

Fear of the Workplace What to Expect

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Employee Anxiety

- Contracting the Virus
- Exposing Family Members to the Virus
- Violation of Stay-At-Home Orders
- School Closures

Employer Concerns

- Providing a Safe Workplace
- Compliance with Ever Changing Safety Guidance
- Staffing Concerns
- Unemployment Claims

Changing Legal Landscape

- **Missouri** – The Rural Community Workers Alliance and an unnamed worker have filed a lawsuit against Smithfield Foods, Inc., and Smithfield Fresh Meats Corp., alleging that despite “the horrific situation facing many of its employees around the country and abundantly clear guidance from the [CDC] and state public health officials,” the giant, very profitable meat producer continues to operate its plant in Milan, Missouri, in a way that helps spread COVID-19.
- **Illinois** – Wrongful Death action filed against Wal-Mart alleging employer failed to take precautions to protect employee from contracting the virus at work.
- **Texas** – Civil suit alleging wrongful discharge in violation of public policy (retaliation) for refusing to work onsite in violation of local Shelter in Place Order.
- Workers Compensation Claims

Managing Leaves of Absence

- Paid Leave

- Emergency Paid Sick Leave Act (EPSLA)
- Expanded Family and Medical Emergency Leave Act (EFMLEA)
- Short Term Disability
- State Paid Sick Leave
- Existing Paid Time Off Policies

Managing Leaves of Absence (Cont.)

- Unpaid Leaves of Absence
- Americans with Disabilities Act
- State Disability Statutes
- FMLA
- Existing Unpaid Leave Policies

EPSLA and EFMLEA Analysis

Employee states He/She cannot report to work:

1. Can the employee work from home?

- **Yes** – Not eligible for EPSLA or EFMLEA
- **No** → Move to Question 2

2. Does employer employ 500 or more U.S. based employees?

- **Yes** → Not eligible for EPSLA or EFMLEA (see question 5)
- **No** → Move to Question 3

EPSLA and EFMLEA Analysis (Cont.)

3. Is the employee excluded from EPSLA/EFMLEA benefits as a health care provider or a first responder?

- **Yes** → Not eligible for EPSLA or EFMLEA move to Question 5
- **No** → Move to Question 4

EPSLA and EFMLEA Analysis (Cont.)

4. Does the employee meet one of the Six FFCRA qualifying reasons for leave?

- a) Employee is subject to Federal, State or local quarantine or isolation order related to COVID-19 (May not include state or local stay-home orders)
- b) Employee is advised by a health care professional to self-quarantine due to concerns related to COVID-19;
- c) Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
- d) Employee is caring for an individual subject to Federal, State or local quarantine or isolation order or by direction of health care professional;
- e) Employee is caring for a child because of school or childcare facility closure related to COVID-19; or
- f) Employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

EPSLA and EFMLEA Analysis (Cont.)

- Yes → Full time employees eligible for up to 80 hours of paid EPSLA for reasons a – f. Compensation is subject to statutory cap.
- If leave is for reason (e – school closure) and employee has worked at least 30 days, employee is eligible for 2 weeks of unpaid leave and up to 10 additional weeks of partially paid leave.
- No qualifying reason → Move to Question 5
 - Examples on non-qualifying reasons:
 - Live with elderly parents
 - Heart Condition/Asthma/Diabetic
 - Immunocompromised
 - Pregnancy
 - Age

Special Expanded Benefits

5. Does the employee qualify for special expanded benefits under Federal, State or Local order?

- Pandemic Unemployment Assistance (PUA) provides a weekly federal benefit for employees that do not qualify for state unemployment benefits and who certify under penalty of perjury that they are able to work and available to work but are unemployed or partially unemployed because:
 1. The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
 2. A member of the individual's household has been diagnosed with COVID-19.
 3. The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19.
 4. A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.
 5. The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.

Special Expanded Benefits (Cont.)

6. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 7. The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.
 8. The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19.
 9. The individual has to quit his or her job as a direct result of COVID-19.
 10. The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.
 11. The individual is an independent contractor who is unemployed, partially unemployed, or unable or unavailable to work because the COVID-19 health emergency has severely limited their ability to continue performing their customary work activities, and have been forced to suspend such activities.
 - **Yes** → Provide information regarding unemployment benefits. Eligibility is not determined by Employer.
 - **No** → Move to Question 6.
- NOTE: Like recipients of state unemployment benefits, PUA recipients will be eligible for the \$600 FPUC benefit for any week in which they are eligible for at least \$1 in underlying PUA benefits.

Disability Accommodation and FMLA

6. Is employee a qualified individual with a disability (ADA) or have a serious health condition (FMLA)?
- **Yes** → Proceed to ADA and/or FMLA unpaid leave analysis.
 - **No** → Move to Question 7.

Employer Leave Policies

7. Does the employee have accrued but unused PTO or vacation available?

- **Yes** → Offer paid time off to employee as appropriate.
- **No** → Consider unpaid leave of absence.
- **No** → Discipline for violation of attendance policies or failure/refusal to report for work.

Safety Measures to Protect Employees

Evaluate Potential Worker Exposure Based on Job

- Pursuant to OSHA Guidance, there are four risk exposure levels: very high, high, medium, and lower risk.
 - **Very High Risk** – doctors, nurses, dentist, first responders, laboratory workers etc. (performing intubation, cough induction, bronchoscopies, invasive specimen collection).
 - **High Risk** – Healthcare delivery and support staff exposed to known or suspected COVID-19 patients e.g., doctors, nurses and hospital staff that enter patient rooms.
 - **Medium Risk** – Job requires frequent and/or close contact (6 ft) with people who may be infected with COVID-19, but who are not known or suspected patients. Includes workers in areas with ongoing community transmission and those who have frequent contact with travelers from international locations (e.g. schools, high-population-density work environments, some high-volume retail settings).
 - **Lower Risk** – Jobs that do not require contact with people known to be, or suspected of being infected and does not require frequent close contact (6 ft) with the general public.

Steps to Reduce Risk of Employee Exposure

- Restricting the number of workers present on premises and increase distance between work spaces
- Provide PPE
- Enforce social distancing
- Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace

Steps to Reduce Risk of Employee Exposure (Cont.)

- Encourage employees to stay home when sick and contact health care provider
- Educate employees about OSHA Best Practices to Prevent Spread of Infectious Diseases
- Develop Procedure for Prompt Identification and Isolation of Sick Employees
- Consider staggered shifts or modifications to the work environment such as one-way aisles, using Plexiglas or tables to create physical barriers between customers and co-workers

COVID – 19 Testing in the Workplace

EEOC Approved Workplace Screening Mechanisms

- **Screening for Symptoms:** Employers may ask employees entering the workplace about any symptoms identified by public health authorities as associated with COVID-19. For instance, employers may ask employees about fever, cough, shortness of breath, loss of smell or taste, as well as gastrointestinal problems such as nausea, diarrhea and vomiting.
- **Temperature Checks:** Employers may require all employees to have a daily temperature check before entering the workplace and may maintain a log of the results. Employers must maintain the confidentiality of this medical information.
- **COVID-19 Tests:** Employers may administer a COVID-19 test before permitting employees to enter the workplace without running afoul of the ADA. Employers considering this course of action should review guidance from the U.S. Food and Drug Administration concerning safe and accurate testing.
- Employers must maintain the confidentiality of medical information obtained through screening.

Questions



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