

WORKPLACE SAFETY, DISABILITY ACCOMMODATIONS, AND LEAVES IN THE COVID-19 ERA

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INTRODUCTIONS



Sarah Bushnell



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Workplace Safety in the COVID-19 Era

Doug Mac Arthur

LAWS AND GUIDANCE

- General Duty Clause – “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...”

Occupational Safety and Health Act – 29 USC 651,
Section 5(a)(1)

LAWS AND GUIDANCE

- Personal Protective Equipment
 - Gloves, eye protection, masks
 - Loosened rules requiring fit tests
- CDC Guidance
 - Frequently cited in OSHA materials
- State Plans
 - 28 in nation, including Minnesota and Iowa

ASSESS, EVALUATE, EXECUTE.

Employers of workers with potential occupational exposures to coronavirus should follow these practices:

- Assess the hazards to which workers may be exposed.
- Evaluate the risk of exposure.
- Select, implement, and ensure workers use controls to prevent exposure, including physical barriers to control the spread of the virus; social distancing; and appropriate personal protective equipment, hygiene, and cleaning supplies.

(Quoted from OSHA Alert re Preventing Worker Exposure)

WHAT IS THE RISK OF EXPOSURE

- Low Risk
 - Infrequent contact with public
- Medium Risk
 - Frequent contact with public, but not with people known to be infected with COVID-19
 - Depends on whether community transmission is occurring in the geographic area
- High Risk
 - Jobs requiring contact with people known to be infected with COVID-19
- Very High
 - Jobs requiring close exposure with infected persons at high risk times

EXECUTE

- Appropriate Actions Depends On Risk Level
- Categories of Protective Steps
 - Engineering controls
 - Administrative controls
 - Personal Protective equipment

ENFORCEMENT ACTIONS

- First Step – Call Arthur Chapman!
- Inspection, then Citation
- Contest Period – 15 days
 - Post the Citation
 - Informal Conference
 - Contest or accept Citation

Disability Accommodations in the COVID-19 Era

Jeff Markowitz

DISABILITY LAW AND COVID-19

- Duty to Reasonably Accommodate
- Prohibition on Disability Screening
- Prohibition against Medical Examinations and Inquiries

DISABILITY LAW AND COVID-19

- All Three Are General Rules
- All Three Have Exceptions
- COVID-19 Pandemic Triggers Exceptions, According To EEOC

DISABILITY LAW AND COVID-19

- EEOC: Put COVID-19 Safety First
- But, Rapidly Changing, and Nuanced
 - Issued 3/19/2020
 - Revised 3/21/2020
- EEOC Guidance ≠ Law

March 24, 2020

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DISABILITY LAW AND COVID-19



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REASONABLY ACCOMMODATE PERSONS WITH COVID-19?

- No Duty to RA if “Direct Threat” (ADA) / “Serious Threat” (MHRA)
- EEOC: “the COVID-19 pandemic meets the direct threat standard”
- Arguably Good Enough for MHRA

EEOC PRACTICAL GUIDANCE

SEND HOME?

- May an ADA-covered employer send an employee home if she has COVID-19 or symptoms associated with it?
- Yes.

EEOC PRACTICAL GUIDANCE

SYMPTOM QUESTIONS?

- May an ADA-covered employer ask an employee who reports feeling ill at work, or who calls in sick, questions about their symptoms to determine if they have or may have COVID-19?

- Yes.

EEOC PRACTICAL GUIDANCE

SYMPTOM QUESTIONS?

- EEOC Acknowledged Symptoms:
 - Fever
 - Chills
 - Cough
 - Shortness of Breath
 - Sore Throat

EEOC PRACTICAL GUIDANCE

TAKE TEMPERATURE?

- May an ADA-covered employer take an employee's temperature to determine whether he has COVID-19?
- Yes.
- (A Word on Confidentiality)

EEOC PRACTICAL GUIDANCE POST-TRAVEL QUESTIONS?

- May an ADA-covered employer ask COVID-19 questions advised by CDC and public-health authorities to determine whether employer may return to work?
- Yes.

EEOC PRACTICAL GUIDANCE POST-TRAVEL QUESTIONS?

- Questions Will Vary Based on Travel
- CDC Level 3 Travel **Restricted**: China, Iran, Most of Europe, UK, Ireland
- CDC Level 3 Travel **Not Recommended**: Australia, Brazil, Canada, Chile, Ecuador, India, Indonesia, Japan, Israel, 11 others

Leaves in the COVID-19 Era

Sarah Bushnell

WHAT IF AN EMPLOYEE CAN'T WORK OR THE BUSINESS IS SHUT DOWN?

- Paid leaves
- Unpaid leaves
- Unemployment
- Resources for business impacted by COVID-19

FFCRA PAID SICK LEAVE

- Effective April 1, 2020
- Applies to private employers with fewer than 500 employees and certain government employers of any size
- Two weeks of paid leave
 - Full pay for employees taking leave due to their own quarantine or self-quarantine or symptoms
 - 2/3 pay for employees caring for a family member under quarantine or a child whose school or day care is closed due to COVID-19 and for similar conditions that may be identified by federal agencies

FFCRA EXTENDED FMLA LEAVE

- Effective April 1, 2020
- Applies to private employers with fewer than 500 employees and certain government employers of any size
- Up to 12 weeks of leave for employees who must be off work to care for the employee's child(ren) due to school or day care closures caused by COVID-19
- First ten days/2 weeks unpaid or paid by other available PTO or sick leave
- Then, paid leave at 2/3 the employee's regular rate

EMPLOYER PROVIDED PTO/PAID SICK LEAVE

Follow the policy . . .



And, in Minnesota, allow use of paid sick time
for care of a sick family member

MINNEAPOLIS AND SAINT PAUL SICK AND SAFE TIME ORDINANCES

- Employees who work for more than 80 hours per year in Minneapolis or Saint Paul
- Accrued leave may be taken by an employee who is out of work due to:
 - Coronavirus screening;
 - Care or quarantine due to Coronavirus symptoms or infection;
 - Testing or quarantine following exposure;
 - Need to care for child whose school or day care is closed due to Coronavirus; and
 - Workplace closure by order of a public official due to Coronavirus.
- This leave is paid, except for employers under the Minneapolis ordinance with fewer than six employees.

UNPAID FMLA AND OTHER LEAVES

- Employers with more than 50 employees
- Employees who work at a site with 50 or more employees within 75 miles and who have worked for at least 12 months and 1,250 hours
- 12 weeks unpaid, job protected leave for a serious health condition involving inpatient treatment or ongoing care by a health care provider or to care for a spouse, child or parent with a serious health condition
- Consider application of ADA and MHRA

UNEMPLOYMENT

By executive order, to address the impact of COVID-19:

- The waiting week has been eliminated
- The five week benefit limit for business owners who have elected coverage has been lifted
- Applicants must still seek suitable employment while receiving benefits, but suitable employment does not pose a risk to your health or the health of others
- Workers temporarily laid off can satisfy the search requirement by staying in contact with their employer

HELP FOR BUSINESSES IMPACTED BY COVID-19

- **Refundable tax credit (and tax withholding) for FFCRA leaves**

“Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.”

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>













- **SBA small business loans**

<https://mn.gov/deed/newscenter/covid/employers/>

COVID-19 TASK FORCE


www.arthurchapman.com/areas/covid-19-task-force

The Team

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Print SHARE

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News

- › Plan not Panic: Join us this week for two webinars on the changing legal landscape related to COVID-19
- › COVID-19: Plan not Panic
- › COVID-19: FAQ's for Employment, Coverage, and Workers' Compensation

Resources

- › ACKSP 2020 Families First Coronavirus Response Act Alert
- › ACKSP 2020 COVID-19 Resources

March 24, 2020

TOMORROW'S WEBINAR

Work-at-Home Risks and Injury Prevention and COVID-19 Occupational Exposure

Wednesday, March 25, 2020

3:30 – 4:00 p.m. Central Time



March 24, 2020



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QUESTIONS?



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Resources

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Upcoming Seminars

Name of Seminar	Date	Location
2020 Work Safety, Disability Accommodations, and Leaves in the COVID-19 Era	March 24, 2020	https://zoom.us/meeting/register/vpAkdemgrz4oL0w86DTvESvag6a195wiG
2020 Work-at-Home Risks and Injury Prevention and COVID-19 Occupational Exposure	March 25, 2020	https://zoom.us/meeting/register/u50tfu-hqjwoVE3RqrSGk5FP243DhBPLvg

Access Materials:
Password: **webinar**

www.arthurchapman.com/seminars

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RESOURCES

- FFCRA Paid Leaves Summary and DOL Guidance
 - <https://www.arthurchapman.com/news/families-first-coronavirusresponse-act>
 - <https://www.dol.gov/agencies/whd/pandemic>
- Minneapolis Sick and Safe Time
 - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/covid-19_and_sst_3_18_20.pdf
- Saint Paul Sick and Safe Time
 - https://library.municode.com/mn/st._paul/codes/code_of_ordinances?nodeId=PTIILECO_TITXXIIPUHESAWE_CH233PUHESAWE_S233.01STLEPUIN

RESOURCES

- Minnesota unemployment
 - <https://www.uimn.org/applicants/needtoknow/news-updates/covid-19.jsp>
- DOL/IRS/Labor Guidance on Tax Credits
 - <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- COVID-19 Small Business Loans
 - <https://mn.gov/deed/newscenter/covid/employers/>

RESOURCES

- Minnesota Chamber of Commerce COVID-19 Business Toolkit
 - <https://www.mnchamber.com/blog/covid-19-business-toolkit>
- FMLA Generally
 - <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>
- OSHA Guidance
 - <https://www.osha.gov/SLTC/covid-19/>
- EEOC Guidance
 - https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitation_act_coronavirus.cfm