



FREEMAN MATHIS & GARY, LLP
Attorneys at Law

Navigating Employment Issues and the Coronavirus – What To Do and Not To Do

Labor & Employment Law

CA | CT | FL | GA | KY | MA | NJ | NY | PA | RI

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info@fmglaw.com | fmglaw.com

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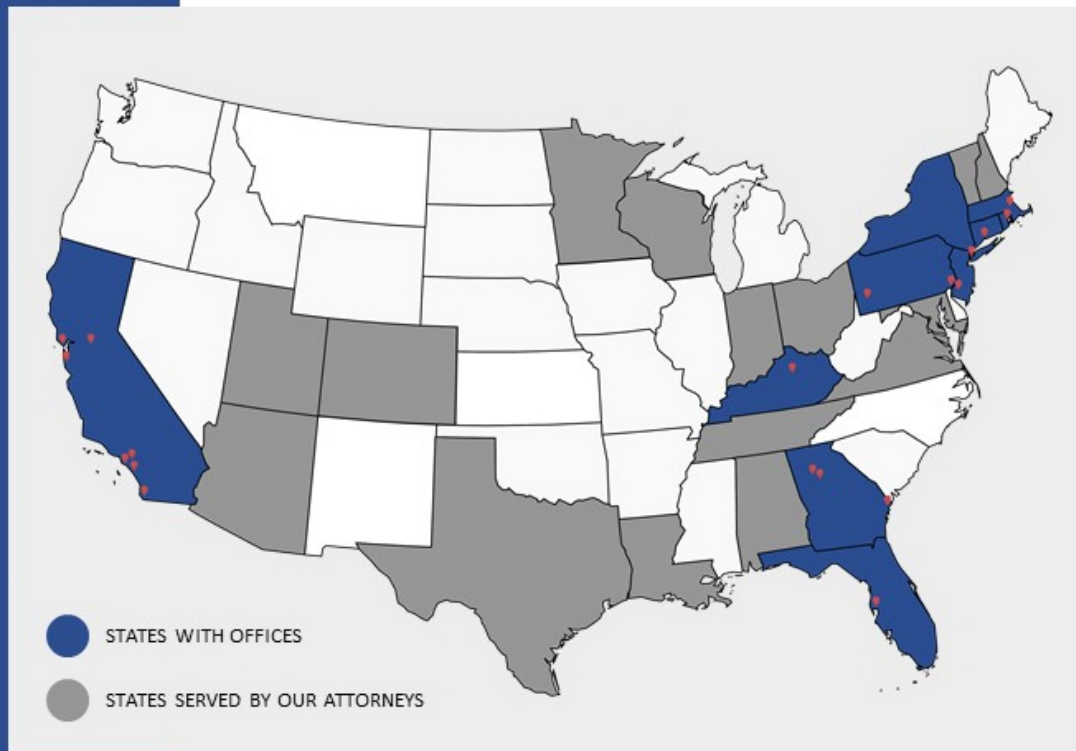
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Presenters



Brad Adler
Partner | Atlanta

770.818.1413
badler@fmglaw.com



Michelle Harrington
Partner | Los Angeles

213.615.7036
mharrington@fmglaw.com



Jennifer Markowski
Partner | Boston

678.807.8962
jmarkowski@fmglaw.com



FMG Coronavirus Task Force - Upcoming Coronavirus Webinars

- Thursday, March 19, 1:00-2:15 pm ET: [Navigating Insurance Coverage Issues Arising From Coronavirus](#)
- Friday, March 20, 1:00-2:15 pm ET: [Managing Legal Risks In The Healthcare Industry](#)
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- Thursday, March 26, 1:00-2:15 pm ET: [Tort & Liability- Defending Companies from Personal Injury/Products Claims](#)



The Coronavirus (COVID-19)

- **What Is It?**

- A pneumonia-like infection
- Symptoms manifest as mild to severe respiratory illness with fever, cough, and difficulty breathing.

- **Where Did It Come From?**

- No answer, although it appears it may have come from bats and transmitted to an animals sold in the Wuhan Fish and Livestock Market

- **How Does It Spread?**

- Person to person through droplets from nose or mouth
- Person to surface to Person

- **How Long Before Symptoms Show Up?**

- Typically between 4 – 6 days after exposure

The Coronavirus

- **How Long Does The Virus Last On Surfaces?**
 - Cardboard (24 hours); Plastic and Steel (3 – 5 days)
- **What Is The Incubation Period**
 - Scientists believe it is no longer than 14 days
- **Can You Catch It Twice?**
 - Scientists believe you can catch it twice, although the body builds antibodies during the first exposure
- **Can You Have CV, But Exhibit No Symptoms?**
 - Yes, you can be asymptomatic, but still have the virus

The Coronavirus

Alert Levels

- CDC
 - Level 3 (widespread sustained, ongoing transmission)
 - Level 2 (sustained ongoing transmission)
 - Level 1 (a risk of limited community transmission)
- State Department
 - Level 4 (warning not to travel to that country)
 - Level 3 (travelers should reconsider)
 - Level 2 (exercise increased caution)
 - Level 1 (exercise normal precautions)

The Coronavirus

- **What If An Employee Tests Positive For The Coronavirus?**

- 14 day quarantine after EE started exhibited CV symptoms, unless a doctor certifies that it is safe for the employee to return to work earlier.
- Notify colleagues of potential exposure and request visit to doctor or self-quarantine
- **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms

- **What Should An Employer Do If An Employee's Household Member Tests Positive For The Coronavirus Symptoms?**

- Ask employees to notify you;
- 14 day quarantine after potential exposure, unless a doctor certifies that it is safe for the employee to return to work earlier
- Notify colleagues of potential exposure and request visit to doctor or self-quarantine
- **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms

The Coronavirus

- **What Should An Employer Do If An Employee Presents Coronavirus Symptoms, But Is Not Confirmed With The Coronavirus?**
 - 14 day quarantine after EE started exhibited CV symptoms, unless a doctor certifies that it is safe for the employee to return to work earlier.
 - Notify colleagues of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms
- **What Should An Employer Do If An Employee Reports That He/She Interacted With Somebody Who Has Been Diagnosed With The Coronavirus Or Exhibited The CV Symptoms?**
 - 14 day quarantine after EE started exhibited CV symptoms, unless a doctor certifies that it is safe for the employee to return to work earlier.
 - Notify colleagues of potential exposure and request visit to doctor or self-quarantine
 - **NOTE:** Maintain confidentiality of employee who tested + or exhibited CV symptoms

The Coronavirus

- **Can I Require All My Employees To Get Tested For The Coronavirus?**
 - No, except maybe if workplace CV cluster
- **Can I Take The Temperature Of All My Employees?**
 - No, except in very limited circumstances (cluster cases)
- **Can I Require An Employee Who Tested Positive For CV Or Exhibited CV Symptoms To Submit An “All Clear” From A Doctor Before Returning To Work?**
 - Yes, but may not be feasible due to lack of tests so more realistic to rely upon 14 day self-quarantine

The Coronavirus

- **What Should An Employer Do If An Employee (Or An Employee's Household Member) Returns From An International Trip, But Has Not Exhibited Any Coronavirus Symptoms**

- If travel to areas of heightened risk (see CDC and State Department Alert Levels), then 14 day self-quarantine or secure confirmation of negative test

CDC

- Level 3 (widespread sustained, ongoing transmission)
- Level 2 (sustained ongoing transmission)
- Level 1 (a risk of limited community transmission)

State Department

- Level 4 (warning not to travel to that country)
 - Level 3 (travelers should reconsider)
 - Level 2 (exercise increased caution)
 - Level 1 (exercise normal precautions)
- All other travel = do not advise imposing any type of return to work condition.

The Coronavirus

- **Can I Restrict Employees From Traveling Internationally?**
 - If travel is work-related, yes
 - If travel is not work-related, then limit to areas of heightened risk
 - But can require 14 day quarantine upon return
 - NOTE: Have to consider state law “off-duty lawful activity” statutes
- **Can I Restrict Employees From Traveling Domestically?**
 - If travel is work-related, yes
 - If travel is not work-related, no.
 - But can require 14 day quarantine upon return
 - Possible Exception: CV cluster
 - NOTE: Have to consider state law “off-duty lawful activity” statutes

The Coronavirus

- **What If An Employee Wants To Wear A Respirator Or Mask At Work?**
 - No requirement at this time so lots of discretion
- **What If An Employee Refuses To Come To Work (Or Travel) Because Of A Generalized Fear Of Being Exposed To CV?**
 - Must have a reasonable objective belief that someone in workplace has CV (or interacted with someone with CV)
 - Can discipline
 - Exempt – must pay for any day where EE worked in that week
 - Non-Exempt – don't have to pay
- **Can I Send All Of My EEs Over 60 Or With Compromised Immune System Home?**
 - No
- **What If An Employee Who Has A Compromised Immune System Because Of A *Disability* Does Not Want To Come To Work?**
 - Have to assess whether teleworking or staying out is a reasonable accommodation

The Coronavirus

- **What If An EE Request Leave To Take Care Of A Family Member With CV?**
 - FMLA
 - See Coronavirus Response Act
 - State Laws
- **With So Many School Closures, What Happens If An Employee Can Not Come To Work Because Of Childcare Issues?**
 - Federal law
 - See Coronavirus Response Act
 - State law
 - NY – ERs have to provide EEs with leave if absence necessitated by school closure because of public health emergency

The Coronavirus

- **What Should You Do If An EE Complains About Your Company's CV Response On Social Media?**
 - Deep breath
 - If disciplinary action considered, evaluate whether lawful or prudent
- **How To Avoid Discrimination Claims In Dealing With CV Issues?**
 - No judgments based on race or national origin of employee.

The Coronavirus

- **Do I Have To Pay The Employee While Out Of Work For CV Issue?**

- FLSA

- Non-Exempt Employee – Only when working (unless EE uses PTO)
 - Exempt Employee –
 1. If ER imposes quarantine, then have to pay EE entire week if any work performed in that week
 2. If EE imposes self-quarantine, then only have to pay EE for any day where EE performs work

- State Laws

- Some states have “reporting time” laws.

- **Do I Have To Allow Employees To TeleWork?**

- No, unless EE has disability and telework is an accommodation

- **If I Do, Can Those Same Employees Request To TeleWork After CV Crisis Ends?**

- Have to make clear that TeleWork is because of extraordinary circumstances

- **If I Allow An Employee To TeleWork, Can I Require Them To Document Their Activities At Home?**

- Yes



The Coronavirus

- **Can We Shut Down An Office/Facility Because Of CV?**
 - Yes, but remember any type of applicable WARN (or mini-WARN) notice
 - WARN – “natural disaster” or “unforeseen business circumstances”
 - But have to give as much notice as practicable
- **Can We Furlough Employee(s) Because Of Downturn (Or Anticipated Downturn) In Business Because Of Coronavirus?**
 - Yes
- **Can We Lay Off Or Reduce Hours Of Employees Because Of Downturn (Or Anticipated Downturn) In Business Because Of Coronavirus?**
 - Yes
- **Can An Employee File For U/E If Hours Reduced Or Laid Off Because Of CV?**
 - Yes
- **Can An Employee File For W/C If They Get CV At Work?**
 - Yes

The Coronavirus

• What Can We Do To Help Reduce Potential Exposure To The Coronavirus?

- Providing employees with a written reminder about effective steps for reducing the risk of exposure to Coronavirus is a great way to let employees know you are paying attention to the issue and looking out for their safety. A few things to include:
- Remind employees to cover their mouths and noses when they cough or sneeze, and to immediately throw used tissues in the garbage.
- Remind employees of the importance of regularly washing their hands (for at least 20 seconds with soap and water) and/or using an alcohol-based hand sanitizer containing at least 60 percent alcohol.
- Avoiding touching your eyes, nose, and mouth with unwashed hands.
- Avoiding close contact with people who are sick.
- Ensure you have enough relevant supplies, including soap, hand sanitizer, tissues, paper towels, disinfectant, and trash receptacles.
- Encourage the regular cleaning of frequently-touched surfaces in the workplace, such as workstations, countertops, and doorknobs.
- Practice social distancing
- Consider the use of tele-conferencing options instead of in-person meetings
- Freeze all non-essential travel in the U.S. and internationally
- Consider the feasibility of implementing a remote work policy

Families First Coronavirus Response Act

- **What Is The Coronavirus Act (HR 6201)?**
 - Bill passed by the House on March 14 (Saturday) and amended March 16 (Monday)
 - Now has to go to the Senate for a vote
- **Employment Components**
 - FMLA Amendment Act
 - Emergency Paid Sick Leave Act
- **How Will the Families First Coronavirus Response Act Impact Employers?**
 - Establishes Paid Leave
 - Reimburses Employers for Cost of Paid Leave

Families First Coronavirus Response Act

FMLA Amendment Act

- **Effective:** 15 days after enactment through 12/31/2020
- **Eligible EEs:** Full and Part-time EEs employed for minimum of 30 days
 - Employers of healthcare providers and first responders may exclude such employees from this Act
- **Covered ERs:** Fewer than 500 EEs
 - Possible exemption with ER with less than 50 EEs
- **Reason for Leave:**

EE is unable to work or telework due to need to care for a son or daughter under 18 years old whose school or place of care has been closed or whose child care provider is unavailable, due to Coronavirus

Families First Coronavirus Response Act

FMLA Amendment Act

- **Substitution of PTO**

- EE can elect to use PTO during first 10 days

- **Calculation of Employee Payment**

- No less than 2/3 of EE's regular rate of pay for the number of hours that the employee would otherwise normally be scheduled to work, not to exceed \$200/day or \$10,000 in aggregate
- Varying Schedule -
 - (a) average number of hours EE was scheduled per day over the 6 month period ending on the date on which the employee takes such leave; or
 - (b) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring, of the average number of hours per day that the employee would normally be scheduled to work.

- **Reinstatement of Employee**

- Same as traditional FMLA, except employers of less than 25 employees where certain conditions are met



Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **Effective:** 15 days after enactment through 12/31/2020
- **Eligible EEs:** Full and Part-time EEs (no minimum tenure)
- **Covered ERs:** Fewer than 500 EEs
- **Reasons for Leave:**
 - (1) EE is subject to quarantine or isolation order related to Coronavirus;
 - (2) EE has been advised by health care provider to self-quarantine due to concerns related to Coronavirus;
 - (3) EE is experiencing symptoms of Coronavirus and seeking medical diagnosis;
 - (4) EE is caring for individual who is subject to order described in (1) or has been advised as described in (2);
 - (5) EE is caring for a child of EE whose school or place of care has been closed or whose child care provider is unavailable due to Coronavirus precautions; Or
 - (6) EE is experiencing other substantially similar condition specified by Sec. of Health and Human Services in consultation with others; Employers of health care providers or emergency responders may exclude such employees from this subsection

Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

• Calculation of Employee Payment

- EE who is:
 - quarantined or subject to isolation order or advised by health care provider to self-quarantine due to CV concerns or experiencing CV symptoms and seeking medical diagnosis,
 - must be paid EE's regular rate of pay, or federal, state or local minimum wage, whichever is greater;
 - Not to exceed \$511/day or \$5,110 in aggregate
- EE who uses leave to:
 - care for individual subject to quarantine/isolation order or advised to self-quarantine; or
 - care for child because of school/daycare closure or unavailability of child care provider due to CV precautions; or
 - EE is experiencing other substantially similar condition specified by Sec. of Health and Human Services,
 - must be paid 2/3 of EE's regular rate of pay, or federal, state or local minimum wage, whichever is greater;
 - Not to exceed \$200/day or \$2,000 in aggregate

• How Much Time?

- Full-Time EEs: Entitled to 80 hours
- Part-Time EEs: Average hours over two week period (varying schedule same as FMLA Amendment Act)



Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- **Substitution of PTO**
 - An EE may first use sick leave under this Act before using other PTO
 - ER may not require EE to use other PTO before using sick leave under this Act
- **Replacement Condition**
 - Can't require an EE to first find a replacement before using sick leave
- **Carryover Of Sick Leave**
 - Doesn't carry over
- **Payout Upon Separation**
 - ER's usual rules apply

Families First Coronavirus Response Act

Reimbursement For Cost To Employers Of Paid Sick Leave

- **Tax Credits (Against Employer's Portion of Social Security Taxes) for Cost of Paid Sick Time Under Emergency Paid Sick Leave Act**

- Credit per employee is limited to \$511/day for employees who are subject to quarantine/isolation order, advised to self-quarantine, or experiencing symptoms of CV and seeking medical diagnosis. Credit per employee is capped at \$200/day for employees who care for an individual who is subject to quarantine/isolation order or advised to self-quarantine, or for child whose school or place of care has been closed or child care provider is unavailable due to CV precautions.

- **Tax Credits (Against Employer's Portion of Social Security Taxes) for Cost of Paid Sick Time Under Amendment to the FMLA for Paid Leave**

- The amount of credit per employee is capped at \$200/day and \$10,000 total for all calendar quarters.
- Credit cannot be used in combination with existing credits for ERs that provide paid family and medical leave



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