if an employee has recently traveled to an affected area or otherwise may have been exposed to the COVID-19 coronavirus?

As noted above, the ADA prohibits employers from making disability-related inquiries and requiring medical examinations unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a "direct threat" to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

According to the EEOC, whether a particular outbreak rises to the level of a "direct threat" depends on the severity of the illness. The EEOC instructs employers that the assessment by the CDC or public health authorities provides the objective evidence needed for a disability-related inquiry or medical examination. During a pandemic, an employer does not have to wait until an employee develops symptoms to ask questions about exposure to a pandemic influenza during recent travel. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home after traveling, an employer may ask an employee what locations they have traveled to, even if the travel was for personal reasons.

We have an employee who has recently traveled overseas to a country that is not on any restricted list, but we're worried about the risk of transmission. Should we institute a "soft" quarantine?

There is likely no greater risk of this employee being infected with the COVID-19 coronavirus than any of your other employees. Follow the same preventive steps and guidance contained within this FAQ to put your organization in the best position.

Can employees refuse to travel as part of their job duties?

Employees who object on behalf of others or act in groups could be covered by the NLRA's protection of concerted protected activity. You will want to proceed with caution and consult with your attorney before taking any steps in this regard. Moreover, under the federal OSH Act, employees can only refuse to work when a realistic threat is present.

Therefore, if employees refuse your instruction to travel for business to any other country for fear of catching the COVID-19 coronavirus, try to work out an amicable resolution. For example, the employer and the employee can check and discuss the CDC (avoid non-essential travel), State Department (Do Not Travel to China), and DHS Travel Advisories, which provide guidance on China Travel.

The CDC is also advising that some individuals may be more at risk of infection than others in the general population. Thus, follow the CDC direction on pregnant employees or on related reproductive issues, and do not make decisions without medical support. Moreover, actions by other countries, especially in Asia, may cause employee concerns, and absolute warnings and restrictions like those on China may not exist.

Can we charge time missed to vacation and leave balances?
The FLSA generally does not regulate the accumulation and use of vacation and leave. The salary requirements for exempt "white collar" employees can implicate time-off allotments under various circumstances. The USDOL has provided some guidance on this topic in an opinion letter that is accessible here. Again, however, what an employer may, must, or cannot do where paid leave is concerned might be affected by an employment contract, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law.

Does family and medical leave apply to this situation?
Employees requesting leave could conceivably be protected by the Family and Medical Leave Act (FMLA) to the extent they otherwise meet FMLA-eligibility requirements. Even in the absence of state or federal protection, an employer's internal policies may extend protection to such individuals. Of course, there is nothing to prevent you from voluntarily extending an employee's leave, even in the absence of any legal obligation.

Generally, employees are not entitled to take FMLA to stay at home to avoid getting sick. As with many employment laws, the worst thing an employer (or as is often the case, an untrained supervisor) can do at times like this is to reject immediately an unorthodox leave request before the facts are in. When in doubt, the wisest approach is to work with counsel to ensure legal compliance, thereby minimizing exposure to costly litigation.

REMOTE WORK

May an employer encourage employees to telework as an infection-control strategy?
Yes. The EEOC has opined that telework is an effective infection-control strategy. The EEOC has also stated that employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

What infrastructure should we have in place for a remote work plan?
You will want to identify the roles that are critical to your business operations and determine whether those individuals can carry out their jobs while working remotely. If you can proceed, the next critical component is assessing your technological capabilities. Do you have the support in place to assist with the inevitable questions and IT problems that will arise? Do you have sufficient security and privacy protocols in place? Considering these questions will help you determine whether you can move forward with a remote work plan.

What can we do to prepare for a possible remote work scenario?
There are a number of things you should do today to prepare for the possibility that your workers will need to operate remotely for a period of time.

- Take an inventory of the types of equipment your workers would need to get their job done and ensure they have access to them. This could include laptops, desktop computers, monitors, phones, printers, chargers, office supplies, and similar materials.
- Encourage your employees to prepare for the possibility of an immediate instruction to work at home. They may want to develop a “ready bag” that they take home with them at the end of each day that would allow them to begin working remotely at a moment’s notice. This would obviously include laptops, smartphones, and other related technology, but could also include physical items (such as binders, documents, materials).
- Make sure you consider and clearly communicate with your workers about which physical items are acceptable to be taken from the workplace and which need to stay in your location at all times.
- You might want to take the time now to digitize any relevant physical materials to make remote working easier.
- You will also want to communicate with your workforce about whether they can or should take digital photos of physical calendars, whiteboards, Kanban boards with stickie notes, or similar items, or whether they are prohibited from doing so.
- But perhaps the most important thing you should do is take the time to develop a remote work policy if you do not have one in place, or review and update your existing policy as it relates to this specific situation.

What should be included in a remote work policy?
Your policy should lay out the expectations you have for your workers as they embark on their temporary remote work routines. The number one item you should convey to them is that you expect them to help your organization maintain normal business operations during this period of time to the extent possible. Consider all aspects of their work and make sure they understand what is expected of them.

- How strict will your policy be? Are your workers simply encouraged to work at home or absolutely barred from coming to the office?

- Will there be exemptions for “essential” personnel that need to be at a certain physical location?
- Will they need to be available at all times during working hours, or will remote meetings and appointments be scheduled ahead of time? (Take into account that your workers’ lives may be disrupted in other ways because of the COVID-19 outbreak, and therefore they may not be able to maintain normal working hours during this time or may be somewhat distracted by family or medical obligations during certain times of the day.)
- Will remote meetings take place online, over the phone, or on camera?
- Will you prohibit employees from meeting together in person during this period? Will you only restrict in-person meetings of a certain size (no more than three or five workers)?
- Will you prohibit employees from meeting with third parties while doing company business during this period of time?
- Will you prohibit workers from performing work outside of their homes (coffee shops, libraries, etc.) because of security concerns? If this kind of work is permitted, do you have sufficient security infrastructure in place (encryption, password-protection, log-out/lock requirements, etc.) and are your workers aware of your requirements to prevent data breaches or other loss?
- Can workers perform work on their own devices, and if so, do you have a comprehensive BYOD (bring your own device) policy in place?

You should include an anticipated end date in your remote work announcement, and/or inform your employees that you will provide weekly updates regarding the status of the remote work period.

What are some concepts we should keep in mind to ensure our remote work time is productive and successful?

There are a number of steps you can take to ensure that the temporary remote work time goes well for your workers and for your organization.

- From a functionality standpoint, you may want to agree on a single communications platform that all workers will be required to participate in. It could be email, instant messaging, Slack, Skype, Zoom Conferencing, or some other designated tool.
- Take an honest approach with yourself about whether any concerns you have regarding reduced productivity among your workers while they are working at home are realistic or overblown. Recognize that you aren’t babysitting your employees while they are performing work at the office, so you shouldn’t begin to micromanage them while they are at home. Keep an eye on the bigger picture and track overall productivity, not moment-by-moment activities.
- In fact, experts say that overwork is more likely for remote workers than a lack of productivity, especially in the first week of a remote work assignment. Keep an eye out for employee burnout and overstressed workers and address your concerns as appropriate.

- Another concern for workers not used to working remotely is that they may feel untethered and disconnected from the organization during this time period. Some tactics to prevent and overcome this problem include:
    - Developing and distributing an agenda for all team get-togethers and meetings, as well as meeting minutes and task lists after they are completed, so that those unable to attend can feel part of the action;
    - Schedule virtual team lunches and digital social time where workers can interact on a social level;
    - Connect workers new to remote work with your experienced remote workers to serve as informal mentors, available to answer questions or give advice about best ways to cope with the change and handle work; and
    - Consider other ways to ensure your workers feel connected with each other and with the organization, whether that includes daily meetings, frequent phone calls or texts, or other actions that can go a long way towards ensuring their peace of mind.

UNEMPLOYMENT, WORKMEN'S COMPENSATION and SHORT TERM DISABILITY

Are there any options currently available to contract workers to seek unemployment or other support in the occurrence that contract work cannot be performed due to closure?
The Families First Coronavirus Response Act has a provision allowing contract workers to get sick pay. Regarding unemployment insurance, the answer is likely no since employers pay into this system in order to fund it. However, contract workers should reach out to the Louisiana Workforce Commission for more detailed information.

If staff hours have been reduced but they are still receiving some work, how do those payments impact their unemployment claims?
If employees are still working but with reduced hours, employees are still eligible to receive unemployment -- in this case, they will receive less unemployment benefits because the hours have been reduced.

My employee alleges that they contracted the coronavirus while at work. Will this result in a compensable workers' compensation claim?
It depends. If the employee is a health care worker or first responder, the answer is likely yes (subject to variations in state law). For other categories of employees, a compensable workers' compensation claim is possible, but the analysis would be very fact-specific.
It is important to note that the workers' compensation system is a no-fault system, meaning that an employee claiming a work-related injury does not need to prove negligence on the part of the employer. Instead, the employee need only prove that the injury occurred at work and was proximately caused by their employment. Additionally, the virus is not an "injury" but is instead

analyzed under state law to determine if it is an "occupational disease." To be an occupational disease (again subject to state law variations), an employee must generally show two things:

- the illness or disease must be "occupational," meaning that it arose out of and was in the course of employment; and
- the illness or disease must arise out of or be caused by conditions peculiar to the work and creates a risk of contracting the disease in a greater degree and in a different manner than in the public generally.

The general test in determining whether an injury "arises out of and in the course of employment" is whether the employee was involved in some activity where they were benefitting the employer and was exposed to the virus. Importantly, special consideration will be given to health care workers and first responders, as these employees will likely enjoy a presumption that any communicable disease was contracted as the result of employment. This would also include plant nurses and physicians who are exposed to the virus while at the worksite.

As for other categories of employees, compensability for a workers' compensation claim will be determined on a case-by-case basis. The key point will be whether the employee contracted the virus at work and whether the contraction of the disease was "peculiar" to their employment. Even if the employer takes all of the right steps to protect the employees from exposure, a compensable claim may be determined where the employee can show that they contracted the virus after an exposure, the exposure was peculiar to the work, and there are no alternative means of exposure demonstrated.

Absent state legislation on this topic, an employee seeking workers' compensation benefits for a coronavirus infection will still have to provide medical evidence to support the claim. Employers who seek to contest such a claim may be able to challenge the allowance if there is another alternative exposure or if the employee's medical evidence is merely speculative.

Finally, employers should be aware that states are taking action on this issue. For instance, Washington Governor Jay Inslee recently directed his Department of Labor and Industries to "ensure" workers' compensation protections for health care workers and first responders. The directive instructs the Department to change its policies regarding coverage for these two groups and to "provide benefits to these workers during the time they're quarantined after being exposed to COVID-129 on the job." We expect other states to follow Washington's lead.

My employee contracted COVID-19 while on a business trip for my company. Is this a compensable workers' compensation claim?

Again, it depends. While an employee who contracts a disease while traveling for business may be eligible for workers' compensation benefits in many jurisdictions, the analysis will be very fact-specific. In most states, the worker will need to satisfy the test for compensability outlined above. States often differentiate between exposures that occur while "working" during a business trip versus exposures that occur during "down time." Some states create almost strict liability for any injury that occurs on a business trip, whether the employee is working or not. But again, in order to have a compensable claim, the employee must, at a minimum, establish that

they had an exposure to the coronavirus while traveling for business. Like other matters, these cases are best examined on a case-by-case basis under advice of counsel.

Do we think short term disability would come into play?
Yes, if the person requesting short term disability has a disability and not able to work. The guidance for employers is to contact the insurance provider or broker for the organization in order to get detailed information about short-term disability and how staff can access short-term disability if needed.

What are the likely benefits an employee will be eligible to receive if their coronavirus infection is found to be a compensable workers' compensation claim?
The good news is that, except in rare situations, an employee diagnosed with the virus will have no significant long-term health care problems. Therefore, medical costs associated with the claim are likely to be limited to visits to the family physician and antiviral medications. More significant cases may involve hospital stays of two to three weeks.

The compensation costs should also be limited to the lost time associated with any recovery time. They may also be associated with lost time due to quarantine as required by the employer or local, state, or federal government agencies.

CHILDCARE

Can we open childcare centers at our workplace for employees' children who are not allowed to go to school?
No. Though while well-intentioned, childcare centers and daycares require proper licensing from your state. Unless you already have or can obtain the proper licensure, you should refrain from doing so.

Can we instead offer informal "entertainment areas" or "kid zones" for employees' children who are not allowed to go to school?
You should probably refrain from offering informal "entertainment areas" or "kid zones" because state regulating agencies may consider them unlicensed daycares. Additionally, the reason that schools have been closed across the country is to encourage social distancing in an effort to stop the spread of the COVID-19 coronavirus. Allowing children to gather in "kid zones" would place children in close quarters and would risk spreading the virus among the children and the workforce. You may instead consider clearly communicating with those on your staff who are able to work remotely that you will be flexible to allow them to parent their children during this time, which may include adjusting schedules, holding phone calls or video meetings during off-hours, and other alterations. Even a quick message letting your employees know that managers will not mind if children are sitting on laps or making noise in the background during phone calls and video conferences could go a long way toward making your employees feel comfortable.