

## ***Managing a Safe Return to the Workplace***

*As stay-at-home orders begin to ease, planning is needed to ensure that your workplace is safe and productive.*

### **Bringing back your furloughed employees:**

As employers call their employees back to work, many employees will welcome the return to the normalcy, while some may push back due to fear or other reasons. Employers should plan in advance on how they will address those issues. Some states, including Alabama, are encouraging employers to report furloughed employees who are receiving unemployment benefits to the state Department of Labor if they fail to return when work is available, as the refusal to work could result in the termination of unemployment benefits.

Employers should take care to maintain accurate records of their employees' work status, especially if the employer has applied for or received a Paycheck Protection Program (PPP) loan under the CARES Act. Such documentation will help establish that the employer has maintained its payroll for purposes of loan forgiveness. If employers maintain their full-time equivalent employee headcount and do not reduce any employee's compensation by more than 25%, or hire or rehire employees or restore compensation levels by June 30, 2020, up to the entire amount of the loan may be forgiven.

In addition, be mindful that when the workplace reopens and employees are able to work that they may be eligible for FFCRA leave. See below for more information about the FFCRA.

### **Ensure that your workplace is safe:**

As employees return to the workplace, pay close attention to State and local restrictions. Ensure that the workplace is clean and sanitized and that frequently-touched surfaces receive extra attention. The CDC encourages employers to provide soap and water for handwashing, as well as tissues and hand sanitizer, and encourages employers to ask their employees to follow good hygiene practices, including frequent handwashing. Avoid having employees share work tools such as keyboards, telephones, or writing instruments. If an employer requires its employees to wear PPE, the employer should provide the PPE. Employers should train their employees on the proper use of PPE, such as the proper donning and doffing of masks.

Managers should enforce social distancing procedures, and avoid large gatherings of employees at the workplace. If possible, stagger work schedules so that employees are not all entering and exiting the work place at the same time. Employers are also encouraged to continue using remote work where possible. Ask your employees to help minimize the risk of spread by limiting their exposure to other people outside of work and limiting their outside activities and travel to only what is necessary (such as grocery shopping). Even if PPE is not required, employers may permit their employees to bring and use their own. Employees should also be required to let their supervisor or human resources officer know if they are exposed to someone with COVID-19 symptoms or a positive test.

## EMPLOYMENT **Alert**

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Employers should also have a system in place to keep track of employees' shift times and locations, so that if an employee becomes infected, employees who may have been exposed to the infected employee may be easily identified, notified, and quarantined if necessary.

Consistent with guidance from the EEOC, employers are permitted to screen employees for COVID-19, so long as it is consistent with advice from the CDC and public health authorities, and so long as the information collected is kept confidential and not placed in an employee's personnel file. Employers may continue to take an employee's temperature or ask questions about symptoms related to COVID-19, including fever, cough, shortness of breath, chills, new loss of smell or taste, muscle pain, headache, or sore throat. Employers may also choose to administer COVID-19 testing to employees before they enter the workplace, if the presence of someone with the virus would pose a direct threat to other employees.

If an employee tests positive, the employee should remain at home and the employer should inform any employees that may have been exposed to the virus, without identifying the name of the employee with the virus. The employer should follow CDC guidelines for cleaning and disinfecting the workplace. They should also follow CDC guidance for when the employee can return to work. As of now, the CDC states that an employee who has tested positive can return to work if their symptoms have improved and they have two negative COVID-19 tests, or for someone who is asymptomatic, that at least seven days have passed since their first positive COVID-19 test and they have had no subsequent illness.

**Manage individual issues carefully:**

Employers should be prepared for a wide range of employee issues related to the extraordinary nature of COVID-19. A generalized fear of contracting the virus is not a valid justification for an employee to refuse to work. However, employers must be receptive to issues such as mental health conditions that are exasperated by the pandemic, or preexisting medical conditions that are considered risk factors for COVID-19, because such conditions may trigger a need to provide a reasonable accommodation. In such cases, employers should engage in the typical ADA interactive process to understand the nature of the employee's condition and determine whether an accommodation should be provided.

**Provide FFCRA leave if required:**

Public employers and employers with fewer than 500 employees are required to provide paid leave for COVID-19 related reasons. This includes up to 2 weeks of paid sick leave and up to 12 weeks of paid leave for employees who need to care for a son or daughter whose school or place of care is closed. The DOL has begun its enforcement action for violations of the FFCRA and has already resolved one matter involving an employer in Arizona. At least one lawsuit has been filed in Alabama alleging that an employer violated the FFCRA.

Our firm's employment practice group is well-versed in the new law and has previously provided summaries of the law on our [website](#). By way of update, the DOL and the IRS have now provided more specific guidance regarding the information employers should collect when evaluating leave requests:

- Employers should maintain records of each employee's name, the dates leave is requested, a statement of the COVID-19 related reason the employee is requesting leave, and a statement that the employee is unable to work (or telework) due to the COVID-19 related reason.
- For leave requests because of a Federal, State, or local quarantine or isolation order, the employee should provide the name of the governmental entity ordering quarantine.
- For leave requests because the employee has been advised by a health care provider to self-quarantine, the employee should provide the name of the health care provider who advised the employee to self-quarantine.
- For leave requests because the employee is caring for an individual subject to a quarantine or isolation order, or an individual advised by a health care provider to self-quarantine, the employee should provide the name of the governmental entity or the name of the health care provider, AND the name of the individual being cared for and his or her relation to the employee. Employees may receive FFCRA leave to care for an immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a

relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined.

- For leave requests to care for a son or daughter whose school or place of care is closed or unavailable, the employee should provide the name and age of each son or daughter who requires care, the name of the school or place of care, and a representation that no other suitable person is available to care for the son or daughter during the period for which the employee is taking leave. If the employee has a child that is older than fourteen years old, the employee should also provide a statement that special circumstances exist requiring the employee to provide care to that son or daughter during daylight hours.

In addition, when providing FFCRA leave, employees should determine:

1. Whether to provide intermittent leave for employees working remotely and/or for workers who are caring for their children whose school or place of care is closed. Both the employer and the employee must agree to the intermittent schedule.
2. Whether, for weeks 2-12 of paid expanded family leave, to run the employees' accrued vacation, PTO, or other annual leave concurrently with FFCRA leave (at full pay). Note that the tax credit is still capped at 2/3 pay or \$200/day and \$10,000 in the aggregate.
3. Whether to allow employees who only receive 2/3 pay to use their accrued leave to cover the 1/3 that is otherwise unpaid. Note that the tax credit is still capped at 2/3 pay or \$200/day and \$10,000 in the aggregate.

Employers should also note that for expanded family leave, the first two weeks are considered unpaid; however, employees can use FFCRA-provided sick leave at 2/3 pay, other accrued PTO or vacation leave (but probably not sick leave) at full pay, or take that leave as unpaid but with job protection. Employees cannot be forced to use accrued leave before using FFCRA sick leave; it is the employee's choice during the first two weeks of expanded family leave.

As always, please reach out to one of our lawyers for further information and guidance so we can help you with your individual business needs.