



UNCOMMONLY INDEPENDENT

Coronavirus disease 2019 questions and answers for U.S. employers

LAST UPDATED: MARCH 20, 2020

Please note: *The spread of the coronavirus (COVID-19) is a quickly changing situation. For the most up-to-date information and resources, visit the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). The CDC should be your primary source for emergency preparedness and response to the coronavirus. The below information is designed to guide businesses to known, credible online resources covering the coronavirus and does not constitute medical advice.*

Employers with offices outside the U.S. should review their statutory obligations for reporting suspected cases and paid time off policies with employment counsel to ensure compliance with local and national legislation.

Sections:

Employment issues

- Temperature checking and fever screening
- Exposed employee
- Symptomatic employee
- Confirmed case
- Notifying employees
- Americans with Disabilities Act (ADA)
- New I-9 Form, employers navigating remote workers

Coronavirus Testing

Leave

- General
- Furloughs and layoffs
- Paid sick leave
- USERRA / military leave
- Return to work

Unemployment

Compliance issues

- Cafeteria plans/election changes/FSAs
- COBRA rights/COBRA coverage/subsidizing COBRA coverage

- Eligibility/losing eligibility/amending the plan/deemed hours in the measurement period
- Premiums / employer pre-payment and recoupment

Travel and return to work

Health coverage

- Medical plan/HSA
- Telemedicine coverage
- Pharmacy

Business risks

- General insurance
- Property and business interruption
- General liability, excess and umbrella
- Pollution legal liability
- Workers' compensation
- Occupational Safety and Health Administration (OSHA)
- Cyber

Preparedness planning

Coronavirus facts

- High-risk individuals
- Pregnancy and children

Industry-specific questions

Employment issues

Temperature checking and fever screening

Are we permitted to fever screen our employees?

Yes, but subject to some guardrails and best practices.

A fever screen is a form of medical examination that creates issues under the Americans with Disabilities Act (ADA). Typically, medical examinations need to be job-related and consistent with business necessity. For example, the employer should have a reasonable, objectively-based belief that the employee's ability to perform essential job functions will be impaired by a medical condition, or that the employee will pose a direct threat to self or others due to a medical condition.

That means that, under normal circumstances, widespread fever screening of employees who objectively appear asymptomatic would be prohibited. But these are not normal circumstances, and in 2009 the Equal Employment Opportunity Commission (EEOC)

carved out a limited exception for fever screening during a pandemic, an exception equally relevant today. In fact, the EEOC has just updated its guidance for the coronavirus pandemic:

During a pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?

Generally, measuring an employee's body temperature is a medical examination. If pandemic influenza symptoms become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature. However, employers should be aware that some people with influenza, including the 2009 H1N1 virus or COVID-19, do not have a fever.

Because the CDC and state/local health authorities have acknowledged community spread of the coronavirus and issued attendant precautions as of March 2020, employers may measure employees' body temperature. As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

So, if an employer is inclined to conduct fever screens, what are the guardrails?

- First, the pandemic must be widespread in the community, as assessed by state or local health authorities or the CDC. The EEOC says this requirement has been met.
- Second, perform the testing in a nondiscriminatory manner – don't single out employees by race, sex, etc. for the fever screening.
- Third, tell the employees that the testing is intended to determine only whether the employee has coronavirus symptoms (and, in fact, that should be the only reason for the testing).
- Fourth, have the screens conducted by medical professionals, if available in the workplace. If they're not, utilize management or supervisors to conduct the testing, and ensure they're trained on how to do it. Conduct the testing with as much privacy as reasonably possible, and not within view of other employees.
- Fifth, be as noninvasive as reasonably possible. There are a variety of temperature-gauging devices available that are far less intrusive than an oral thermometer.
- Sixth, treat the results as appropriately confidential. Where warranted, employers may be permitted to share *relevant* evidence with public health officials, as part of the community's pandemic risk mitigation efforts led by

those officials. But don't keep the information in the employee's personnel file, for example.

- Seventh, if the employees are in a collective bargaining unit, ensure nothing in the bargaining agreement prohibits the screening.
- Finally, remember that an employee might be infected with the coronavirus and not have an elevated temperature. A negative screening result does not guarantee the employee is not infected.

The Occupational Safety and Health Administration (OSHA) has issued general guidance to employers on measures to ensure the safety of their employees during this pandemic. That guidance is worth reviewing.

See alert published on fever screens here.

Updated: 3/18/2020

Employee was exposed to someone suspected to have coronavirus

If an employee notifies us that they were exposed to an individual suspected of the coronavirus, what do we need to do to make sure we protect our other employees?

The employer should request the exposed employee work from home for 14 days, per CDC guidance, and monitor for symptoms of fever (check twice a day), cough or shortness of breath. Have the employee complete the CDC Coronavirus Self-Checker if they develop symptoms and follow the guidance. The employer should have the exposed employee identify people in the workplace they were in close contact with since the first date of their exposure. Close contact is defined as within 6 feet for more than 10 minutes, having direct physical contact with the person, or exposure to respiratory secretions (such as a cough). The employer should notify the people of their potential exposure without sharing the employee's information. If symptoms develop, the employee and others should complete the Coronavirus Self-Checker and follow the guidance.

In asymptomatic secondary exposure (people who have been in contact with people who are also asymptomatic but have been possibly exposed), the CDC is recommending that people within 6 feet of these secondary exposures in the workplace also be notified, begin monitoring their health twice a day for fever, cough and shortness of breath, and if symptoms develop, they should complete the CDC Coronavirus Self-Checker and follow the guidance. More information about general preparedness for businesses is available here: CDC Interim Guidance for Businesses and Employers.

Reference - CDC

Employee shows symptoms on the job

If we have an employee on-site showing fever and flu-like symptoms, what steps should we take?

Employers should follow the [CDC's advice](#) relating to ill employees.

The [CDC recommends](#) that employees who appear to have *acute* respiratory illness symptoms, such as cough or shortness of breath, upon arrival to work or who become sick during the day, should be separated from other employees and sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

Individuals should complete the CDC [Coronavirus Self-Checker](#) and follow the guidance if they feel sick with fever, cough or difficulty breathing, and have been in close contact with a person known to have the coronavirus, or if they live in or have recently traveled from an area with ongoing spread of the virus. Lockton is recommending the use of telemedicine providers for those who are not seriously ill, as those providers can also evaluate patients and manage care virtually. Providers will order testing based on the patient's symptoms. Public health departments are performing the testing and, on March 9, commercial lab tests became available through Quest and LabCorp. The healthcare professional will work with the state's public health department and the CDC for notification.

Given this guidance, it may not be advisable to have the employee report to your on-site clinic, for fear of infecting staff there, as well as other employees. If it appears likely the employee has the virus, or if healthcare workers confirm the employee does, notify other employees of their potential exposure but it is typically unnecessary to identify the employee by name.

Confirmed coronavirus case in workplace

If we identify a confirmed case of the coronavirus in our workplace, what do we need to make sure we do to protect our other employees? Is OSHA the best place to consult to help decide whether to close an office, move to remote work, etc.?

Yes, Lockton recommends looking to [OSHA](#) and the [CDC](#) for guidance on protecting employees.

The employer should notify the employee(s) of their exposure to the coronavirus in the workplace without sharing patient information. Additionally, the employer should request the exposed employee(s) work from home a minimum of 14 days, per CDC guidance, and monitor for symptoms of fever, cough or shortness of breath. If symptoms develop, the employee should complete the CDC [Coronavirus Self-Checker](#) and follow the guidance.

The provider who cares for a patient diagnosed with the virus has a responsibility to report the case to the public health department. The employer may choose to report to public health officials, consistent with applicable law. Lockton recommends the employer refer to their local and state health departments for specific concerns of suspected or actual exposures: [CDC state and territorial health department websites](#).

In terms of employee risk, Lockton recommends employers educate their employees, as needed, based on the CDC's risk assessment guidance for next steps: [CDC Interim U.S. Guidance for Risk Assessment and Public Health Management](#).

The local public health department will provide guidance and mandated reporting requirements, or notifications based on risk exposure to other people and businesses. If exposure concerns remain outside these guidelines, the employee(s) are advised to contact their public health department or their primary care clinic for next steps.

- In general, testing for the coronavirus is still limited to certain providers and public health offices; however, commercial tests have been developed and are being distributed.
- To limit exposure to other high-risk populations, it's recommended employee(s) use telemedicine, when possible.
- Symptomatic employees or other people with exposure should complete the CDC [Coronavirus Self-Checker](#) and follow the guidance. Individuals who don't have internet access should call their healthcare provider for treatment guidance.
- Consider a deep cleaning of the workplace.

Notifying employees of possible exposure

Is it a HIPAA violation if we tell public health officials an employee of ours has been tested for or diagnosed with the coronavirus? Can we tell other employees they might have been exposed?

Most employers (unless they are healthcare providers) are not regulated by HIPAA directly, although their health plans *are* subject to HIPAA. If you learn of a coronavirus diagnosis through a claim submitted to your health plan, the HIPAA privacy rules will apply. However, those rules have exceptions allowing protected health information (PHI) to be disclosed without a patient's authorization, including in the following cases:

- As necessary to treat the patient, or to treat a different patient.
- *To a public health authority who is authorized by law to collect or receive the information.*
- *To anyone, as necessary, to prevent or lessen a serious and imminent threat to the health and safety of a person or the public, to the extent state law allows the disclosure.*

When making a disclosure, disclose only the minimum necessary information. For instance, it may be permitted to say, "An employee with whom you may have come into contact has tested positive for COVID-19." However, it may be unnecessary to say, "John Smith, who works in the Human Resources department, tested positive for COVID-19 on Tuesday and is being treated at Downtown Memorial Hospital."

As a rule, we urge you to treat any employee health information as sensitive, even in health emergencies such as this one. State privacy laws might also come into play here, and though many of them also have public health exceptions, you'll want to exercise caution just as you would in the normal course of action. We encourage you to consult with your legal counsel on such matters.

How does HIPAA impact the way employers handle employees with suspected or confirmed cases of the coronavirus?¹

An individual's health information is confidential and should not be shared with employees. Employers must understand that according to guidance from the CDC's NIOSH, if an employee is confirmed to have the coronavirus, employers must maintain confidentiality, as required by the ADA. Employers should notify the local health department and follow their guidelines for notification of fellow employees with possible exposure to the coronavirus in the workplace, without sharing patient information. Additionally, employers should remind employees to self-monitor for

¹ CDC NIOSH

symptoms of fever, cough or shortness of breath. Public health contacts can be found at [CDC state & territorial health department websites](#).

Patient and employee confidentiality

- Under HIPAA, employees' health status is considered their private PHI and cannot be shared.
- If there is significant concern due to exposure or symptoms, employees should reach out to their telemedicine primary care team for next steps and/or to be referred to local public health departments for testing.

In asymptomatic secondary exposure (people who have been in contact with people who are also asymptomatic but have been possibly exposed), the CDC is recommending that people within 6 feet of these secondary exposures in the workplace also be notified and begin monitoring their health twice a day for fever, cough and shortness of breath. More information about general preparedness for businesses can be found in the CDC's [guidance for businesses and employers](#).

If an employee believes they have been exposed to others who have tested positive for the coronavirus, can an employer require that an employee disclose that to us confidentially?

Employers may require that an employee disclose health information with respect to whether the employee poses a direct threat to the health or safety of himself/herself or others, per the ADA. While an employee may allege that he or she is "regarded as" having a disability, or the employee claims that he or she is being discriminated against for "association" with a person diagnosed with the coronavirus, the direct threat defense would likely be applicable.

Updated: 3/19/2020

If an employee calls in sick and we suspect it may be due to the coronavirus, but the employee didn't mention it, what information may we ask for from the employee?

EEOC guidance allows ADA-covered employers to ask employees who report feeling ill at work, or who call in sick, if they are experiencing symptoms associated with the

coronavirus, including fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Updated: 3/19/2020

Disability-based discrimination

Do ADA rules apply to the coronavirus, given that it is a transitory or temporary condition?

Yes, the ADA applies even though the coronavirus is likely considered a transitory condition. The ADA regulates employers' disability-related inquiries and medical examinations for all applicants and employees, including those who do not have ADA-defined disabilities. Further, the ADA prohibits covered employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat" (i.e., a significant risk of substantial harm even with reasonable accommodation). Third, the ADA requires reasonable accommodations for individuals with disabilities (absent undue hardship) during a pandemic.

In addition to the ADA limiting an employer's ability to ask disability-related questions and conduct medical examinations, the ADA could also come into play because an employee with the coronavirus could be *perceived* as having a disability. In this circumstance, the employer is liable under the ADA for employment actions taken based on an employee's contraction of the virus or *perceived* contraction.

The EEOC recommends employers follow [CDC guidelines](#) regarding excluding employees from the workplace. This will protect an employer from a claim by the employee that they were excluded based on a disability or because they were perceived to be disabled, even if that was not the case.

These [guidelines](#) from the EEOC are instructive.

Please note that because the coronavirus outbreak has been declared a pandemic, employers may have more flexibility relating to testing and questioning their employees regarding the virus and its symptoms.

New I-9 Form, employers navigating remote workers

Beginning Friday, May 1, 2020, employers must use a new version of Form I-9 for Employment Verification Eligibility, which is required for new hires and reverifications. The existing form expired last year and the Department of Homeland Security (DHS) had temporarily extended its validity.

The new form is virtually unchanged from the older version, except for minor technical updates to the instructions.

At this time many employers are developing flexible working arrangements, including work-from-home options, as part of their communicable disease preparedness plans and working through coronavirus. One area of concern with remote workforces is navigating the requirement for employers or their authorized representatives to review original documents in completing Section 2 of the Form I-9.

DHS announces Form I-9 flexibility while employers navigate remote workforce

The Department of Homeland Security (DHS) made an important announcement at a time when many employers are developing flexible working arrangements. Until now, DHS has been inflexible on the regulation requiring review of original documents in completing Employment Eligibility Verification (Form I-9).

DHS has stated that due to precautions implemented by employers and employees related to physical proximity associated with the coronavirus, employers with employees taking such precautions will **not** be required to review the employee's identity and employment authorization documents **in the employee's physical presence** – giving employers an option to avoid designating an **authorized representative**.

In doing so, the following directives were set forth:

- Employers must inspect the Section 2 documents remotely (over video or email, for example) and obtain, inspect, and retain copies of the documents, within three (3) business days for purposes of completing Section 2. Retaining copies of documents is voluntary unless you participate in E-Verify, except in this case.
- After normal operations resume, employers should:
 - Require all employees who were onboarded using this remote verification to report to their employer within **three business days** for in-person

- verification of identity and employment eligibility documentation for Form I-9 purposes.
- Enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field.
- Add "*documents physically examined*" with the date of inspection to the same field on the form, or to Section 3 as appropriate.
- Employers should have written documentation of their remote onboarding and telework policy in place for each employee.

These provisions are allowed for a period of 60 days from OR within 3 business days after the termination of the National Emergency, whichever comes first.

This provision only applies to employers and workplaces that are operating remotely; not so if there are employees physically present at a work location. DHS has said they will evaluate situations on a case-by-case basis if newly-hired or existing employees are subject to coronavirus quarantine or lockdown protocols.

Keep in mind, current I-9 rules granting broad permission for employers to designate an **authorized representative** to review the documents and complete page 2 is still permitted. Even so, the employer is still liable for any violations committed by the designated person.

USCIS announced March 18 their offices will temporarily close to the public until at least April 1 to help slow the spread of the coronavirus.

Updated: 3/20/2020

Coronavirus testing

Who should get tested?

A healthcare provider (HCP) will determine if you should be tested, and an HCP order is required for the test. Contact either your established primary care provider via phone or telemedicine provider to perform a remote risk assessment. An HCP will ask questions to assess your level of risk for infection, walk through your signs and symptoms to determine if they are consistent with the coronavirus, and determine if your signs and symptoms can be explained by other causes. If laboratory testing is appropriate, your

HCP will work with health officials in your state, who in turn will work with the CDC. *Your HCP or local health officials will provide instructions on where you should go to have the test sample collected.*

Can a person test negative but later test positive for the coronavirus?

Using the CDC-developed diagnostic test, a negative result means the virus that causes the coronavirus was not found in the person's sample. In the early stages of infection, it is possible the virus will not be detected. A negative test result for a sample collected while a person has symptoms likely means the coronavirus is not causing their current illness.

I'm seeing offers from companies to send a coronavirus test kit to my home. Is this an approved test method?

As of March 18, 2020, per our Clinical Advisory Team's direct communication with the FDA, "there are no authorized tests for home collection for COVID-19 and the recently updated policy guidance is not applicable for home testing. If this changes, the information will be included on our website in the EUA authorizations." To stay up-to-date on the latest FDA approvals for coronavirus testing, please visit <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-diagnostic-testing-sars-cov-2>.

If I do purchase a home test kit, can the results be used by my healthcare provider (HCP) or public health authority to clear me from self-quarantine or public health-ordered quarantine?

Home test kits that require an individual to self-collect a sample are not approved for clinical diagnosis or public health use. Test kit development and authorization are rapidly changing, and it is likely that a home test kit will be approved in the weeks ahead. An HCP will still have to perform a remote risk assessment of the individual before the home test kit will be shipped to the individual.

I'm hearing about vendors who will send a healthcare provider (HCP) to the home to collect my sample for coronavirus testing; is this authorized testing?

If an HCP has performed a risk assessment and determined that an individual meets the criteria for coronavirus testing, and an HCP makes a house call to collect the sample, it is authorized – as long as the test is being performed by an approved clinical laboratory.

I don't have symptoms, but I am concerned that my family or I may have been exposed while in the community. How do I get tested?

Currently, testing is being prioritized for individuals who are determined to have a high likelihood of infection (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html>). However, testing capacity in the U.S. is ramping up quickly, and HCPs will likely be able to broaden the criteria for coronavirus testing in the coming weeks.

What is the current status of testing capacity in the U.S.?

During the week of March 16, public health laboratories were processing the backlog of test samples that were collected from persons under investigation (PUI). As of March 18, there are 89 public health laboratories performing PUI testing along with the CDC, and these labs have processed approximately 45,000 samples. In addition, the FDA has approved COVID-19 clinical diagnostic testing from specific manufacturers through the FDA's Emergency Use Authorization authority. As of March 20, there are 26 clinical laboratories that have reported to the FDA that they are performing testing. Roche, the manufacturer of the high-throughput COVID-19 test, announced plans to ship 400,000 test kits to clinical laboratories by March 20.

What is the current turn-around-time (TAT) for test results?

Coronavirus testing is complex. The current TAT for results once the sample is received in the laboratory can be up to 5 days. This TAT will likely decrease in the coming weeks with high-throughput testing and more laboratories performing testing.

References

<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/testing-in-us.html>

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html>

<https://www.cdc.gov/coronavirus/2019-nCoV/lab/guidelines-clinical-specimens.html>

<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations#coronavirus2019>

<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-diagnostic-testing-sars-cov-2>

<https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-provides-more-regulatory-relief-during-outbreak-continues-help>

Updated 3/20/20

Leave

General

If public health officials order an employee to take specific action, what should we do?

It is important to note that public health orders are “legally enforceable directives issued under the authority of a relevant federal, state or local entity that, when applied to a person or group, may place restrictions on the activities undertaken by that person or group.” The CDC provides definitions of specific public health orders and what these mean to a group or individual.

If your employee has been ordered by public health officials to take specific action, you must support the employee in complying with this action. If working remotely is an option for the employee, then allow the employee to do so. Otherwise, follow the CDC’s guidance for businesses and employers. As this could be a stressful and frightening time for the employee, provide them with information about supportive resources, such as an Employee Assistance Program.

Can I make an employee stay home for two weeks without pay after returning from an international personal vacation?

Employers should really assess the risk by reviewing the State Department's travel alerts and the CDC’s risk assessment levels. If there is a high risk, employers can set forth expectations that the employee not come to the office for a 14-day period once they return. Under the Occupational Safety and Health Administration's (OSHA) general duty clause, employers have an obligation to protect their workforce from known hazards, and taking precautions to contain the spread of communicable diseases could fall under that requirement. They could set the expectation that anyone returning from any international travel is held to that standard. An employee traveling for personal reasons may feel they have been singled out due to their national origin (those visiting family in heavily infected areas, for example), which could lead to discrimination claims. Additionally, care should be taken not to discriminate unlawfully against an employee with an actual or assumed medical condition, or you may run afoul of the Americans with Disabilities Act (ADA).

Employers are encouraged to review and be flexible with current time off practices, to extend the reasons they would typically allow an employee to use such time during the quarantine.

Nonexempt employees need only be paid for actual hours worked, unless the employer has a policy or collective bargaining agreement that is more generous.

Before docking PTO banks or pay, we'd encourage employers try to work out a way for employees to work from home or, if asymptomatic, return to the office with limited access to others and strict guidance on precautions to take, such as increased hand washing and social distancing of at least six feet. If this is not possible, consider paying regular wages as a temporary emergency measure for a specified time frame, or offer unpaid leave instead of making the employee use accrued paid leave.

We also recommend providing the employee with advance notice whenever possible of the stipulations in place prior to their travel out of the country.

Furloughs and layoffs

What are some of the compliance considerations around furloughing employees due to potential business interruption? Additionally, if an employee's position does not allow them to work from home and they have already exhausted any available paid time off, should the company consider a furlough? Would unemployment benefits be a resource in the event of a furlough?

Many employers face having to furlough employees. A furlough is an involuntary leave of absence, but not an outright employment termination; a layoff is an outright termination. Employers may also consider simply reducing the hours worked by employees. It is, of course, up to the employer to decide whether a furlough is appropriate or necessary with respect to employees who have exhausted all available paid time off.

Compliance considerations relating to furloughs specifically include:

- Complying with emergency paid leave requirements that may be imposed by federal or state lawmakers.
- Avoiding discrimination in the selection of employees for furlough or layoff.
- Ensuring the federal WARN Act and any applicable state WARN Acts are followed for mass layoffs or plant closings.
- Avoiding violations of the Fair Labor Standards Act, such as failing to pay exempt employees their entire weekly salary if they work any portion of the workweek.

Unemployment benefits may be available to employees who are furloughed. Employers should refer to applicable state wage replacement laws regarding eligibility and waiting times for benefits. In some states, partial unemployment benefits may be available for

employees who work a partial workweek. Employers should use scheduling to try to maximize unemployment benefits for furloughed employees when possible.

Also see [Eligibility/losing eligibility/amending the plan/deemed hours in this measurement period.](#)

WARN Act issues

If we're forced to lay off a large number of employees or close a facility, are we subject to the WARN Act and its advance notice requirements (or pay and benefits in lieu of notice)?

Possibly. Federal and state WARN laws require, generally, 60-day advance warning of mass layoffs/closures, or alternatively 60 days of pay and benefits. Federal rules apply to employers with 100 or more employees; the event must affect 50 or more employees at a single worksite. State rules vary. Note that California has waived the 60-day notice requirement under the state's mini-WARN Act.

Federal and typical state law, include exceptions for "unforeseen business circumstances" and for faltering companies. The "unforeseen circumstance" situation might be a double-edged sword: The longer the employer delays layoffs/closings, the harder to say the situation is unforeseen. There are other exceptions for natural disasters. We recommend speaking to your employment counsel about these types of situations.

Paid sick leave issues

Can paid sick or family leave laws apply when employees work from home?

Yes. Many states, counties and municipalities have paid sick and family leave laws, and their requirements can vary significantly. If you send an employee home to work, typically the employee will still have protection under the law or ordinance, meaning if the employee – while working remotely – needed time off for the employee's own illness or to care for a family member, the law would operate just as if the employee had been coming into the office or other workplace. State and local paid leave laws vary considerably, so an employer should ensure it is complying with any such applicable state or local requirements. Employers may need to speak to employment law counsel about these matters.

If an employee has already used all their vacation and sick leave when they contract the coronavirus, are they entitled to further paid time off? If so, what laws apply here?

If an employee has used all paid leave the employer offers or that the law requires, then no, the employee would not be entitled to further paid time off. In some instances, an employer may *choose* to offer employees additional paid sick time to encourage employees who are ill or may be ill to stay home from work.

Keep in mind, an employee may be entitled to unpaid time off under the Family and Medical Leave Act (FMLA) if they qualify as having a serious health condition and are eligible to take leave. Unpaid leave may also be a considered a reasonable accommodation under the Americans With Disabilities Act (ADA) as may be determined through the employer's interactive process with the employee.

Updated: 3/17/2020

If employees are quarantined by public health officials because they've been exposed to the coronavirus, will short-term disability normally provide salary continuation? What if they're quarantined because they're sick? Different answer?

As it relates to short-term (and even long-term) disability programs, we expect a coronavirus diagnosis of to be treated as any other illness under those policies. However, for those individuals who are quarantined by public health officials but do not have a diagnosis, the situation is less certain. The answer will likely hinge on the definition of disability under the plan. Employers who self-insure short-term disability have the flexibility to expand coverage to include a quarantine in the absence of a diagnosis, but absences for this reason might just as well be addressed under a paid leave policy.

For individuals who request to stay home or for employers who cease operations and send all employees home out of an abundance of caution, fully insured disability programs likely will not provide coverage. Here too, employers might revisit their paid leave or salary continuation policies and proactively communicate potential scenarios with their employees.

USERRA / military leave

We have employees being called up for National Guard duty. What are our obligations with respect to their benefits and reemployment rights?

A great summary is available here:

https://www.dol.gov/agencies/vets/programs/userra/userra_fs

And a wealth of information is available here:

<https://www.dol.gov/agencies/vets/programs/userra/USERRA%20Pocket%20Guide#23>

Returns to work and doctors notes, etc.

We've heard a lot about not requiring a doctor's note to allow an employee to return to work, because (for example) public health officials are encouraging individuals to avoid seeing a doctor in person unless they are manifesting severe symptoms. How do we know the employee isn't still contagious? Is there a recommendation for a substitute to a doctor's note?

Lockton does not advise asking for a doctor's note to *verify an illness for purposes of an absence*. However, if someone has been ill for an extended period, then, at least at this time, Lockton *does* advise requiring a doctor's note that states the employee is *cleared to return to work*. In these cases, employers should be flexible in the format of the note. For instance, employers should consider accepting emailed notes from doctors as well as notes from doctors practicing telemedicine, if they offer this service (check with your telemedicine provider). If an employee has a doctor's note that states they can return to work 14 days after all symptoms subside, then that can be used for purposes of timing an employee's return to work.

If the coronavirus continues to rapidly spread, Lockton's position may change due to the increased burden on healthcare providers. Employers should remain flexible.

Employers should also encourage all employees who have symptoms of acute respiratory illness to stay home and not come to work until they are free of fever (100.4 F or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g., Tylenol or cough suppressants).

Unemployment

How are unemployment benefits impacted by the coronavirus?

DOL announced guidance urging states to review and be flexible with unemployment as it relates to the coronavirus in order to assist individuals affected by the disease.

Generally, unemployment insurance (UI) may require individuals to be able and available for work and to actively seek work, which could be problematic during a pandemic given the current recommendations of reduced travel and social distancing.

States have significant flexibility in implementing these requirements, as well as in determining the type of work that may be suitable given the individual's circumstances. In short, while UI is generally not intended to be used as paid sick leave, an individual may be quarantined or otherwise affected by the coronavirus and still eligible to make an unemployment claim, depending on state law.

Each state administers a separate UI program, but all states follow the same guidelines established by federal law. **For more information regarding rules in your state, contact your state's UI program. You can also view Lockton's grid of unemployment compensation and state temporary disability program responses to the coronavirus here.**

-
Updated: 3/18/2020

Compliance

Cafeteria plans/election changes/FSAs

Can I lower my dependent care FSA contribution if my child's daycare or school closes?

Yes. However, amounts already contributed to the FSA cannot be refunded, even if the employee fears they won't have expenses in the future against which to apply those funds. If the employer were to refund those dollars, the enforcement risk is low, but this is not something we can recommend.

Some carriers are offering employers the option of opening a "COVID-19 special enrollment period" midyear, due to the coronavirus, and are even offering

documents purporting to amend health plans and cafeteria plans to allow for this. Is this permitted?

The special open enrollment period is not permitted by the cafeteria plan rules, at least not to allow for pretax deductions from employees enrolling in the special enrollment period. The pandemic is not a cafeteria plan qualifying event, nor is there a change in eligibility (a prerequisite for most cafeteria plan qualifying events).

An employer could allow employees to enroll midyear and pay premiums on a *post-tax* basis, but unless the cafeteria plan allows for post-tax deductions, for a self-funded ERISA plan, ERISA might require the employee contributions to be held in trust, like a VEBA. (We note that the DOL does not require a plan to hold some post-tax contributions in trust, like COBRA contributions and retiree contributions, so it's possible to analogize to those situations.)

The documents that some carriers are providing, purporting to "amend the health plan, SPD and cafeteria plan," are shoddily prepared, do not (at least the one we've seen) contain actual amendatory language, and by could be construed to allow *any* employee the right to enroll.

Of course, the IRS has not been aggressive in policing the cafeteria plan rolls, but the employer should consider the cost implications of enrolling potentially many more employees midyear, who elected not to enroll and pay premium to the plan (i.e., share the risk) at the last open enrollment period.

Any concerns (other than the optics) if the employer wants to increase the cost of coverage to employees, including those on leave?

Increasing the cost of coverage just for those on leave will trigger a COBRA qualifying event.

Increasing the cost of coverage for all eligible employees, whether or not on leave, is permissible (unless a bargaining agreement or other contractually enforceable document or statement provides otherwise). If the cost increase to the employee is "significant" (conventional wisdom says that's 10% or more), the employer's cafeteria plan very likely is written to allow employees to change to a cheaper plan option, if available, or drop coverage altogether.

COBRA rights/COBRA coverage/subsidizing COBRA coverage

We are considering some layoffs. Will our employees who are laid off have a right to purchase COBRA coverage? Is it ok for us to subsidize COBRA coverage for a few months?

Please review the eligibility rules in your plan. If the employees lose eligibility due to employment termination, they are entitled to COBRA coverage.

If employees are merely furloughed and remain on your employee rolls, they might continue to be eligible depending on how your plan defines eligibility. For example, if your plan treats as eligible any employee considered a full-time employee under the Affordable Care Act, based on average hours over a measurement period, furloughed (not terminated) employees likely remain eligible for all or a portion of the remainder of the plan year. Their status as ACA full-time employees (and therefore, eligible employees) for the next plan year would be determined based on their average hours of service per week or month in the current measurement period, and you'll make that determination at the end of the measurement period.

You are certainly welcome to subsidize COBRA coverage for a period of time. Please note, however, that when you terminate your subsidy toward COBRA coverage (say, in three months or six months), that does not trigger a special enrollment right under HIPAA that would allow your spouse, for example, to add the spouse and the employee onto spouse's coverage through spouse's employer.

Eligibility/losing eligibility ... or not/amending the plan/deemed hours in this measurement period

We are considering some furloughs, hopefully short-term. We tie health plan eligibility to ACA full-time status and determine that status by tracking hours of service over a measurement period. Will our employees lose eligibility upon the furlough?

It's possible – even likely – a furloughed employee or an employee whose hours are reduced hasn't lost eligibility at all, at least not for medical benefits.

Many employers now tie eligibility to ACA full-time employee status and determine that status by tracking average hours of service per week or month over a prior measurement period, usually a 12-month period. That is, employees' hours are measured over an extended measurement period, and those employees averaging at least 30 hours of service per week are considered ACA full-time employees – and thus eligible for at least medical coverage – for an ensuing "stability period," which is typically the plan year.

Many employees whose hours are affected by the coronavirus are in the middle of such an ACA stability period for which they earned ACA full-time employee status last year.

As long as the employee hasn't had employment *terminated*, eligibility likely continues through the end of the current plan year.

Now, *newly hired* full-time employees are determined to be ACA full-time employees on a *month-to-month* basis until they've cleared their first full *standard* measurement period. As these employees are furloughed, before completing that first full standard measurement period, they'll cease to be considered ACA full-time employees. To maintain their eligibility would, ideally, require a plan amendment, but you might be able to simply get carrier or reinsurer buy-in to continue to treat these employees as eligible during the furlough, and forego an immediate plan amendment to that effect.

We don't want our furloughed employees to lose eligibility for coverage, but they might not qualify as ACA full-time employees coming out of the *next* measurement period. What can we do?

Generally, you control your own eligibility rules (if the plan is insured, you might need carrier approval to modify your eligibility scheme; if self-insured, confirm with the reinsurer or stop-loss carrier if you're going to modify those rules).

First, remember that paid leave counts as service for ACA hours-tracking purposes.

Second, if employees will have a substantial amount of *unpaid* time, you can amend the plan (subject to the caveats above) to obtain the result you want here. For example, you could amend the plan to provide that the employees will be credited with the hours they *would have worked* but for the coronavirus-related layoff. We recommend *not* modifying the measurement period; that creates a host of administrative and programming issues.

Premiums/employer pre-payment and recoupment

We would like to pay the medical and dental premiums for our employees while they're furloughed and are not being paid but would like them to repay the amount we paid on their behalf (the amount they would have otherwise paid) once they return to work. Is that permissible?

Yes. If the catch-up, when the employee returns, will occur across the cusp of a new cafeteria plan year, there are some issues with collecting the back premium on a pretax basis, but we suspect this will be a short-term subsidy by the employer and that recoupment could occur before the end of the year. If it extends later, the recoupment in the next cafeteria plan year should be post-tax, out of an abundance of caution.

It would be a best practice to get the employee's agreement to repay in writing, if even in an email, but if that's not possible we nevertheless think most employers will not encounter a problem with employees later, as the recoupment begins.

Travel and return-to-work issues

How should employers handle planned work conferences and other events?

The CDC has issued recent guidelines regarding all U.S. events of 10+ people should be canceled or held virtually.

Can we restrict an employee's personal travel right now to limit exposure when they return home?

Employers cannot prohibit or limit employee personal travel but could restrict a person from returning to work after visiting certain places. States and locales are providing additional guidance (e.g., Kansas guidance on travel to Washington, New York, Massachusetts and parts of Colorado). An employer may restrict or not allow them to use company provided time off such as PTO or vacation for such absences as well. However, be aware there are some state laws that could protect employees' activities off-duty.

Updated: 3/19/2020

Health coverage

Medical plan/HSA

Should we consider excluding coronavirus testing as a covered service?

Instituting any sort of blanket exclusion within your plan for coronavirus testing and treatment is not recommended, not only because of risk of claims under the Americans with Disabilities Act and HIPAA, but as a matter of public policy and employee relations. It may also be difficult, in at least some cases, to pinpoint exactly what treatments or therapies to exclude, an issue that could be aggravated by the potential for inadequate or vague provider coding of claims.

Is our health plan *required* to cover the cost of coronavirus testing? Can we apply the deductible or other cost-sharing requirements, like copayments?

The new Families First Act requires all medical plans to cover, with no member cost sharing, coronavirus testing *and the related doctor's visit (presumably whether in person or via telemed)*, without imposing cost sharing (e.g., deductibles, copays or coinsurance). Nor may the plan impose any preauthorization or medical management requirements for coronavirus testing. The new coverage requirement does not require plans to waive cost sharing for coronavirus *treatment*.

We are slashing hours for employees, so their paychecks are smaller. Can they cancel their health FSA elections? Can they cancel their medical insurance coverage?

Technically, no. Financial hardship is not a cafeteria plan qualifying event. For medical coverage, the IRS will allow an employee who moves from full-time to part-time to cancel their healthcare plan election if they are instead leaping into an ACA marketplace to buy coverage there.

Having said all that, we recognize the unique circumstances presented by the coronavirus and recognize also the benign enforcement environment related to cafeteria plan election changes.

Telemedicine coverage

Many insurers that include a telemed feature with their plans are waiving all cost sharing for telemed visits, whether or not coronavirus related. Does this create a compliance concern for HDHPs?

Yes. The IRS did not (yet) go so far as to say that an HDHP may cover any telemed visit, whether or not coronavirus related, below the high deductible. But the enforcement risk in this regard is very modest, we think.

We are thinking of buying telemed coverage for a portion of our employees who are not enrolled in the major medical plan. In fact, they're not even eligible for that plan. Does this create compliance concerns?

Yes. The telemed coverage is a health plan, subject to ERISA (for ERISA employers), HIPAA, COBRA and perhaps even the ACA's obligation to cover all mandated preventive care with no cost sharing. It's possible the ACA obligation may be avoided if regulators

were to conclude that the telemed coverage supplies “insignificant benefits,” but the COBRA obligation would apply, and employees can sue over COBRA notice failures.

Pharmacy

I have heard that the coronavirus might lead to drug shortages in the U.S.? Why is that? What is the connection between what’s going on in China and what is on the shelves of my local pharmacy here in the U.S.?

Medications are composed of a complex combination of inactive and active ingredients. In a typical tablet, for instance, the majority is made of inactive or inert ingredients, designed to hold the dosage form together and to make the administration of very small amounts of active ingredient easy and consistent. Active pharmaceutical ingredient (API) is the “active drug” component of a tablet or capsule. In a typical 10 mg tablet or capsule of any drug, the majority of its mass is composed of inactive or inert ingredients, while only a very small percentage is composed of API.

Today, the greatest concentrations of API manufacturers to meet worldwide demand are located primarily in China and India (approximately 80%). Of note, the use of China as a primary source for worldwide API supply impacts both brand and generic pharmaceutical manufacturers, as companies increasingly rely on outsourced API.

As China has taken steps to control the spread of the coronavirus within its borders, all its manufacturing processes have been curtailed as workers are ordered to stay at home to limit the opportunities for the disease to spread through direct person-to-person contact. This is why, depending upon the length of time the API manufacturing slow-down persists in China, drug supply in the U.S. may be negatively impacted.

In a statement issued on Feb. 27, 2020, the FDA indicated:

“A manufacturer has alerted us to a shortage of a human drug that was recently added to the drug shortages list. The manufacturer just notified us that this shortage is related to a site affected by the coronavirus. The shortage is due to an issue with manufacturing of an active pharmaceutical ingredient used in the drug. It is important to note that there are other alternatives that can be used by patients. We are working with the manufacturer as well as other manufacturers to mitigate the shortage. We will do everything possible to mitigate the shortage.”

Since January 24, the FDA has been in touch with more than 180 manufacturers of human drugs, not only to remind them of applicable legal requirements for notifying the FDA of any anticipated supply disruptions, but also asking them to evaluate their entire supply chain, including active pharmaceutical ingredients (the main ingredient in the drug and part that produces the intended effects, e.g., acetaminophen) and other components manufactured in China.

Also, as part of our efforts, the FDA has identified about 20 other drugs, which solely source their active pharmaceutical ingredients or finished drug products from China. We have been in contact with those firms to assess whether they face any drug shortage risks due to the outbreak. None of these firms have reported any shortage to date. Also, these drugs are considered non-critical drugs.

We will remain in contact with manufacturers so that we can continue to assist them with any potential issues in the fastest way."

When pressed further to identify the specific drug in question, the FDA indicated that the name of the drug in question is confidential commercial information. They explained:

"While manufacturers are legally required to report drug supply disruptions to FDA, they are not required to provide the detailed information on their supply chain that we have needed to monitor the drug supply since the onset of the outbreak ... We need the cooperation of the drug companies in order to obtain accurate information as we proactively take steps to mitigate drug shortages, and companies will be less willing to provide this voluntary information if they cannot trust FDA not to disclose commercial confidential information such as drug names, company names or exact location of facilities."

For these reasons, Lockton is unable to determine the specific names of any drugs potentially looming to be in short supply, but the fact that 80% of the world's API is currently manufactured in China and India remains the broader fact to keep in focus as time goes by.

Business risks

General Insurance

What insurance premium payment options might be available to support my company's cash flow needs?

Some insurers are proactively making corporate-level decisions on payment terms leniency in the wake of the coronavirus. In addition, certain state insurance commissioners are on record asking all insurers to show leniency. Your Lockton team will work with you to advocate to insurers on your behalf.

Third-party premium finance companies may also be approached for renewal premium financing terms. This process requires credit underwriting and may take longer than usual following an anticipated increase in volume of policyholder applications. Contact your Lockton team to learn more about this potential option.

Property - business interruption coverage

Are business interruption claims related to the coronavirus covered under a property policy?

Most property policies will also require that *physical damage to property* be present to trigger coverage for potential losses involving business interruption or civil authority. The policy may also include "contamination" exclusions that could also further restrict or exclude coverage. An individual review of your specific policies forms will be crucial to properly evaluate potential coverage application. Please contact your local Lockton team for any assistance that may be needed.

Are there any coronavirus-specific policies being offered in the marketplace?

We continue to monitor the marketplace daily. At this point, all virus-specific coverages are being offered on *future* pandemics only.

Is there any insurance coverage that would provide business interruption/extra expense coverage for a non-physical damage shutdown of operations related to the coronavirus or other future pandemics?

Pandemic cover can be obtained from Swiss Re's nonphysical damage product, Munich Re's pandemic product, Zurich's supply chain product, and Kiln's trade disruption product. Note: These products are available for *future* pandemic outbreaks and will not cover the current coronavirus pandemic. We also don't know how these markets will address appetite or coverage triggers for future events given the current outbreak.

All markets will have intense underwriting processes, be location specific, tend to be in the 10-20% on line, and limits will most likely be cut back.

To reiterate, there is no known coverage for the current coronavirus pandemic.

Is there any legislative intervention that is expected regarding expanding coverage related to the coronavirus?

That remains unclear at this time. New Jersey was the only state to potentially develop legislation related to business interruption and the coronavirus. However, that process has been halted.

On the federal level, an apparent government backstop solution continues to be evaluated.

Could vacancy and unoccupied terms within property policies be raised by carriers as a coverage defense in some situations?

It is typical for property policies to contain provisions that exclude coverage for situations where properties are vacant or unoccupied. Usually these terms are undefined in the policy form. Vacancy is typically defined within the insurance context as premises without any furnishing or related contents. Unoccupied is generally defined as a lack of individuals within the property (living or working). Some policies may have a time period attached to these provisions (such as a property vacant for more than 60 days).

Actual loss situations and a review of individual policy forms will be a crucial step to properly evaluate potential available coverage application. Insurance carriers have the ultimate authority in determining coverage for presented claims and apply their interpretation of terms such as vacancy and unoccupied. Any suspected coronavirus-related losses should be reported per the policy guidelines. Some policies may require specific time frames to notice a potential claim, such as 48 hours.

General liability, excess and umbrella

Are there exclusions being applied upon program renewals related to general liability, excess or umbrella coverages?

We are aware of a growing number of carrier markets that will be attaching a communicable disease exclusion on policies with an effective date of April 1, 2020, and thereafter. In addition to individual carrier endorsements, ISO also has a 2009 exclusion (attached), which may be adopted by ISO form-based markets and/or inspire drafting of additional carrier-specific versions.

Are there any coronavirus renewal extensions that may be applied to general liability, excess or umbrella coverages?

Organizations that have *extreme circumstances* related to the coronavirus that will prohibit facilitating their excess casualty program renewal may have the option of a policy extension if they have the “business continuity renewal endorsement” that affords this. Endorsement wordings vary, but if triggered it could afford a 30-day policy extension at pro-rata additional premium. Limits are not typically reinstated under these endorsements. Without the endorsement, an extension may still be available depending upon individual circumstances. Please contact your local Lockton team to discuss in detail.

If my umbrella policy has a catastrophe management endorsement, might it apply to coronavirus-related business expenses?

Also referred to as “crisis response,” this coverage grant and financial allowance is designed to offer flexibility to suit a policyholder’s most urgent needs (both first and third-party expenses) in the aftermath of a potentially catastrophic liability event. While language varies, the provision typically requires an occurrence (as defined in the policy) that has the potential for both (1) covered damages that will reach the umbrella attachment, and (2) reputational risk exposure for the policyholder. This coverage part often has its own notice requirements given its inherent urgency. Please reach out to your Lockton team with any questions.

Pollution legal liability

Is there any exclusionary language that carrier markets are starting to introduce within pollution policies?

Some carrier markets are beginning to attach a full communicable disease exclusion on their environmental policies moving forward.

Workers’ compensation

We have an employee on-site showing fever and flu-like symptoms; are the workers’ compensation doctors able to assess and test for the coronavirus?

Under such a scenario, employers should follow both the CDC and a qualified physician's guidelines for coronavirus treatment and prevention. The situation may not be a viable claim under a workers' compensation policy. Proper treatment and prevention should be the first priority.

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Refer to [this question](#) regarding dealing with employees showing symptoms on the job.

How will it be determined whether an employee was exposed to the virus while at work, making workers' compensation liable?

Each injured employee situation will be evaluated on its own individual merits. Workers' compensation insurance covers employees who suffer injury or illness "arising out of or in the course of their employment." Many factors will be considered to determine if presented coronavirus claims are work related. These include, but are not limited to, the following:

1. The timing of when the loss occurred.
2. The location(s) where the injured worker was present leading up the injury or exposure.
3. The activities the injured worker was engaged in leading up to when the loss or exposure took place.
4. The specific nature of the loss.

We are having many our employees work remotely. How is this evaluated if they are hurt during the telecommuting period?

In most states it will be the burden of the injured employee to show they were injured "arising out of or within the course of their employment." An employer raising the defense that they are not in control of the remote employee at the time of the injury, is typically not recognized by most states.

In an attempt to create specific time frames around business-related periods, employers can potentially consider setting fixed work hours, including (if applicable) break times for remote workers.

OSHA issues

How would an employer determine if an employee contracted the coronavirus in the course of their employment, for OSHA 300 log purposes, versus contracting it under nonindustrial circumstances?

The OSHA reporting requirements are intended only to record cases that are caused by conditions or exposures arising in the work environment. As a result, individual factors of the worker's job functions and location(s) need to be evaluated to determine if it was possible the exposure of the virus was directly linked to their work activities. Given the complicated nature of this type evaluation, it is recommended employers retain legal counsel that is familiar with the OSHA requirements and record keeping rules.

Business liability issues

Is there liability potential for not restricting employee travel?

Possibly. The restriction of employee business travel may help in reducing the coronavirus exposure workers could experience. Affected individuals could allege their virus-related injuries were due to the lack of any policies restricting employee business related travel.

Would businesses have liability associated with the coronavirus?

Possibly. Allegations could be made that an organization was aware of the dangers from the virus and did not properly protect their workers, customers, general public or products. The burden of proof of establishing liability would be upon the potential plaintiffs.

Cyber

How can we protect our company and employees from phishing emails?

Refer to Lockton's [COVID-19 Cyber Risk Update](#).

Preparedness planning issues

How do we create a coronavirus preparedness plan?

Any preparedness plan should be evaluated and established based upon an entity's unique situation. The CDC has various guidelines businesses can follow as they evaluate their own exposure situations: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Lockton and FDI Consulting have also partnered to create a document on [business continuity planning](#).

Please contact your local Lockton team to discuss the potential use of these preparedness plans.

Where can an organization be provided with copies of business continuity plan?

Business continuity plans should be created around the unique needs of individual organizations. Sample plans can only provide a broad perspective of potential risks and exposures. Outside vendors such as FDI Consultants and others can be engaged with our Lockton teams to work with your specific needs.

A few firms in this area:

Everybridge - <https://www.everbridge.com/solutions/anticipate-and-prevent-disruptions-to-operations/business-continuity-planning/>

Avalution - <https://avalution.com/what-is-business-continuity/>
<https://avalution.com/what-is-business-continuity/>

FDI Consulting - <http://www.fdiconsultinginc.com/>

We are evaluating the use of a crisis management firm for help in managing the impacts of the coronavirus on our organization. Which entities do you recommend?

Please contact your local Lockton team to review your excess policy for any crisis management coverage that may be included (depending upon potential third-party claims that may trigger coverage). Here is a list of a few crisis management entities Lockton has prior experience with:

Sensis (PR and response) - <https://www.sensisagency.com/>

Motion Agency (PR and response) - <https://agencyinmotion.com/>

FDI Consulting (business continuity with access to clinical experts) - <http://www.fdiconsultinginc.com/>

COVID-19 Facts

- For current updates on the **spread** of the virus, monitor the [CDC website](#).
- Visit the [COVID-19 Prevention and Treatment](#) page to learn about how to protect yourself from respiratory illnesses like the coronavirus.
- For who is considered high risk, click [here](#).
- For more information on pregnancy and childbirth, click [here](#).

Industry-specific questions

Real estate

We manage large apartment buildings. Can you give an overview of the communication plan if a renter in the building becomes infected? What is the plan with our employees and what about others living in the building?

As with all situations, follow CDC guidelines. The situation described would be best managed by activating your organization's crisis management plan. If you do not have a crisis plan, we recommend identifying a crisis communications firm to assist with developing the plan.

We are in the real estate business. Part of our portfolio includes a concert venue. Some performers are canceling their events due to the virus. Are you seeing this, and are there any insurance triggers or implications we should be considering?²

For recommendations on closing venues or canceling events, refer to the CDC's published recommendations. [CDC Interim Guidance: Get Your Mass Gatherings or Large Community Events Ready](#)

Currently the CDC does not specifically call or mandate for events to be canceled. If the client or organizers want specific guidance due to their geographic location and/or population being served, they should contact their local public health department for risk assessments and guidance.

Public health contacts can be found at [CDC state & territorial health department websites](#).

In terms of liabilities, one consideration is specific to whether tickets have already been sold. Any cancellation would likely result in a requirement for refunding the tickets. Further discussions are in process on this topic.

Healthcare

Is there guidance for healthcare providers?

The Centers for Medicare and Medicaid (CMS) requires all providers in their program to have a complete disaster program, including pandemic preparedness. Additionally,

² Lockton Associates, CDC

infection-control procedures have been enhanced to prevent the transmission of pathogens to patients and to improve safety for healthcare workers. Other coronavirus resources for healthcare providers:

- [What Healthcare Personnel Should Know](#)
- [OSHA COVID-19 website](#)
- [Interim Infection Prevention and Control Recommendations for Patients with Confirmed COVID-19 or Persons Under Investigation for COVID-19 in a Healthcare Setting](#)
- [Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease \(COVID-19\)](#)
- The Society for Post-Acute and Long-Term Care Medicine: <https://paltc.org/COVID-19>
- American Hospital Association: <https://www.aha.org/2020-01-22-updates-and-resources-novel-coronavirus-2019-cov>
- Association for the Health Care Environment: <https://www.ahe.org/novel-coronavirus-evs-advisory>

State and local health departments are updated continuously. The California Department of Public Health has been featured on news channels: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

San Diego county is one of the models for the rest of county, as they deal with many pathogens coming over the border and through the ports: <https://www.sandiegocounty.gov/coronavirus/>

For all employers, the CDC website offers useful literature and posters: <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>

Under OSHA, our company is expected to provide surgical masks (we have customer-facing employees). CDC says masks are not recommended. Please clarify if we should follow CDC guidelines or OSHA regulations.

We recommend you follow the requirements set forth by OSHA.

In my workplace, we are in constant, close physical contact with patients all day. Given the shortage of personal protective equipment (PPE), if we are unable to provide staff with the necessary personal protective equipment to stay safe, what do you suggest we do?

The CDC has developed guidelines related to the use and potential shortage of PPE. We recommend you follow their stated guidance:

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/healthcare-supply-ppe.html>

In addition to protecting employees, PPE may also be required by OSHA for your situation.

Long-term care facilities

Are there specific preparedness guidelines for this industry?

The CDC has provided specific guidance: Preparing for COVID-19: Long-Term Care Facilities and Nursing Homes. There is also a checklist developed for preparedness.

Included in this guidance are the below guidelines:

If COVID-19 is suspected, based on evaluation of the resident or prevalence of COVID-19 in the community:

- Residents with known or suspected COVID-19 do not need to be placed into an airborne infection isolation room (AIIR) but should ideally be placed in a private room with their own bathroom.
- Room sharing might be necessary if there are multiple residents with known or suspected COVID-19 in the facility. As roommates of symptomatic residents might already be exposed, it is generally not recommended to separate them in this scenario. Public health authorities can assist with decisions about resident placement.
- Facilities should notify the health department immediately and follow the Interim Infection Prevention and Control Recommendations for Patients with COVID-19 or Persons Under Investigation for COVID-19 in Healthcare Settings, which includes detailed information regarding recommended PPE. The interim guidance is based on what is currently known about the transmission and severity of the coronavirus.

CDC state & territorial health department websites

Schools/child care

Is there guidance for school systems and child care centers?

The interim guidance is based on what is currently known about the transmission and severity of the coronavirus. Schools can play an important role in the effort to prevent the introduction and spread of the virus into U.S. communities. Schools should collaborate with local health departments to take steps to disseminate information about the spread of the disease and potential transmission within the school community. Below are links to find your local and state public health departments:

- Local health department link: <https://www.naccho.org/membership/lhd-directory>
- State health department (after hours) links: <https://www.cste.org/page/EpiOnCall>

The CDC provides guidance to help administrators of public and private child care programs and K-12 schools. This [guidance](#) is intended for administrators at both the school or facility and at the district level. It describes the role of schools in responding to the coronavirus, including guidance on how to establish procedures for students and staff who are sick at school, routine environmental cleaning, and how to create a communications plan. The CDC also provides posters with messages for staff and children.

Additionally, multiple federal agencies have developed resources related to school planning principles and a six-step process for creating plans to build and continually foster safe and healthy school communities. Key resources include guidance on developing high-quality [school emergency operations plans](#), and a [companion guide](#) on the role of school districts in developing high-quality school emergency operations plans.

There are general CDC fact sheets to help staff and students' families understand the coronavirus and steps to take to protect themselves.

- [What you need to know about coronavirus disease 2019](#)
- [Stop the spread of germs: Help prevent the spread of respiratory viruses like COVID-19](#)

Food service

My company manufactures food and ingredients for human consumption. Is there any concern the virus can be spread through raw ingredients, such as fruits and vegetables?

Via a COVID-19 Q&A document, the CDC replied to a similar question with the following:

<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

“Coronaviruses are generally thought to be spread from person-to-person through respiratory droplets. Currently there is no evidence to support transmission of COVID-19 associated with food. Before preparing or eating food it is important to always wash your hands with soap and water for 20 seconds for general food safety. Throughout the day wash your hands after blowing your nose, coughing or sneezing, or going to the bathroom.

It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.

In general, because of poor survivability of these coronaviruses on surfaces, there is likely very low risk of spread from food products or packaging that are shipped over a period of days or weeks at ambient, refrigerated, or frozen temperatures.

Learn what is known about the spread of COVID-19.”

Are there different recommendations between our restaurant and manufacturing operations?

There may be different recommendations between the two operations. For example, a restaurant operation will have direct interactions with customers and possibly the general public. A proactive plan reducing the potential exposure of the coronavirus should be enacted for the protection of all of these individuals. We would ask that you contact your local Lockton service team so that your specific situation can be reviewed.

How will business interruption insurance cover restaurants that may need to close?

Property policies for restaurants may require that *physical damage to their property* be present to trigger coverage for potential losses involving civil authority and business interruption. The policy may also include “contamination” exclusions that could also

further restrict or exclude coverage. An individual review of the restaurant's specific policies forms will be crucial to properly evaluate potential coverage application.

Construction

How do we create a preparedness plan for the coronavirus at construction job sites?

Any preparedness plan should be evaluated and established based upon an entities' unique situation. The CDC has various guidelines business can follow as they evaluate their own exposure situations:

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Lockton and FDI Consulting have also partnered to create a document on business continuity planning. This document is a good source of initial information:

https://s3-us-west-2.amazonaws.com/lockton-corporate-website/Compliance-Alerts/Coronavirus_Continuity_GUIDE.pdf

Please contact your local Lockton team to discuss the potential use of these preparedness plans.