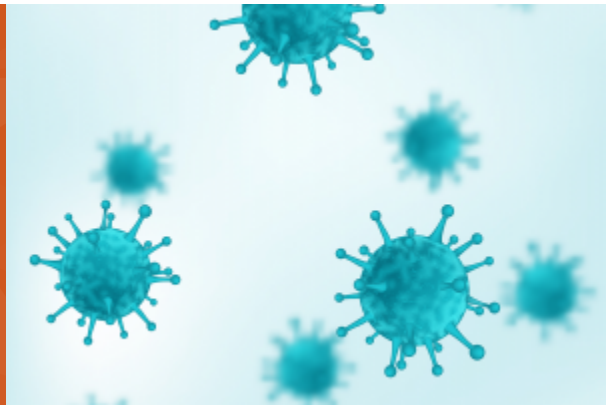
COVID-19 Resource Collection

Coronavirus Updates

July 21, 2022



7/21/2022 EEOC Updates Guidance on Workplace COVID-19 Testing

1/24/2022 U.S. Supreme Court Rules on OSHA COVID-19 Vaccine ETS

1/5/2022 CDC Reduces COVID-19 Isolation and Quarantine Periods – Sets New Standards for the Management of COVID-Related Employee Absences

1/4/2022 The United States Supreme Court to Hear Argument on Private Employer Vaccine Mandate on January 7

12/21/2021 Massachusetts Issues Mask Advisory for Vaccinated and Unvaccinated Residents

11/15/2021 Federal Vaccine Mandates: What You Need to Know, Now

10/6/21 Massachusetts Emergency Paid Sick Leave Extended to April 2022

9/15/21 Biden Administration Announces Public Vaccine Mandates That Require Action by Large Private Employers, Federal Contractors, and Healthcare Employers

7/29/21 The CDC Revises COVID-19 Mask Recommendations For Fully Vaccinated Individuals: Implications For Massachusetts Employers

6/14/21 OSHA Issues Emergency Temporary Standard for Healthcare Settings

6/2/21 New Massachusetts Law Provides COVID-Related Emergency Paid Leave To Employees

6/1/21 Federal EEOC Issues New Workplace Guidelines Related to Employee Vaccinations and Employee Safety

5/27/21 Massachusetts Employers Prepare to Re-Open Their Workplaces

4/5/21 The American Rescue Plan Act Of 2021: What Employers Need to Know

3/24/21 Massachusetts Advances To Step 1 Of Phase IV – Replaces Travel Order With Travel Advisory: What Employers Need To Know Now

1/12/21 COVID-19 Relief Law Decoded: What Clients Need To Know Now

12/22/20 EEOC Issues New Employer Guidance on COVID-19 Vaccines – Private Employers Poised To Play Front Line Role in Government's Mass Vaccination Effort

10/8/20 Small Business Administration Issues New Guidance That Impacts M&A Transactions Involving PPP Loan Recipients

9/18/20 Massachusetts Extends Administrative Tax Relief for Small Businesses

8/31/20 IRS Issues Guidance on President's Payroll Tax Memo

8/28/20 DOL Updates FAQs on FFCRA Leave as a New School Year Approaches

8/13/20 President Issues New Executive Order on Enhanced Unemployment Benefits

8/13/20 NY Federal Court Issues Opinion Invalidating Portions of the FFCRA

8/12/20 PPP Loan Forgiveness Portal Opens; SBA Issues New Forgiveness Rules

8/12/20 Tax Memo: Deferring Payroll Tax Obligations in Light of the Ongoing Pandemic

7/29/20 The Complex Web of Employment Law Regulations Expands: *The Latest COVID-19 Considerations for Massachusetts Employers*

7/9/20 Federal Reserve Publishes Initial Listing of Lenders Accepting New Business Customers Under the Main Street Lending Program

7/6/20 Federal Reserve Announces that the Main Street Lending Program is Fully Operational

6/30/20 PPP Application Period Ends; Treasury Department Releases Revised Forgiveness Application Forms and Revises Regulatory Standards Related to PPP Loan Forgiveness

6/26/20 EEOC Updates COVID-19-Related Employer Guidance on Antibody Testing

6/26/20 OSHA Publishes Guidance on Returning to Work

6/23/20 Trademark Office Offers Accelerated Examination for COVID-19-Related Trademark Applications

6/17/20 OSHA Publishes FAQs on Face Coverings in the Workplace

6/16/20 Federal Reserve Main Street Lending Program Update: Open for Lender Registration

6/15/20 EEOC Updates COVID-19-Related Employer Guidance

6/10/20 Federal Reserve Expands the Main Street Lending Program

6/4/20 Payroll Protection Program Flexibility Act Passes: Congress Fundamentally Changes PPP Loan Forgiveness Rules

6/3/20 Federal Reserve Provides Additional Guidance on the Main Street Lending Relief Program: Program Slated to Commence in the Near Term

5/28/20 OSHA Updated Response Plan and Updated Reporting Requirements for COVID-19

5/28/20 DOL Issues New Final Rule on Fluctuating Workweek Calculations

5/27/20 Massachusetts Office Spaces Are Authorized to Re-Open: A Report From the Field

5/27/20 PPP Update: Treasury Department Releases New Regulations Related to PPP

Forgiveness

5/18/20 Treasury Department Releases PPP Loan Forgiveness Application Form: Technical Aspects of PPP Loan Forgiveness Explained, But Questions Remain

5/18/20 Massachusetts Governor Announces Phase 1 of Re-Opening Plan: Certain Non-Essential Businesses are Authorized to Recommence Operations Today

5/14/20 Paycheck Protection Program Update: What the Question 46 Guidance Means for Recipients of PPP Loans Under $2 Million

5/13/20 Treasury Department Announces Safe Harbor for PPP Borrowers with Loans of Under $2 Million

5/12/20 Massachusetts Governor Outlines Four-Phase Re-Opening Plan

5/11/20 EEOC Issues Guidelines with Respect to COVID-19 "Higher Risk" Employees

5/11/20 EEOC Announces Delay in EEO Data Collections

5/11/20 USPTO Announces COVID-19 Prioritized Examination Pilot Program

5/5/20 Federal Reserve Main Street Lending Program

5/5/20 CDC Recommends New Workplace Sanitation Standards

5/4/20 A Roadmap for the Re-Opening of the Massachusetts Economy is Offered – A Slow, Phased Re-Opening is Anticipated

4/29/20 MA Governor Extends Non-Essential Business Closings Until May 18, 2020

4/27/20 Post-Quarantine: A Return-to-Work Guide
Practical Considerations Related to the Re-Call of Employees to the Worksite

4/27/20 Unemployment Options Under the Massachusetts Emergency Regulations

4/24/20 CARES Act Payments are Public Assistance and Exempt From Seizure by Creditors and Debt Collectors Under Massachusetts Law

4/22/20 Surviving as a Tenant In the Age of Coronavirus

4/22/20 Senate Approves Deal To Expand PPP Small Business Loan Program

4/16/20 PPP Fund Exhausts; Important PPP Update for Partnerships and LLCs

4/10/20 Practical Strategies for VC and PE Backed Businesses Considering PPP Loans

4/10/20 Federal Reserve Bank Unveils $2.3 Trillion Plan to Bolster Economy – Outlines NEW Emergency Loan Programs for Small and Mid-Sized Businesses

4/10/20 Small Business Administration Modifies Economic Injury Disaster Loan (EIDL) Advance

4/9/20 Best Practices Before Applying for a PPP Loan: Board of Directors Meeting

4/6/20 PPP Loan Program: Analysis of Treasury Interim Final Rule on Affiliation; Impact on Portfolio Companies

4/3/20 U.S. Treasury Releases Interim Rules on Paycheck Protection Program

4/3/20 DOL Releases New Guidance for Compliance with CARES Act and FFCRA

4/2/20 DOL Posts Temporary Rule Issuing Regulations on Families First Coronavirus Response Act

4/1/20 USPTO Announces Certain Patent and Trademark-related Deadlines Extended Under CARES Act

4/1/20 MA Governor Extends Non-Essential Business Closings Until May 4, 2020

4/1/20 SBA Paycheck Protection Program (PPP)

3/31/20 DOL Issues Revised Emergency Paid Sick Leave Guidance; Limits Scope of Small Business Exemption

3/30/20 A Plain Language Guide to the Coronavirus Aid, Relief and Economic Security ("Cares") Act

3/25/20 DOL Releases New Fact Sheets and FAQs for Compliance with Families First Coronavirus Response Act

3/24/20 IRS, DOL, and Treasury Issue Plan on Implementation of Payroll Tax Credit, Paid Leave and Other Employment-Related Provisions of the Families First Coronavirus Response Act

3/24/20 Equal Opportunity Commission Issues Updated Guidance Related to COVID-19 Preparedness for "Essential Businesses"

3/23/20 MA Governor Orders "Non-Essential" Businesses to Close Physical Workplaces by Tuesday, March 24

3/20/20 Helpful Resources for Employers Managing the Impact of COVID-19

3/20/20 The Virtual Board Meeting in the New COVID-19 World Order

3/19/20 Employment Law Alert – Congress Adopts Emergency Paid Family Medical Leave and Sick Time Standards; Contemplates Payroll Tax Deductions and Cash Payments to Offset Employer Costs

3/19/20 Business Update – State and Federal COVID-19 Small Business Loan Programs

3/16/20 Employment Law Alert – MA Governor Issues Emergency Orders

3/16/20 *Force Majeure* in Light of the Coronavirus Outbreak

3/13/20 update.

3/12/20 update.

3/11/20 update.

3/13/2020 Update

The Coronavirus outbreak is creating unprecedented challenges for employers. Existing employment law standards and structures do not contemplate our present circumstances, and employers are increasingly faced with novel questions with respect to employee relations.

We are beginning to see some clarity on the subject, however. As government and organizational actors begin to deploy response strategies, best employment practices regarding Coronavirus concerns are emerging.

The following are plain-language answers to several common questions that we are fielding from clients:

May employers ask employees whether they are experiencing COVID-19 symptoms, or ask employees whether they are returning from personal travel from locations where Coronavirus is present?

In general, the Americans with Disabilities Act (the "ADA") *prohibits* employers from asking employees to disclose health and medical conditions.

However, the federal Equal Employment Opportunity Commission (the "EEOC") has issued guidelines that provide exceptions to this "non-inquiry" rule *during* pandemics

Specifically, during pandemics, employers may:

- Ask employees whether they are experiencing influenza-like symptoms, ***and send employees home if they are.***
- Take employees' temperature to determine whether they have a fever.
- Ask whether employees are returning from locations where the Coronavirus is present, even if the travel was personal.
- Ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?

In addition, although asking employees about the illness or potential infection of a family member would not implicate the ADA, such inquiries might trigger protections under the federal Genetic Information Nondiscrimination Act ("GINA"). Employer questions in this area should, therefore, focus on the employee's potential exposure to the virus, and not on the specific conditions of family members.

It should be noted that employers *must* maintain all information about employee illness and medical conditions as a confidential medical record in compliance with the ADA.

May an employer send employees home if they display influenza-like symptoms during a pandemic?

Yes. The CDC emphasizes that employees who become ill with symptoms of influenza-like illness at work during a pandemic ***should leave the workplace.***

The EEOC's pandemic guidance clarifies that asking employees to work from home, during a pandemic, as an infection control strategy, does not run afoul of the ADA.

When an employee returns from travel during a pandemic, must an employer wait until the employee develops influenza symptoms to ask questions about exposure to pandemic influenza during the trip?

No. Employers may implement policies asking employees to report whether they have traveled to impacted regions (*i.e., areas with extensive person-to-person transmission of the illness*). For those employees identified as having potential exposure, an employer may, and in certain cases must, direct those employees to work from home or not work during an appropriate period.

Employees who refuse to provide information about travel or potential exposure may also be asked to work from home or not work until it is determined safe for them to return to work.

May an employer encourage employees to telework (*i.e., work from an alternative location such as home*) as an infection-control strategy during a pandemic?

Yes. Telework is an effective infection-control strategy now recommended, ***but not required***, by the Centers for Disease Control (the "CDC"). Employers might consider such a strategy if practical and reasonable for their workforces.

In addition, employees with disabilities that put them at high risk for complications of infection may affirmatively request telework, as a reasonable accommodation. Such requests should be evaluated by employers as any other reasonable accommodation request. However, many job functions may not be reasonably accomplished remotely, and employers are *not* required to provide telework accommodation to employees assigned to such jobs.

Must an employer continue to pay employees during work stoppages related to Coronavirus – during times when employees are instructed *not* to work from the jobsite and *not* to telework?

In general, employers are not required to pay ***nonexempt employees*** for hours not worked. As such, nonexempt employees directed by their employers not to work at the job site and not to telework, generally, are not required to be paid. Those employees may be permitted, or in some cases entitled, to use accrued paid time off, including paid sick leave, during work stoppage periods.

Exempt employees, *however*, must generally be paid their full, predetermined salary amount "free and clear" for any week in which the employee performs any work, without regard to the number of days or hours worked.

As such, exempt employees *must* be paid their regular predetermined salaries, without deduction, during work stoppages, unless the employer adopts one of the following strategies:

- *Unpaid furlough.* Employers may impose an unpaid "furlough" – *an instruction not to perform job functions for an entire work week or multiple work weeks.* During a furlough an exempt employee may not perform any job functions whatsoever – they may not respond to email, take calls, or otherwise perform work duties. If an exempt employee performs any work during a furlough week, they must be paid for the full week.

- *Mandated Vacation.* Employers may require exempt employees to exhaust vacation time or paid time off, during work stoppage periods, rather than treating a furlough as unpaid.

- *Prospective Reduction of Predetermined Salary*. An employer may decide to reduce the regular salary of an exempt employee during anticipated, future work stoppage or work slowdown periods. An employer is not prohibited from prospectively reducing the predetermined salary amount of an exempt employee during a work stoppage, provided the change is *due to a bona fide economic downturn, and* the employee still receives on a salary basis at least $684 per week.

Please note: Federal and state governments are *now* considering economic stimulus programs that include certain, specific paid leave benefits for employees affected by Coronavirus-related work stoppages. We will continue to monitor this development.

Are employers required to notify OSHA of any suspected cases of Coronavirus?

The Occupational Safety and Health Administration ("OSHA") considers work-related exposure to COVID-19 as a recordable (and reportable) illness. If an employee becomes infected while traveling for work or at work, the employer must file appropriate reports with OSHA.

Developing state and local directives may also require additional reporting of work-related exposures to local agencies.

Should an employer notify employees of suspected cases of Coronavirus within a workforce?

Yes. Employers should notify employees, generally, of suspected cases of infection within a workforce, to allow employees to monitor themselves or self-quarantine, if appropriate.

Under the ADA and applicable privacy laws, the employer should not, however, disclose the specific identity (or other identifying information) of any infected employee or any employee who is suspected of infection.

The Morse Employment Law Team is following this topic closely. Please contact us should you have any questions.

3/12/2020 Update

In recent days, we have seen increased incidents of COVID-19 infections in Massachusetts and around the United States, and extraordinary actions from federal, state, and organizational actors in response to the outbreak – including the announcement by the White House of a European travel ban, and the proposed suspension of all Social Security payroll taxes. Continue reading here.

3/11/2020 Update

In response to increased incidents of COVID-19 infections in the Commonwealth, on Tuesday, March 10, 2020, Governor Charlie Baker declared a *State of Emergency* in Massachusetts.

What does this mean for private-sector employers?

Here is what you need to know:

- The State of Emergency declaration is, in essence, an activation of the Governor's emergency powers – *meaning that the Governor may now order certain directives and allocate certain resources, to respond to the Coronavirus outbreak, outside of regular legislative processes.*

- At this time, the Governor has *not* issued any directives that apply to, or restrict, private-sector employers. As such, there are no special legal requirements that private-sector employers *must* comply with in connection with the Commonwealth's Coronavirus response.

- The Governor has, however, issued a directive that applies to the Commonwealth's Executive Branch. That directive to public-sector employers is as follows:

> *All work-related travel, both foreign and domestic, is to be discontinued until further notice. Employees are also strongly encouraged to avoid any personal international travel.*
>
> *Conferences, seminars and other discretionary gatherings, scheduled and hosted by Executive Branch agencies involving external parties, are to be held virtually or cancelled. Regular internal business shall continue, including but not limited to mandated public hearings and board meetings. Meeting organizers are strongly encouraged to utilize alternatives like conference calls, WebEx and other group communication tools.*
>
> *Additionally, employees should not attend external work-related conferences, seminars or events. Alternatively, employees are encouraged to participate remotely.*
>
> *Employees feeling sick with fever or flu symptoms should not come into work. Information available to date regarding COVID-19 indicates that the highest risk population includes older adults and individuals with serious chronic medical conditions. Employees in this risk group are encouraged to talk with their supervisors to review possible alternative*

work assignments.

These actions complement additional precautions that have been undertaken in recent days including encouraging proper self-care and hygiene such as washing hands, ensuring bathrooms are stocked with hand washing materials and paper products, frequently cleaning touch points such as doorknobs, handles, elevator buttons and common area surface, and making cleaning products and sanitizers available in all Executive Branch workspaces.

- In the announcing this public-sector directive, the Governor urged, *but did not order*, private-sector employers to "**follow our example and limit or eliminate non-essential travel, limit or eliminate large events where possible, and explore telework where appropriate for your organization.**"

- In addition, the Governor, through the Massachusetts Department of Health, provided recommended guidelines for certain categories of private-sector employers, including: Clinical Laboratories; Hospitals; Long-Term Care Facilities; Colleges Universities; and Elementary and Secondary Schools.

As demonstrated from the above, the recommended response to the Coronavirus outbreak is, at the present, a moving target. At this time, we recommend that our clients consider *measured, common-sense* strategies, in line with government recommendations. Specifically, we recommend that clients consider the following strategies:

- Make telecommuting options available for employees, when possible and if reasonable;

- Encourage good hygiene among employees, such as frequent hand-washing;

- Urge employees to stay home when they are sick;

- Be flexible with sick leave benefits for those employees who are ill or who are recommended to stay home because they are high risk;

- Increase routine environmental cleaning.

As emphasized in our prior Alert on the subject, we also recommend that employers familiarize themselves with CDC-issued guidance for employers.

The Morse Employment Law Team is following this topic closely. Please contact us should you have any questions.