For Companies Affected by the 2020 COVID 19 Virus Pandemic

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General Questions

Does an employer have to pay for sick leave due to COVID-19?

- Yes to the extent the employer has a sick leave or paid-time-off policy, the employee has any leave time accrued, and the employee elects to take that time under the policy.
- No, if the employee has exhausted paid time off accrued under the policy.
- Remember, in many cases employers can voluntarily change their sick leave policies to adapt to current circumstances if they wish to do so.

Do employers have a notice obligation in the event of a layoff or a reduction in hours?

Notices under the WARN Act (for worksite closings and partial layoffs), COBRA notices under ERISA (for terminations and reductions in hours), and notices to the local State Employment Security Commission (or equivalent) will still be necessary in most employment actions.

- Under the Workers Adjustment and Retraining Notification (WARN) Act, an employer subject to the WARN Act may order a plant closing or mass layoff without giving the otherwise mandatory 60-day notice if the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable (such as the affect upon the employer of COVID-19), provided the employer gives the employees as much notice as is practicable and explains why a 60-day notice was not given.

- COBRA – the Consolidated Omnibus Budget Reconciliation Act – requires group health plans to offer continuation coverage to covered employees and others when group health coverage would otherwise be lost due to a covered employee's job loss or reduction in hours of more than 50%. However, on May 4, 2020, the US DOL provided guidance that group health plans must take into account the COVID-19 pandemic and therefore suspend time limits when determining the 60-day deadline for individuals to elect COBRA continuation coverage, make COBRA premium payments, and notify the plan of certain qualifying events (such as divorce or a dependent child aging out of plan coverage) or determination of disability as it relates to COBRA coverage. *See*: https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected

If teleworking is an alternative to worksite attendance by non-exempt employees, what documentation does the Fair Labor Standards Act require from an employer?

Whether or not the teleworking arrangement is related to COVID-19, employers have an obligation under the Fair Labor Standards Act (FLSA) to track the number of hours of compensable work performed by employees who are teleworking or otherwise working remotely away from any worksite or premises controlled by the employer. Without setting minimum requirements or standards, the Wage and Hour Division of the US Department of Labor on August 24, 2020, issued a Field Assistance Bulletin (FAB) that addresses an employer's duty to pay for time worked that is known to, or made known to, the employer. Without going into specifics, the FAB uses the word "reasonable" many times. An employer has the duty to implement a "reasonable reporting procedure" and must use "reasonable diligence" to verify accurate reporting of time worked by non-exempt employees. The FAB can be found at: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_5.pdf

Will workers' compensation insurance apply for COVID-19 related claims at the workplace?

Generally there has to be some connection to the workplace or job in order to support a claim for unemployment benefits based upon COVID-19. There may be exceptions (for example, as in

the case of a healthcare worker who contracted the virus at work). Also, some States have adopted positions that address COVID-19 and its implications for workers compensation laws and regulations; for example, see this Executive Order from the Governor of Arkansas: https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-35.pdf

Does a COVID-19 illness qualify as a "disability" under the ADA?

Illnesses generally do not satisfy the definition of "disability" under the Americans with Disabilities Act. The EEOC on September 8, 2020, released updated technical assistance entitled "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws". The advice pertains to taking temperatures of employees, maintaining medical information in a confidential manner, sharing COVID-19 test results with public health authorities, and accommodations of employees under the ADA. For more information, go to: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Are costs for testing and treatment regarding COVID-19 allowed to be paid out of an HSA without regard to the deductible for that Plan?

Yes. The IRS issued Notice 2020-15 ("HIGH DEDUCTIBLE HEALTH PLANS AND EXPENSES RELATED TO COVID-19") that reads in part: "Due to the unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19, a health plan that otherwise satisfies the requirements to be an HDHP under section 223(c)(2)(A) will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible. As a result, the individuals covered by such a plan will not fail to be eligible individuals under section 223(c)(1) merely because of the provision of those health benefits for testing and treatment of COVID-19."

Does COVID-19 have an impact upon Section 125 Cafeteria Plans?

Yes. IRS Notice 2020-29 ("COVID-19 GUIDANCE UNDER § 125 CAFETERIA PLANS AND RELATED TO HIGH DEDUCTIBLE HEALTH PLANS") addresses the following: (1) for mid-year elections made during calendar year 2020, a § 125 cafeteria plan may permit employees who are eligible to adjust or revoke their prior elections; (2) for unused amounts remaining in a health FSA or a dependent care assistance program under the § 125 cafeteria plan as of the end of a grace period or plan year ending in 2020, a § 125 cafeteria plan may permit employees to apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020; and (3) the relief previously provided in IRS Notice 2020-15 (see above FAQ) regarding high deductible health plans and expenses related to COVID-19 may be applied retroactively to January 1, 2020.

IRS Notice 2021-15 builds upon prior temporary special rules for health flexible spending arrangements (health FSAs) and dependent care assistance programs under § 125 cafeteria plans by:

- providing flexibility with respect to carryovers of unused amounts from the 2020 and 2021 plan years;
- Extending the permissible period for incurring claims for plan years ending in 2020 and 2021;
- Providing a special rule regarding post-termination reimbursements from health FSAs during plan years 2020 and 2021;
- Providing a special claims period and carryover rule for dependent care assistance programs when a dependent "ages out" during the COVID-19 public health emergency; and
- Allowing certain mid-year election changes for health FSAs and dependent care assistance programs for plan years ending in 2021.

IRS Notice 2021-15 can be found here: https://www.irs.gov/pub/irs-drop/n-21-15.pdf

Has there been any change to the requirements for employers to collect I-9 forms from new employees?

In 2020 the Department of Homeland Security (DHS) announced changes to the Employment Eligibility Verification (Form I-9) process which generally allowed employers some flexibility. That flexibility ended on December 31, 2020.

Do employers have to worry about OSHA reporting?

On May 19, 2020, the Occupational Safety and Health Administration ("OSHA") issued revised enforcement guidance stating OSHA now requires employers to record cases in the employer's OSHA 300 log if all of the following conditions are fulfilled: (1) the case is a confirmed medical diagnosis of COVID-19 as defined by the Centers for Disease Control and Prevention, and (2) the case is "work-related," which means the employee became infected at the workplace or the workplace somehow contributed to the employee's contracting COVID-19. See: https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19 . On September 30, 2020, OSHA published FAQs regarding reporting of COVID-19 hospitalizations and fatalities. For reporting, OSHA stated an "incident" is "an exposure to SARS-CoV-2 in the workplace." As a result, employers must report for its employees (a) hospitalization due to COVID-19 if the employee is hospitalized within 24 hours of an exposure to COVID-19 at the workplace or work or (b) fatality resulting from COVID-19 if the employee dies within 30 days of an exposure to COVID-19 at the workplace. This and other COVID-19 guidance from OSHA can be found at: https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#reporting .

Can employees drop medical, dental, and vision insurance due to a reduction in hours?

Many benefit plans will define an unexpected reduction in a participant's hours as a qualifying event; check the plan's language as it will be controlling. The plan may allow for temporary suspension of participation or contributions. Employees should consider reenrollment impediments if they drop coverage, particularly with regard to health insurance. Employers may wish to consider amending plans to address COVID-19 issues; relevant IRS guidance, if available, should be consulted before amending plans.

What is a "Shared Work" or "Workshare" Program and does it interact with the Federal Emergency Unemployment Compensation Program?

A Shared Work or Workshare Program is a variation on unemployment compensation. It provides an alternative for employers faced with layoffs. It allows an employer to divide available work or hours of work among employees in lieu of a layoff, and it allows the employees to receive a portion of their unemployment benefits while working reduced hours. Many States have a "Shared Work" or "Workshare" program. In this program an employer submits a plan to the State regulatory authority (a Department of Labor, an Employment Security Commission, or a similar agency) for approval and must then adhere to the approved plan; during the program employees can receive unemployment compensation from the State and pay from the employer for the reduced hours worked. In the Southeast, the following States have these programs:

Arkansas: https://www.dws.arkansas.gov/employers/shared-work-program/

Missouri: https://labor.mo.gov/shared-work

Texas: https://www.twc.texas.gov/businesses/shared-work

Families First Coronavirus Response Act

What was the Families First Coronavirus Response Act (the "FFCRA")?

On March 18, 2020, the FFCRA became law. Paid leave provisions for employees became effective on April 1, 2020, and applied to leave taken between April 1, 2020, and December 31, 2020. Under the FFCRA employers could not terminate employees for taking leave related to COVID-19 but were allowed a 100% tax credit for paid employee leave related to COVID-19. Generally the FFCRA provided for mandatory leave (related to COVID-19) with pay of up to 10 days (or 80 hours) in some cases and an additional 10 weeks (or 400 hours) in others

What happened to the "FFCRA" ?

The FFCRA expired on December 31, 2020. However, certain of its provisions were extended until March 31, 2021, by the Consolidated Appropriations Act signed into law on December 27, 2020. (Text of the approximately 5,600-page House Bill, H. R. 133, can be found here: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf) Under that Act, it is no longer mandatory for employers to grant additional leave due to COVID-19 related events, but on a voluntary basis employers may obtain tax credits if the employer extends any remaining (from 2020) FFCRA paid time off to employees after December 31, 2020, through March 31, 2021. Certain conditions apply to the leave and tax credits, and employers should consult with their legal and tax advisors before adopting what is in essence a 90-day extension of the FFCRA program to assist employees who have a reason for leave related to COVID-19.

What is the current IRS Guidance regarding tax credits and paid employee leave under the FFCRA?

Among other guidance, on January 28, 2021, the Internal Revenue Service issued "*COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs*" which can be found at: https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs At that webpage the IRS provides instruction for employers on how to claim tax credits and addresses many other questions employers will have concerning tax credits and COVID-19.

Coronavirus Aid, Relief, and Economic Security Act

What did the 2020 Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") do for employers?

The CARES Act provided, among other things, supplemental unemployment benefits to qualifying individuals, loans to small employers that were arranged to be forgiven if the loan proceeds were spent in the manner proscribed under the CARES Act, and an employee retention tax credit.

What was the Federal Pandemic Emergency Unemployment Compensation Program that provided an extra $600 on top of the normal State unemployment compensation weekly payment?

Under the Pandemic Emergency Unemployment Compensation program, the Federal Government provided funds to States for additional unemployment benefits to be paid at the rate of $600 per applicant per week for up to 13 weeks to "qualified individuals". States could not charge employers for any benefits paid under this program. Implementation costs and ongoing administrative costs were also 100% Federally funded. Federal emergency unemployment programs established under the CARES Act expired as of December 26, 2020.

Was the Federal Pandemic Emergency Unemployment Compensation Program extended?

Yes. The Consolidated Appropriations Act (the "CAA") signed into law on December 27, 2020, extends the amount of time that unemployed workers can collect unemployment insurance benefits by an extra 11 weeks. The CAA also reinstates the supplemental federal unemployment benefit provided under the CARES Act, but at a lower rate. Previously, the federal government supplemented State unemployment insurance benefits in the amount of $600 per week to eligible individuals. The rate of supplement is now $300 per week as is scheduled to expire on March 14, 2021.

Was the PPP loan program under the CARES Act also extended by the CAA?

Yes, but many things changed. The "Second Draw" provisions apply for small businesses (300 or fewer employees) that have exhausted or will exhaust their first PPP loan proceeds and limits loan proceeds to the lesser of $2 million or a multiple (2.5 x for most, 3.5x for Accommodation and Food Service employers) of payroll. The Small Business Administration is set to issue regulations in support of this program.

For tax purposes, was the deductibility of PPP loan expenditures impacted by the CAA?

In 2020 the Internal Revenue Service issued guidance to the effect that expenditures used as credits to offset PPP loan repayment could not also be deducted as a business expense (for example, if loan proceeds were used to cover payroll cost, then the employer could get credit to

apply to the loan balance but could not also deduct the payroll cost as a business expense). The CAA provides that PPP loan proceeds will not be included in taxable income and clarifies that deductions are allowed for expenses paid with proceeds of a PPP loan even if those proceeds are also used as credits to offset PPP loan balances. The CAA makes this tax treatment retroactive to March 27, 2020 (the date of the CARES Act).

How does my company apply for PPP loan forgiveness?

On January 19, 2021, the U.S. Small Business Administration (SBA) published an "Interim Final Rule" regarding PPP loan forgiveness. Three forms are now available for borrowers:

- Instructions and an application for loan forgiveness for PPP balances $150,000 or less: https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form-3508S-1192021.pdf
- Instructions and an application for loan forgiveness for PPP balances over $150,000: https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-and-Instructions--Form-3508-1192021.pdf
- Instructions and an application for loan forgiveness labelled "Form 3508EZ" which may be used if the employer can establish the it maintained payroll as set forth in the form: https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form3508EZ-1192021.pdf

Any application for loan forgiveness should be submitted to the *lender* and not to the SBA. The borrower cannot use only one of the application forms (above) to apply for forgiveness of both a "First Draw PPP Loan" and a "Second Draw PPP Loan". For a Second Draw PPP Loan in excess of $150,000, the borrower must submit a loan forgiveness application for each of the First Draw PPP Loan *before or simultaneously* with the loan forgiveness application for the Second Draw PPP Loan, and as instructed by the SBA: "…even if the calculated amount of forgiveness on your First Draw PPP Loan is zero."

Were the Employee Retention Credits (ERC) under the CARES Act enhanced by the CAA?

Yes. The ERC for wages paid between January 1 and June 30, 2021, will be equal to 70 percent of qualified wages, rather than 50 percent of such qualified wages, and the ERC cap is increased from $10,000 of qualified wages per employee per year to $10,000 of qualified wages per employee per calendar quarter. Also, the ERC limitation to employers with 100 or fewer employees was increased to 500 employees for the period January 1 through June 30, 2021. Certain conditions apply to these tax credits, and employers should consult with their legal and tax advisors for guidance.

On March 1, 2021, the Internal Revenue Service issued *Guidance on the Employee Retention Credit under Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act,* Notice 2021-20, which provides guidance for employers claiming the employee retention credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as modified by the Taxpayer

Certainty and Disaster Tax Relief Act of 2020 (Relief Act), for calendar quarters in 2020. The Notice also provides answers to questions such as:

- who are eligible employers?
- what constitutes full or partial suspension of trade or business operations?
- what is a significant decline in gross receipts?
- how much is the maximum amount of an eligible employer's employee retention credit?
- what are qualified wages;
- how does an eligible employer claim the employee retention credit?
- how does an eligible employer substantiate the claim for the credit?

IRS Notice 2021-20 can be found at: https://www.irs.gov/pub/irs-drop/n-21-20.pdf

Is unemployment compensation subject to taxation?

Yes, and this may surprise some recipients. Recipients should consider setting aside some of the receipts for purposes of making quarterly estimated income tax payments (using Form 1040-ES) or implementing voluntary withholding. The Internal Revenue Service issued a statement on August 18, 2020, that read in part:

> "With millions of Americans now receiving taxable unemployment compensation, many of them for the first time, the Internal Revenue Service today reminded people receiving unemployment compensation that they can have tax withheld from their benefits now to help avoid owing taxes on this income when they file their federal income tax return next year. By law, unemployment compensation is taxable and must be reported on a 2020 federal income tax return. Taxable benefits include any of the special unemployment compensation authorized under CARES Act. Withholding is voluntary. Federal law allows any recipient to choose to have a flat 10% withheld from their benefits to cover part or all of their tax liability. To do that, fill out Form W-4V, Voluntary Withholding Request, and give it to the agency paying the benefits. Don't send it to the IRS. If the payor has its own withholding request form, use it instead."

Other Small Business Administration Programs for COVID-19 Relief

The U.S. Small Business Administration currently offers approximately 30 national programs related to COVID-19 funding and relief. Descriptions of the programs can be found here:

https://www.sba.gov/funding-programs/loans/coronavirus-relief-options

and here:

https://www.sba.gov/covid-19-funding-sources/index.html

Employees Returning to the Workplace

The Centers for Disease Control and Prevention ("CDC") maintains a website intended to address some of the issues concerning the return to work by employees. That website address is: https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html

What are the symptoms of COVID-19 infection?

According to the U. S. Department of Labor, Occupational Safety and Health Administration ("OSHA"): "Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as asymptomatic cases, have experienced no symptoms at all. According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure."

How does COVID-19 infection spread?

According to OSHA: "The virus is thought to spread mainly from person-to-person, including:

- Between people who are in close contact with one another (within about 6 feet).

- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

It may be possible that a person can get COVID-19 by touching a surface or object that has SARS-CoV-2 on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads. People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads. Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur. The Centers for Disease Control and Prevention ("CDC") website provides the latest information about COVID-19 transmission: www.cdc.gov/coronavirus/2019-ncov/about/transmission.html ."

Generally, when should an employee who has been exposed to COVID-19 infection return to work?

Obviously it will be very difficult for anyone to know with certainty if exposure to the virus has occurred. This is why social distancing is being emphasized in our country. A person who has

been exposed to the virus can be "asymptomatic" in that the person has no symptoms and may not know he or she has been exposed. Such a person can nevertheless pass along the virus to others. According to the CDC, a person is most likely to be contagious when exhibiting symptoms. So, the best an employer can hope to do is to emphasize social distancing, follow the sanitation protocols recommended by the CDC and other public health authorities, and implore each of its employees to stay away from work if there is any reason to suspect the employee has been in contact with a victim of the virus and especially if the employee has any flu-like symptoms.

Generally, when should an employee who has been diagnosed with COVID-19 infection return to work?

How long someone is actively sick can vary, so the decision on when a person who has had the virus may return to work will vary. The decision involves considering specifics of each situation including disease severity, illness signs and symptoms, and results of laboratory testing for that person. Getting a release from a doctor might be a good idea, but in the current crisis our medical caregivers are stressed, making medical releases temporarily unrealistic. On July 20, 2020, the CDC changed its recommendations concerning the length of time that that employees should stay away from work and self-quarantine. For those recommendations, go to: https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html

Can an employer require employees to self-report regarding exposure to, symptoms of, or diagnosis of COVID-19 infection?

Yes, OSHA recommends that employers adopt policies and procedures for the prompt identification of employees who are sick or experiencing symptoms of COVID-19. According to OSHA: "Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure."

Can an employer require employees to submit to testing for COVID-19?

Yes, if done properly and with planning. An employer may implement a screening process, such as taking each employee's temperature, before employees enter the workplace. If the employer elects to do this, the following should be considered:

- Where the tests will be conducted?
- How they will be conducted (for example, can the employer secure sufficient thermometers that do not require physical contact)?
- How will the privacy of the employee be maintained (remembering HIPAA requirements)?
- Who will conduct the tests?
- Will all employees be tested every day, or will there be a gating or screening process to determine who will be tested?
- How will social distancing be enforced while employees wait to be screened and tested?

- How much time will the process take (this is particularly important for pay purposes for non-exempt employees)?
- Will screening and testing extend to contractors, customers, vendors, and visitors?
- On October 21, 2020, the Centers for Disease Control and Prevention issued revised testing guidance for employers not engaged in healthcare: https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/testing-non-healthcare-workplaces.html

Can an employer require employees to return to the workplace following a period of temporarily working remotely in response to the COVID-19 pandemic?

Yes, an employer that implemented a remote working arrangement in response, directly or indirectly, to the requirements of local civil authority can end that arrangement. The employees may be required to resume their normal duties at their normal workplaces. Generally, an employee who refuses to resume normal duties at the normal workplace may be terminated.

Can an employer require employees to return to the workplace following a period of working less than full-time (half days or reduced hours, either as part of a work-sharing program or not) in response to the pandemic?

Yes, the employer's returning to a full work schedule would end the employee's right to benefits under a work-sharing arrangement with the local Employment Security Commission or equivalent State administrator of unemployment benefits. Generally, an employee who refuses to resume normal duties during normal hours may be terminated.

Can an employer require employees to return to the workplace following a furlough, layoff, or termination in response to the pandemic?

No, the status of an employee who has been furloughed, laid off, or terminated is such that the employer may offer reemployment, which offer the employee may accept or decline. If the employee accepts, then the administrative burdens normally associated with new hires may be avoided in some cases. Of course an offer of rehire may under State law be required to be communicated to the local Employment Security Commission or equivalent State administrator of unemployment benefits, and an offer of reemployment would normally end the employee's right to unemployment compensation.

What should employers consider in the event an employee declines to return to work at the employee's normal workplace?

Generally, an employee who refuses to return to work can be terminated by the employer. There are, however, exceptions the employer should consider:

- What does the employer's normal leave (sick leave, vacation, or paid time off) policy allow? With various government agencies urging "flexibility" on the part of employers,

employers should develop and implement a standard response to returning employees who request leave under a PTO or other policy. Employers may wish to consider temporarily suspending normal vacation and leave for reasons other than health or medical for a period of weeks or months to allow for recovery from the disruption caused by the COVID-19 pandemic.

- What are the employee's leave or accommodation rights under the Americans with Disabilities Act ("ADA") if the employee refuses to return to work due to the risk of COVID-19 infection? Under the ADA a fear of COVID-19 infection is generally not a covered disability, and the ADA does not grant an employee a general right to refuse work due to any disability (because that would mean the employee is refusing to perform the essential functions of the job). There may be situations in which the employee has some recognized disability that may need to be considered, however, and in that event the employer may need to grant accommodation to the employee; if such facts are encountered, the employer should engage in an interactive process with the employee to determine the proper course of conduct (and an experienced employment attorney should be consulted throughout the process). The Centers for Disease Control and Prevention has issued two notices regarding people who are at increased risk of contracting COVID-19 which employers should consider when an employee requests an accommodation.
    - One addresses people over the age of 60: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html.
    - The other addresses people of any age who have underlying medical conditions: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html.

Will an employee's return to work depend upon school re-openings?

Practically, it may, but the provisions of the FFCRA that addressed leave in conjunction with schools being open were not extended beyond December 31, 2020.

How should an employer prepare the workplace for the return of employees?

Employers will need to adopt basic infection prevention measures and additional ones as may be appropriate for the specific workplace. For example, employers might:

- Promote frequent and thorough hand washing by providing employees and workplace visitors with a place to wash their hands. If soap and running water are not immediately available, the employer should provide alcohol-based hand sanitizers.

- Require employees to stay home if they are sick.

- Require companies that provide services and temporary staffing to keep their employees who are sick out of the employer's workplace.

- Encourage respiratory etiquette, including covering coughs and sneezes.

- Provide workplace visitors with tissues and trash receptacles.

- Discourage employees from using other employees' workspaces and equipment.

- Enhance housekeeping practices, including more frequent cleaning and disinfecting of surfaces, equipment, door handles, and other parts of the work environment.

- If the workplace is one that is normally deemed to be at higher risk for the spread of COVID-19 infection, such as a hospital or nursing facility, then provide adequate personal protective equipment (PPE) to appropriate employees.

- Limit the use of common and high-traffic areas in the workplace, such as cafeterias, breakrooms, conference rooms, and auditoriums.

- Limit face-to-face meetings and encouraging use of electronic communication.

- Minimize non-essential business travel and isolate employees following travel.

What about employees wearing facemasks?

The Occupational Safety and Health Administration (OSHA) from time to time issues guidance, in the form of frequently asked questions and answers, regarding the use of masks in the workplace; that guidance can be found here: https://www.osha.gov/SLTC/covid-19/covid-19-faq.html. Beyond the OSHA guidance, the Centers for Disease Control and Prevention has recommended cloth face coverings for everyone; see: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html. While both OSHA and the CDC recommend masks, each employer has to determine whether or not to furnish masks to employees, and many employees will wish to bring their own masks to the workplace. In addition, a growing number of State and local laws may require employees to wear masks in the workplace.

Does OSHA have more recent guidance?

Yes, in addition to reiterating its recommendation for all employees to face coverings, on January 29, 2021, OSHA issued "*Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*" which is stronger and more specific than its prior guidance and can be found at: https://www.osha.gov/coronavirus/safework In this extensive release, OSHA among other things states: "Employers should implement COVID-19 Prevention Programs in the workplace. The most effective programs engage workers … in the program's development, and

include the following key elements: conducting a hazard assessment; identifying a combination of measures that limit the spread of COVID-19 in the workplace; adopting measures to ensure that workers who are infected or potentially infected are separated and sent home from the workplace; and implementing protections from retaliation for workers who raise COVID-19 related concerns."

Can an employer require employees to submit to COVID-19 vaccinations?

Currently there is no Federal Government requirement for citizens to receive vaccinations, but the general guidance from the EEOC has been that employers should educate about the benefits of a vaccine and then solicit voluntary vaccination. Under the Americans with Disabilities Act, if an employee has a health condition that reasonably prevents vaccination, then the employer cannot require it. There are also religious objections to vaccinations by some employees to consider. Concerning workplace safety, in 2009 OSHA took the position that an employer could require employees to take flu shots, while at the same time warning "… an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that creates a real danger of serious illness or death (such as serious reaction to the vaccine) may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 pertaining to whistle blower rights." *Go to:* https://www.osha.gov/laws-regs/standardinterpretations/2009-11-09; in other words, there could be a cause of action against the employer for mandating vaccinations. The EEOC discusses mandatory vaccinations at: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Are there immunity protections in place that protect employers and businesses?

Some States (including Louisiana, North Carolina, and Oklahoma) have enacted laws that seek to shield employers and business from liability related to COVID-19. The legislation is generally designed to protect employers and businesses from civil liability related to the spread of COVID-19, except in limited situations such as those involving the gross negligence or intentional misconduct of the employer or business. Governors in other States (including Arkansas and Mississippi) have issued Executive Orders that attempt to do the same thing.