

# Guidance For Small to Medium Sized Businesses on **Covid-19**

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# What is The Coronavirus?

- Coronaviruses are a family of viruses that can cause fever, respiratory problems, and sometimes gastrointestinal issues.
- The latest novel coronavirus is being labeled COVID-19.
- It spreads through coughs, sneezes, and surface contact.
- One person on average spreads it to two to three others.
- Good news - a majority of infected individuals recover.

# What is The Coronavirus?

- Over 5,243 cases in the United States and over 94 deaths.
- WHO declared a global pandemic on 3/1, the first since 2009 (H1N1 influenza).
- President instituted travel restrictions and declared national emergency on 3/13.
- States, cities and counties have also taken action, such as prohibiting large gatherings, with more to come.

# What Steps Should I Take Right Now?

**Educate employees** on prevention steps such as handwashing and staying home when sick.

**Communicate regularly** with employees regarding company initiatives and reminders re: prevention.

**Allow employees to work from home** to the extent possible with support of a good WFH policy.

**Increase custodial/sanitizing schedules** if possible.

# What Steps Should I Take Right Now?

Consider **staggering employee** starting and stopping times to minimize overcrowding in common areas.

**Prepare** for temporary shut-downs and employee furloughs.

**Eliminate non-essential travel**, or suspend all travel.

**Follow updates** from CDC and TriNet as situation is fluid.

# What is Government Doing to Help Businesses and Employees Survive This?

- Federal legislation pending:
  - Expanded FMLA coverage and emergency leave benefits.
  - Mandatory paid leave after an initial period of unpaid leave.
  - Emergency paid sick leave for illness and to quarantine.
  - Emergency unemployment insurance benefit funding.
  - Tax credits for paid sick and family leave payments.
- Also, SBA loan provisions and state level initiatives.

# What Do I Do When an Employee Appears to be Sick?

- Tell employees with COVID-19 symptoms (respiratory symptoms or fever) to leave work and seek medical attention.
- You can tell them to get tested for COVID-19, however, testing availability has been a problem.
- You can ask them to get a doctor's note before they return, however, CDC has noted a concern with this.
- If they miss work for unknown reasons, you can ask them why they missed work.



# What if I Have an Employee Who Has a Diagnosis of COVID-19?

- Send them home, and any employees who worked closely with them, for a 14-day period.
- Before the infected employee departs, ask them to identify everyone who worked in close proximity with them in the previous 14-days.
- Do not disclose the identity of the affected employee.
- Have a cleaning company undertake a deep cleaning of the location.
- Inform building management if you work in a shared office building.

# Can I Make People Work From Home? Should I Have Rules for WFH?

- You cannot make employees work from home, but you can tell your employees that working from home is the only option if they want to work.
- WFH policies and procedures are imperative, including:
  - Who can work from home?
  - When will they be required to be on-line or available for calls?
  - Other restrictions on activities while WFH?
  - Will there be remote meetings? Scheduled or impromptu?
  - How will WFH expenses be reimbursed (state law issues)

# What if an Employee Refuses to Work for Fear of Getting Sick?

- Employees are only permitted to refuse to work if they are in imminent danger, and the average workplace does not present an imminent danger.
- Certain types of travel and healthcare environments might present an imminent danger.
- There are possible NLRA implications if employees refuse to work to protest working conditions.

# Should I Make High Risk Employees Stay Home?

- Sending older and disabled workers home to avoid exposure presents discrimination issues.
- You can encourage them to work from home and refer them to the CDC guidelines for information regarding risks unique to them.
- You cannot prevent them from working based solely on a protected category, such as age or disability.

# What Do I Do With Employees Who Want to Wear Masks at Work?

- WHO has stated that only employees treating someone infected with COVID-19 need masks.
- If an employee comes to work with a mask, ask them why they are wearing it.
- If they are wearing a mask because they have symptoms such as fever, runny nose, or cough, send them home immediately.
- If they have no symptoms, educate them on the fact a mask will not be of benefit to them, and is likely causing concern in the rest of the workplace.

# Is Time Off for COVID-19 Protected Leave Under FMLA, ADA, etc.?

- FMLA and state equivalents will apply to employees who are out due to illness, but not to an employee staying home to avoid becoming ill except to extent Federal legislation expands FMLA.
- The ADA likely would not cover someone with COVID-19 unless they had underlying health conditions or you regard them as disabled. However, a state equivalent of the ADA might apply.

# What Compensation Issues Arise From Shutting-down Temporarily?

- You likely do not owe wages to hourly employee during a shut-down, other than paying mandatory (*i.e., required by local, state, or federal law*) or earned paid leave benefits.
- However, salaried exempt employees may present some unique requirements, as will employees working a fluctuating workweek.
- Complications arise from employment contracts, collective bargaining agreements, and state wage laws.

# Can I Make Furloughed Employees Use Sick Pay or Vacation?

- Yes, under Federal law, but possibly not under state laws.
- States with mandatory sick pay requirements may not permit employers to force employees to use their sick time.
- Likewise state vacation/PTO laws may restrict what employers can force employees to do with vacation/PTO.
- Practically speaking, most employees will want to use their sick, PTO, and vacation time, and to the extent your business can support it, you should be flexible with requests.



# Are There Notice Requirements if I Shut-down or Furlough Employees?

- WARN Act only applies if you have 100 or more full-time employees.
- WARN covers layoffs lasting more than six months, and it contains exceptions for layoffs caused by unforeseen business circumstances.
- However, state law may be different.
- California does not have unforeseen business circumstances exception, and it does not limit notice to longer layoffs.
- Give notice if there is any doubt about whether it is required, even if notice is late.

# Can I Make Temporary Changes to Policies to Adapt to COVID-19?

- Yes, so long as the changes are not discriminatory and do not deprive employees of a guaranteed entitlement.
- Examples:
  - Allowing sick pay to be used to stay at home to avoid getting sick and not requiring a doctor's note to validate use of sick pay.
  - Other changes to PTO policies, such as allowing PTO advances.
  - Work From Home policies that are broader than existing policy.

# Can We Prohibit Employees From Taking Trips to Hot Zones on Personal Time?

- Not advisable, and it may violate state privacy laws to do so.
- This includes pregnant employees or those with a high risk of medical complications from exposure.
- When employees return from a risky environment, your ability to question them re: possible exposure is far greater when a pandemic has been declared.

# Do We Need to Report COVID-19 Cases to OSHA?

- No
- OSHA recently issued guidance indicating that employers must report instances of COVID-19 on the OSHA 300 logs.
- OSHA and state OSHAs have emphasized the importance of maintaining an Illness and Injury Prevention Program (“IIPP”) that addresses infectious disease outbreak procedures.

# Is COVID-19 a Covered Condition for Workers' Comp?

- Maybe. The answer will depend on state law, the nature of the job, and the manner in which the employee was exposed.
- Generally, to be covered by workers' comp, the employee must show that they contracted COVID-19 in the course of performing their job and because of conditions peculiar to their work.
- However, states may relax these rules to make it easier for workers to claim workers' comp.

# Does Health Insurance Cover Testing And Treatment?

- Most health insurance plans will cover testing and treatment.
- The question of whether co-pays and deductibles apply is a fast moving subject with Federal and State regulatory activity.
- Some states require testing to be covered without cost to insureds.
- Federal law may require the same once Federal legislation is finalized.

# Webcast Replay

- Webcast replay will be available at:  
[trinet.com/webinars/how-smbs-can-prepare-for-the-impact-of-covid-19](https://trinet.com/webinars/how-smbs-can-prepare-for-the-impact-of-covid-19)

Coronavirus Update: TriNet continues to monitor the situation and provide everyday preventative measures. [Read More](#)



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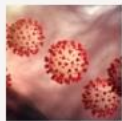
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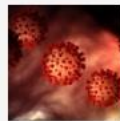
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# Questions

