COALITION OF GREATER MN CITIES

Keeping Public Workers Legally and Practically Safe from COVID-19

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Topics

- **Overview**
  - **COVID-19 Public Employment Impacts Survey Update**
  - **Rationale**
- **Legal Framework**
- **Internal Guidance**
- **Workplace Conditions**
- **Employee Medical-Related Issues**
- **Recommendations**
- **Q&A's**

Questions?

Please submit any questions via the “Chat” function

COVID-19 Public Employment Impacts Survey

- CGMC conducted a rapid survey to better understand the economic and operational changes that local governments have made and intend to make to address the COVID-19 outbreak and its impacts
- Survey was answered by public officials representing 50 government entities, including cities, counties, and municipal utilities

COVID-19 Public Employment Impacts Survey

- **Changes in Operation**
  - Allowed for remote work: 85%
  - Implemented staggered or flexible schedules: 65%
  - Furloughed employees: 40%
  - Reduced total work hours: 30%
  - Implemented a hiring freeze: 25%
  - Laid off employees: 7.5%

COVID-19 Public Employment Impacts Survey

- **Changes to Wages and Benefits**
  - Allowed use of all paid leave for voluntary hours absent from work: 70.6%
  - Allowed use of all paid leave for involuntary hours absent from work (i.e., hours reduced, furloughed): 52.9%
  - Paid employees for involuntary hours absent from work (i.e., hours reduced, furloughed) without being required to use paid leave: 50%
  - Established new COVID-19 Leave Time: 41.20%
  - Did not pay and prohibit use of paid leave for reduction of hours: 0%
  - Did not pay and prohibit use of paid leave for furlough: 0%

Full survey available at: https://greatermncities.org/wp-content/uploads/2020/04/COVID-19-Labor-and-Employment-Survey-Results.pdf

Overview

- Stay at Home Order in effect until Sunday, May 3, 2020 at 11:59 p.m.
  - Executive Order 20-38 expanded allowable outdoor recreational activities
- Midwest governors announce partnership to reopen regional economy
  - Phasing in sectors of economy most effective when working together as a region
  - Balance of slowing the spread of COVID-19 and mitigating economic crisis
  - Top priority – health and safety of citizens, workers
  - Factors include:
    - **Sustained control of the rate of new infections and hospitalizations**
    - **Enhanced ability to test and trace**
    - Sufficient health care capacity to handle resurgence
    - Best practices for social distancing in the workplace

See Executive Order 20-33 (E.O. 20-33), April 8, 2020.

Overview

- Sustained control of the rate of new infections and hospitalizations
  - As of April 20, Minnesota had 2,356 cases of COVID-19 confirmed by testing
  - April 19, 2020 – State's second highest number of fatalities reported in a single day
    - Number of people in the hospital with COVID-19 symptoms declined by 11 people, to 228, which was the largest decline in currently hospitalized cases since the start of the outbreak
- Enhanced ability to test and trace
  - Harvard University researchers found that the number of tests needed to identify COVID-19 cases accurately and to safely reopen the economy needs to triple by mid-May from 146,000 tests per day across country to at least 500,000 per day

See Joe Carlson, *All 10 Winona County virus deaths linked to care facilities*, Star Tribune (Apr. 20, 2020); *see also*, Situation Update for Coronavirus Disease 2019 (COVID-19), Minnesota Department of Health.

Overview

- National Guidelines: *Opening Up America Again*
  - Allow objective assessments of epidemiological status and overall preparedness by states to follow a phased approach for individuals and employers to resume normal activities
  - Specific gating criteria must be met by state or county before proceeding to phased reopening
    1. Influenza-like illnesses and covid-like cases of illness must trend downward for 14 days;
    2. Documented COVID-19 cases and prevalence of positive tests must trend downward for 14 days (while not decreasing the overall number of tests); and
    3. Local hospitals must have the capacity to treat all patients without crisis care and jurisdictions must have a robust healthcare worker testing program and place in place

Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again, Executive Office of the President Office of Management and Budget and U.S. Office of Personnel Management, M-20-23 (April 20, 2020).

Overview

- Guidance from the Office of Personnel Management and the Office of Management and Budget
  - In partnership with state, local, tribal, and territorial governments, and the private sector
  - Federal government, Nation's largest employer, "actively planning to ramp back up government operations to the maximum extent possible, as local conditions warrant, consistent with the National guidelines for *Opening Up America Again*"
  - Contains policies federal agencies could or may take without prescribing specific timelines or actions
  - Agencies to continue deploying maximum telework, then move toward lifting mandatory telework in low-risk geographic areas, and finally lift "maximum" telework at all locations before settling into normal, "optimized" operations

Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again, Executive Office of the President Office of Management and Budget and U.S. Office of Personnel Management, M-20-23 (April 20, 2020).

Overview

- Governor Walz and his administration are developing a plan for restarting Minnesota's economy
  - How and when to start lifting the stay-at-home order
  - Called for testing 5,000 or more people a day as a prerequisite to opening the economy
  - Pledged to try and get some back to work shortly
    - Roughly 14% state's labor force has applied for unemployment insurance – over 460,000 workers
  - Noncritical businesses will need an individual plan for reopening based on health guidance

See Walker Orenstein and Peter Callaghan, How the Walz administration is developing its plans for restarting Minnesota's economy, MinnPost (Apr. 17, 2020).

Overview

"There's a possibility that the assault of the virus on our nation next winter will actually be even more difficult than the one we just went through," CDC Director Robert Redfield said in an interview with The Washington Post. "And when I've said this to others, they kind of put their head back, they don't understand what I mean."

"We're going to have the flu epidemic and the coronavirus epidemic at the same time," he said.

CDC director warns second wave of coronavirus is likely to be even more devastating, The Washington Post (Apr. 21, 2020)

OSHA
DEPARTMENT OF LABOR & INDUSTRY

CDC
CENTERS FOR DISEASE CONTROL AND PREVENTION

Legal Framework

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Legal Framework

- Workplace Conditions
  - MN Department of Labor and Industry Guidance
  - Minnesota Occupational Safety and Health Administration (OSHA)
  - Governor's Executive Orders
  - Centers for Disease Control and Prevention (CDC) Guidance
- Employee Medical and Leave Laws
  - Americans with Disabilities Act
  - Minnesota Human Rights Act
  - Workers' Compensation
  - Leaves (EPSL, EFML, FMLA, Care of Relatives, Quarantine)

Workplace Conditions

MN Department of Labor and Industry

- Agency oversees occupational safety and health, wage and hour standards, workers' compensation
- Issued guidance related to:
  - Worker protections related to COVID-19
  - Safety and health guidelines for the employers and employees of essential work operations
  - COVID-19 Preparedness Plan template
- Employer legal obligations based on a number of state and federal laws

Minnesota OSHA

- Employers under the jurisdiction of Minnesota OSHA must comply with both the federal OSHA standards adopted by reference in Minnesota and Minnesota statutes and rules
- MNOSHA Compliance enforces regulations through worksite inspections, responds to employee complaints, conducts accident investigations and provides education and technical assistance

29 CFR Part 1910 (OSHA General Industry Regulations); Minnesota Statutes Ch. 182 (Occupational Health and Safety); Minnesota Rules Ch. 5205 (Occupational Safety and Health Standards).

Minnesota OSHA

- Fundamental obligation to protect employees from known hazards
- "Each employer shall furnish to each of its employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to its employees"

Minn. Stat. § 182.653, subd. 2.

Minnesota OSHA

- Both employers and employees must follow requirements set forth under the Occupational Safety and Health Act
- Employers cannot retaliate against an employee for reporting health and safety concerns at work

Minn. Stat. §§ 182.653-.654. *See* 29 U.S.C. 654(a)(1)(Federal OSH General Duty Clause); *See also*, Minn. R. § 5206.0600, subp. 5 (viral agents).

Minnesota OSHA

- Many employers are required to develop and use a formal safety and health program known commonly as: A Workplace Accident and Injury Reduction (AWAIR) program
- See Internal Guidance section

See Minn. Stat. §§ 182.653, subd. 8, .676; *See also*, Minn. R. § 5208.0010.

Governor's Executive Orders

- What is required of employers?
  - Ensure that any Critical Sector work adhere, to the maximum extent possible, to Minnesota Occupational Safety and Health Standards, and the Minnesota Department of Health and CDC Guidelines related to COVID-19
    - This includes adherence to social distancing and hygiene

See E.O. 20-33.

CDC Guidance

- Employers
  - Interim Guidance for Businesses and Employers
  - Cleaning and Disinfection Recommendations
  - Possible Exposure of Critical Workers
  - Interim Guidance for Emergency Medical Services (EMS) Systems and 911 Public Safety Answering Points (PSAPS) for COVID-19 in the United States
  - What Law Enforcement Personnel Need to Know about Coronavirus Disease 2019 (COVID-19)
  - What Firefighters and EMS Providers Need to Know about COVID-19

CDC Guidance for Employers

- According to OSHA, most American workers will likely experience low or medium exposure risk levels at their job or place of employment
- All employers need to consider how to best decrease the spread of COVID-19 and lower the impact in their workplace
  - Reduce transmission among employees
    - Actively encourage sick employees to stay and remain home until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments
    - Identify where and how workers might be exposed to COVID-19 at work
    - Educate employees about how they can reduce the spread of COVID-19

CDC Guidance for Employers

- All employers need to consider how to best decrease the spread of COVID-19 and lower the impact in their workplace, cont'd
  - Maintain healthy business operations
    - Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact
    - Implement flexible sick leave and supportive policies and practices
    - Assess essential functions
    - Consider establishing policies and practices for social distancing
  - Maintain a healthy work environment
    - Perform routine environmental cleaning and disinfection
    - Take care when attending meetings and gatherings
    - Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors

See Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus 2019 (COVID-19), CDC.

CDC Guidance

- Individuals
  - What to Do If You Are Sick
  - Groups at Higher Risk for Severe Illness
    - Older adults and people of any age who have serious underlying health conditions might be at higher risk for severe illness from COVID-19
  - Preventing Getting Sick
    - Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission
    - Use of Cloth Face Coverings to Help Slow the Spread of COVID-19
    - Cloth Face Coverings: Questions and Answers

Employee Medical and Leave Laws

Americans with Disabilities Act (ADA)

- The U.S. Equal Employment Opportunity Commission (EEOC) enforces anti-discrimination laws, including the ADA and the Rehabilitation Act, which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries
- The EEOC published *Pandemic Preparedness in the Workplace and the Americans With Disabilities Act* during the H1N1 outbreak, but has updated it as guidance including specific examples and information regarding COVID-19

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

Minnesota Human Rights Act (MHRA)

- The MHRA protects employees from discrimination on the basis of disability, race, national origin, age and other protected classes
- Individuals with disabilities have the right to request "reasonable accommodations" from employers that are subject to the ADA and/or the MHRA
  - See Employee Medical-Related Issues

See Minn. Stat. § 363A.08.

Workers' Compensation

- Employees who contract a disease arising out of and in the course of their employment may be entitled to workers' compensation benefits, including payment for wage loss and medical benefits
- Under new state legislation, if an "employee" has contracted COVID-19 and is employed in the occupation of a licensed peace officer, firefighter, paramedic, or emergency medical technician, the illness is presumed to be a workers' compensation occupational disease and is compensable unless the employer disproves the presumption
  - Generally speaking, firefighters and emergency response volunteers are considered employees for purposes of workers' compensation
  - Employees who must stay home from work because they were exposed, but are not ill, are not entitled to workers' compensation benefits

See Minn. Stat. §§ 176.011, .101, .135; *See also*, H.F. 4537.

Leaves

- Emergency Paid Sick Leave (EPSL)
  - 80 hours (prorated for PT Ees) of EPSL
  - Be compensated at their regular rate if they are unable to work because the employee:
    - Is quarantined pursuant to a Federal, State, or local government order;
    - Is quarantined pursuant to a health care provider advisement; and/or
    - Is experiencing COVID-19 symptoms and seeking a medical diagnosis.
  - Be compensated at two-thirds their regular rate if they are unable to work because the employee:
    - Is caring for an individual quarantined pursuant to a Federal, State, or local government order, or a healthcare provider advisement;
    - Is caring for the employee's minor child whose care provider or school is unavailable due to COVID-19; and/or
    - Is experiencing a substantially similar condition as specified by the Secretary of Health, in consultation with the Secretaries of the Treasury and Labor

See H.R. 6201, Sec. 5110(5); H.R. 748, Sec. 3602; 29 C.F.R. §§ 826.20, .22.

Leaves

- Emergency Family and Medical Leave (EFML)
  - 12 weeks of EFML (combined with any other FML)
  - Be compensated at two-thirds their regular rate after first two weeks of EFML if the employee is unable to work because the employee is caring for his or her minor child whose care provider (or school) is unavailable due to COVID-19
    - May supplement with other paid leave if agreed to by employer

See H.R. 6201, Sec. 3102(b); Department of Labor's Family First Coronavirus Response Act: Employer Paid Leave Requirements.

Leaves

- FMLA
  - 12 weeks of leave for serious health condition of employee or immediate family member
- Care of Relatives
  - Employees are entitled to use sick leave benefits for:
    - Child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent
    - Reasonable periods of time as attendance may be necessary
    - Due to an illness of or injury to relatives
    - On same sick leave terms as own injury or illness
  - May limit use of relatives, except child, to no less than 160 hours in any 12-month period

29 U.S.C. § 2611 and § 2612; Minn. Stat. § 181.9413.

Leaves

- Isolation and Quarantine of Persons
  - Employers may not discharge, discipline, or penalize an employee for missing work if the Minnesota Department of Health (MDH) recommended the employee isolate or quarantine
  - This protection also applies if an employee needs to care for a minor or adult family member for whom MDH recommends isolation or quarantine
    - Adult family member must have a disability or be a vulnerable adult
  - Employment protection is available for 21 workdays
- Other employer-provided leave

See Minn. Stat. § 144.419.

Internal Guidance

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Safety Committee and AWAIR

- Employers required to establish and administer a joint labor-management safety and health committee
  - Applies to employers with more than 25 employees, including volunteers considered employees for purposes of workers' comp, and employers with less than 25 employees that have a high lost-workday incidence rate
  - Tasks include: conducting job hazard analyses; developing and maintaining safety policies; providing for employee safety education
- A Workplace Accident and Injury Reduction (AWAIR) program
  - Employers engaged in certain specific industrial classification codes are required to develop and implement a written safety and health program with specific actions designed to reduce the incidence of workplace accidents and injuries – North American Industrial Classification System (NAICS) codes

See Minn. Stat. §§ 182.653, subd. 8, .676; *See also*, Minn. R. § 5208.0010.

AWAIR and Safety Manual

- Covered employers must establish a written AWAIR program that includes:
  - How managers, supervisors and employees are responsible for implementing the program and how continued participation of management will be established, measured and maintained;
  - The methods used to identify, analyze and control new or existing hazards, conditions and operations;
  - How the program will be communicated to all affected employees so they are informed of work-related hazards and controls;
  - How workplace accidents will be investigated and corrective action implemented; and
  - How safe work practices and rules will be enforced.
- Employers must conduct and document a review of the workplace accident and injury reduction program at least annually and document how the procedures included in the program are being met

Minn. Stat. § 182.653, subd. 8.

Procedures, Practices, Guidelines

- Employers should ensure departmental policies and procedures have appropriately classified employee exposure risk and are taking appropriate precautionary measures
  - See Workplace Conditions
- Employee safety training
  - Many OSHA standards include explicit safety and health training requirements

See Training Requirements in OSHA Standards, OSHA, U.S. Department of Labor.

Personnel Policies

- Employers likely have at least a general policy related to employee health and safety
- Any newly implemented policies or procedures should incorporate reference to any changes to current policies and specify if and when specific departments have a superseding policy

Workplace Conditions

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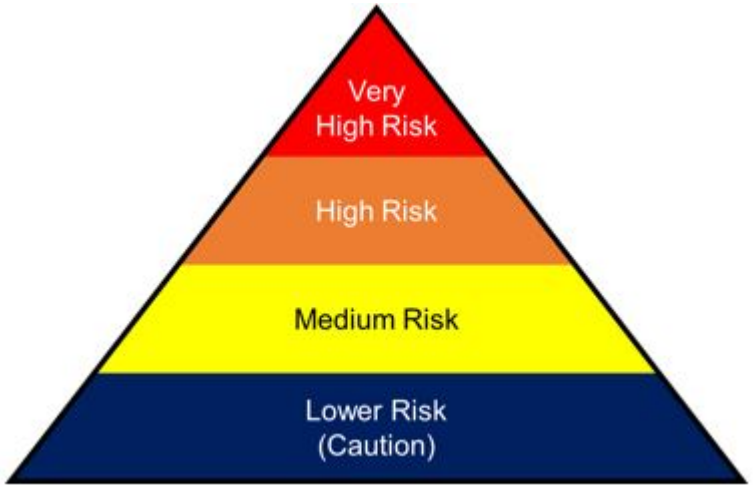
Hazard Assessment

- Worker risk of occupational exposure to COVID-19 may depend on a number of factors
- Determines protections and practices to implement
- OSHA divided job tasks into four risk exposure levels
- Most American workers likely fall into the lower or medium exposure risk levels



Hazard Assessment

- **Lower Exposure Risk (Caution)**
  - Jobs that do not require contact with people known to be, or suspected of being, infected with COVID-19
  - Workers in this category have minimal occupational contact with the public and other coworkers
  - Examples include:
    - Remote workers
    - Office workers who do not have frequent close contact with coworkers, customers, or the public
    - Manufacturing and industrial facility workers who do not have frequent close contact with coworkers, customers, or the public
    - Healthcare workers providing only telemedicine services
    - Long-distance truck drivers

Hazard Assessment

- **Medium Exposure Risk**
  - Jobs that require frequent/close contact with people who may be infected, but who are not known to have or suspected of having COVID-19
  - Workers in this category include:
    - Those who may have frequent contact with travelers who return from international locations with widespread COVID-19 transmission
    - Those who may have contact with the general public (e.g., in schools, high population density work environments, and some high-volume retail settings)

Hazard Assessment

- **High Exposure Risk**
  - Jobs with a high potential for exposure to known or suspected sources of COVID-19
  - Workers in this category include:
    - Healthcare delivery and support staff (hospital staff who must enter patients' rooms) exposed to known or suspected COVID-19 patients
    - Medical transport workers (ambulance vehicle operators) moving known or suspected COVID-19 patients in enclosed vehicles
    - Mortuary workers involved in preparing bodies for burial or cremation of people known to have, or suspected of having, COVID-19 at the time of death

Hazard Assessment

- **Very High Exposure Risk**
  - Jobs with a very high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures
  - Workers in this category include:
    - Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures on known or suspected COVID-19 patients.
    - Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients
    - Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have, or are suspected of having, COVID-19 at the time of their death

Hazard Assessment

- OSHA requires employers to assess occupational hazards to which their workers may be exposed
- Some OSHA standards, such as those for personal protective equipment (PPE) and respiratory protection, include these types of requirements

See 29 CFR 1910.132; *see also*, 29 CFR 1910.134.

Hazard Assessment

- Employers should consider if and when their workers may encounter someone infected with COVID-19 in the course of their duties, or when workers could be exposed to environments or materials contaminated with the virus
  - Increased risk examples:
    - Solid waste and wastewater management
    - First responders and law enforcement

Minnesota OSHA

- Infectious agent training
  - Employers are required to provide to employees routinely exposed to an infectious agent
    - Coronavirus is a recognized viral agent listed under infectious agents
  - To occur before initial assignment to workplace where routinely exposed, with training updates repeated at intervals no greater than one year
  - Employer shall maintain current information for training and implement a written Employee Right-to-Know program

See Minn. Stat. § 182.653, subds. 4-5. *See also*, Minn. R. §§ 5206.0600-.0700.

Wastewater Management

- Coronaviruses may be present in raw wastewater
- Conventional, centralized water treatment methods that use filtration and disinfection should inactivate the COVID-19 virus
  - If wastewater treatment is insufficient to remove or inactivate coronaviruses, or combined sewer overflows/bypasses are operational, the viruses may be released into the environment
- Best practices for protecting the health of workers at sanitation treatment facilities should be followed – including:
  - Wearing appropriate personal protective equipment (PPE) including protective outerwear, gloves, boots, goggles or a face shield, and a mask
  - Performing hand hygiene frequently
  - Avoid touching eyes, nose, and mouth with unwashed hands

Wastewater Management

- Strict sanitation practices should be implemented to encourage:
  - Frequent handwashing
  - Separation of eating areas from work areas
  - Minimization of contact between hands and face
- Communications should be sent to plant operators and staff to inform them of best sanitation practices

See Considerations for Water and Wastewater Treatment related to the recent outbreak COVID-19, Stantec (Feb. 21, 2020); *see also*, Interim Guidance, World Health Organization (WHO).

First Responders and Law Enforcement

- Law enforcement who must make contact with individuals confirmed or suspected to have COVID-19 should follow CDC's *Interim Guidance for EMS*
- Different styles of Personal Protective Equipment (PPE) may be necessary to perform operational duties
  - Only trained personnel wearing appropriate PPE should have contact with individuals who have or may have COVID-19
- Minimum PPE recommended is:
  - A single pair of disposable examination gloves,
  - Disposable isolation gown or single-use/disposable coveralls,
  - Any NIOSH-approved particulate respirator (i.e., N-95 or higher-level respirator); Facemasks are an acceptable alternative until the supply chain is restored, and
  - Eye protection (i.e., goggles or disposable face shield that fully covers the front and sides of the face)

Personal Protective Equipment (PPE)

- Following CDC recommendation that the general public wear, on a voluntary basis, "cloth face coverings in public settings . . . especially in areas of significant community-based transmission" of COVID-19, employers should consider implementing a notice to employees related to Facial Coverings or Masks
- An employer may require employees to wear protective gear such as a mask or gloves
  - Consider making voluntary for lower exposure risk positions
- Employers requiring employees wear masks are also responsible for identifying, providing, and paying for masks or other PPE
  - Employers may not be able to supply masks long-term

See Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission, CDC; *see also*, 29 CFR 1910.132(h).

Personal Protective Equipment (PPE)

- Reasonable accommodation under the ADA or Title VII
  - Where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading) or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

Distancing

- Physical distancing
  - CDC states it is critical to emphasize maintaining 6-feet physical distancing in order to slow the spread of the virus
- Staggered schedules
  - Adjusting work schedules so there are fewer people at a worksite to limit interactions in the workplace and assist with physical distancing
- Implementing flexible worksites (e.g., telework)
- Increasing physical space between employees and customers (e.g., partitions)
- Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events, remote meetings, avoid large group meetings)
- Facility shut down

See Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus 2019 (COVID-19), CDC.

Sanitary Conditions

- OSHA General Duty
- How to clean and disinfect:
  - Wear disposable gloves
  - Practice routine cleaning of frequently touched surfaces including: tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.
  - Clean area or item with soap and water if it is dirty, then use disinfectant
- Close off areas used by an individual who is sick and open doors and windows to increase air circulation
  - If possible, wait 24 hours before you clean or disinfect
- Wash hands often while cleaning, for at least 20 seconds

See Cleaning and Disinfecting Your Facility, CDC (available at: https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html).

Sanitary Conditions

- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.
- Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks, other work tools and equipment) can be wiped down by employees before each use. To disinfect, use products that meet EPA's criteria for use against SARS-CoV-2, the cause of COVID-19, and are appropriate for the surface.

See Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus 2019 (COVID-19), CDC.

Sanitary Conditions

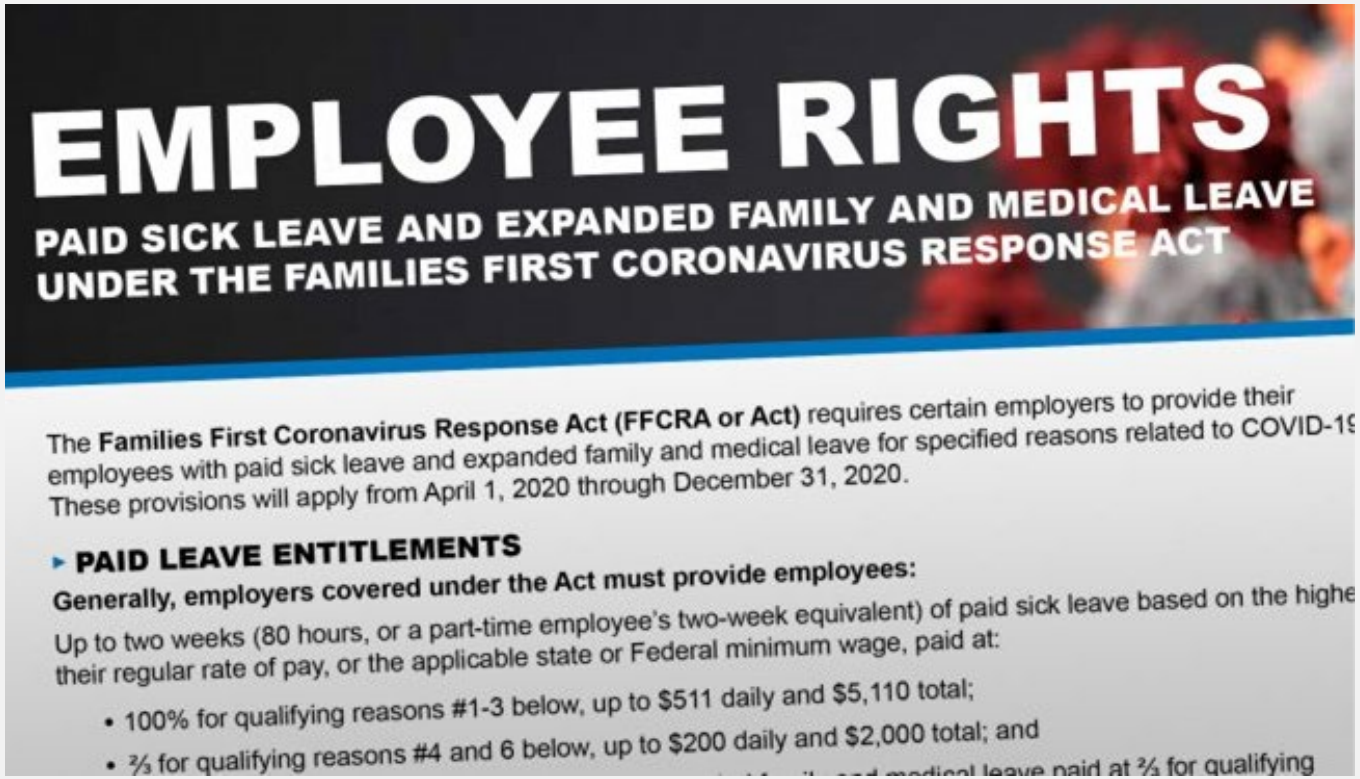
- Provide tissues and no-touch disposal receptacles
- Provide soap and water in the workplace. If soap and water are not readily available, use alcohol-based hand sanitizer that is at least 60% alcohol. If hands are visibly dirty, soap and water should be chosen over hand sanitizer. Ensure that adequate supplies are maintained.
- Place hand sanitizers in multiple locations to encourage hand hygiene.
- Place posters that encourage hand hygiene to help stop the spread at the entrance to your workplace and in other workplace areas where they are likely to be seen.
- Discourage handshaking – encourage the use of other noncontact methods of greeting.

See Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus 2019 (COVID-19), CDC.

Reporting to Work

- Employee legal rights
  - Employees can refuse to work if they reasonably believe they are in imminent danger under MN OSHA
    - Must have reasonable belief there is a threat of death or serious physical harm likely to occur immediately or within a short period for this protection to apply
    - Such as reasonable belief of the employee that the employee has been assigned to work in an unsafe or unhealthful manner with an infectious agent
    - Specific fear of infection that is based on fact – not a generalized fear of contracting COVID-19 infection in the workplace – that employer cannot address in a manner designed to ensure a safe working environment

Minn. Stat. §§ 182.653-.654. *See* 29 U.S.C. 654(a)(1)(Federal OSH General Duty Clause); *See also*, Minn. R. § 5206.0600, subp. 5 (viral agents).



EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▸ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the highe their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to $511 daily and $5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and

Employee Medical-Related Issues

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Employee's Medical Condition COVID-19

- **What steps do I take if an employee still reporting to the worksite tests positive for COVID-19**?

1. Prohibit the employee from working for length of time as required by health care provider and CDC guidance

2. Ask the employee which coworkers they have come into close contact with in the previous two weeks, including what shared work areas they have used
   - CDC defines close contact as within six feet "for a prolonged period of time"

Employee's Medical Condition COVID-19

3. Contact the employees identified and inform them that an employee who has been at the worksite has tested positive for COVID-19 and has identified them as a close contact according to the CDC definition
   - Contact employees by telephone if possible
   - Do not reveal the employee's identify to those exposed, including position title or department unless employee provides valid informed consent

4. Determine whether to request exposed employees self-quarantine
   - Critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community
   - Otherwise, employer should request exposed employee self-quarantine for at least 14 days

Employee's Medical Condition COVID-19

5. Thoroughly clean and disinfect workplace
   - CDC recommends if an infected employee has been at the worksite within 48 hours of testing positive

6. Communication to other employees should be limited to the following:
   - An employee has tested positive for COVID-19 on [date if known];
   - The employee is self-quarantining;
   - All close contacts have already been notified
   - If exposed employees were asked to leave the worksite and self-quarantine, notify other employees of this as well
   - Encourage employees to come to Human Resources or equivalent with questions

Employee's Medical Condition COVID-19

7. Notify employees if a particular worksite will be closed until further notice for disinfecting, cleaning, etc.

8. Maintain any medical documentation in a confidential file separate from the employee's personnel file
    - Under the ADA, any information regarding the medical condition or history of an employee that an employer obtains as part of an examination or inquiry into a disability could constitute a confidential medical record that can be disclosed only to certain individuals in limited circumstances.

42 U.S.C. § 12112(d)(3)(B) and 12112(d)(4).

Minnesota OSHA

- Recording workplace exposures to COVID-19
  - Recordkeeping requirements mandate covered employers record certain work-related injuries and illnesses
  - Responsible for recording cases of COVID-19 if all of the following are true:
    - Confirmed case of COVID-19
    - Work-related
      - Event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness
      - Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting
    - Involves one or more of the general recording criteria (e.g., medical treatment beyond first aid, days away from work)

See 29 CFR §§ 1904.5-.7; *see also*, Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19), OSHA (Apr. 10, 2020).

Minnesota OSHA

- Recording requirements, cont'd
  - However, federal OSHA exercised its enforcement discretion in order to provide certainty to the regulated community
  - OSHA will not enforce regulation requiring employers to make work-relatedness determinations except where:
    - There is objective evidence that a COVID-19 case may be work-related (i.e., a number of cases developing among workers who work closely together without an alternative explanation; and
    - The evidence was reasonably available to the employer (i.e., information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees)
  - Employers of workers in the healthcare industry, emergency response organizations (emergency medical, firefighting, and law enforcement) must continue to make work-relatedness determinations

See 29 CFR §§ 1904.5-.7; *see also*, Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19), OSHA (Apr. 10, 2020).

Reasonable Accommodation

- If an employee is a qualified individual with a disability within the meaning of the ADA, the ADA requires his or her employer to make reasonable accommodations, barring undue hardship
  - Underlying medical conditions
- Reasonable accommodation may include:
  - "Permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment"
  - Flexible work schedule
  - Reduced contact with others
  - Special equipment

29 U.S.C. § 12111(5); *See* 29 CFR pt. 1630, appendix; *see also* EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*, No. 915.002 (Oct. 17, 2002).

Reasonable Accommodation

- Employers may ask employees with disabilities to request accommodations they believe they may need when the workplace reopens
  - Begin the "interactive process" - the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed
- If an employee requests an accommodation for a medical condition, employers may request information to determine whether the medical condition is a disability
  - If not obvious or already known
  - Ask appropriate questions or request medical information

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

High Risk Employees

- The White House, in conjunction with the CDC, has issued broad guidance advising people with serious underlying health conditions to stay home and away from other people
- Underlying medical conditions that may put a person at high-risk for severe COVID-19 illness are detailed on the CDC's website: "Groups at Higher Risk for Severe Illness"

See The President's Coronavirus Guidelines for America; *see also*, At Risk for Severe Illness, CDC, (April 2, 2020).

High Risk Employees

- Based on the CDC guidance, employers should allow high-risk employees to stay home or not return to work, but make this optional
- If an employer has a high-risk employee at work, it is especially necessary to ensure:
  - Symptomatic employees stay home
  - High-risk employee/s stay at least six feet away from others
  - Require frequent hand-washing and frequently clean and disinfect surfaces
  - Face masks are worn when social distancing measures are difficult to maintain

See Use of Cloth Face Coverings to Help Slow the Spread of COVID-19, CDC; *see also*, Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), CDC.

Employees Exposed to COVID-19

- Based on the CDC guidance, employees exposed to COVID-19 should stay home until 14 days after last exposure

See Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), CDC.

Employees with Symptoms

- In order to ask medical questions or require medical exams, employers must have a reasonable belief, based on objective evidence, that a specific employee might pose a direct threat
- During a pandemic, employers may ask employees entering the workplace, or who call in sick, if they are experiencing symptoms of COVID-19 (fever, cough, or shortness of breath), and may take employees' temperatures
  - Rely on guidance from public-health authorities including the CDC, OSHA, and the U.S. Department of State for list of associated symptoms
  - Keep in mind that some people with COVID-19 do not have a fever

See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

Employees with Symptoms

- Provide Tennessen warning before asking for information
- Cannot require employee to provide medical information (i.e., need consent)

See Minn. Stat. §§ 13.04, subd. 2 and 363A.20, subd. 8(a)(2).

Employees with Symptoms

- In accordance with CDC guidance, employers are allowed to require employees stay home if they have symptoms of COVID-19 even if not tested positive
- Any information on an employee that an employer obtains related to COVID-19 should be stored separately from the employee's personnel file in a separate confidential medical file
- Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion
  - Also implicates legal issues under Title VII and the MHRA

See 42 U.S.C. § 12112(d)(3)(B) and 12112(d)(4); *see also*, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, EEOC (updated Apr. 17, 2020).

Fear of COVID-19

- Even without underlying health conditions, employees may fail to report to work out to fear related to COVID-19
  - Employers should actively listen to the employee's concerns – are they reasonable?
  - Consider whether these concerns have already been addressed or if additional steps are needed
- Employers can usually discipline employees for violating their attendance policy
  - Consider putting hesitant employees on leave
  - Rely on existing time-off policies, which may include prior-approval for use, to require leave for this reason be unpaid

Employment Action

- Leave
  - Employees may take Emergency Paid Sick Leave (EPSL) and be compensated at their regular rate if they are unable to work because they are experiencing COVID-19 symptoms and seeking a medical diagnosis, or are quarantined pursuant to a healthcare provider advisement
  - FMLA
  - Other employer-provided leave
  - Run leaves concurrently, but require EPSL to be exhausted first

Documentation of Need for Leave

- DOL regulations state for EPSL an employer may require employees to follow reasonable notice procedures as soon as practical, including written statement, which may be after the first workday or portion of a workday for which an employee receives paid sick leave in order to continue to receive such leave
- Employee must provide a signed statement containing:
  - Employee's name
  - Date(s) for which leave is requested
  - The coronavirus-qualifying reason for leave
  - A statement that the employee cannot work or telework because of this reason

29 C.F.R. §§ 826.90-.100

Documentation of Need for Leave

- Normal FMLA certification rules apply to an employee's own serious health condition related to the coronavirus and to the employee's need to care for a spouse, son, daughter, or parent with a serious health condition
- If an employee fails to give proper notice, the employer should give the employee notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave

29 CFR § 825.306;
29 C.F.R. § 826.90(d); *see* 29 C.F.R. § 826.140; *see also*, COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs, IRS (Apr. 2020).

Employment Action

- If employee is able to work, consider temporary telework arrangement
- Employers should first establish written guidelines addressing:
  - Employees that may be eligible
  - Parameters of when work can be performed
  - Equipment to use
  - Appropriate retention and safeguarding of data
  - Ensure remote workplace is safe
  - Expense reimbursement (or not)
  - Recording of hours

Return to Work

- In most instances, an employee is entitled to be restored to their same or an equivalent position upon return from taking either EPSL or FMLA leave.
- The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity
  - Inquiries and reliable medical exams meet this standard if necessary to exclude employees with a medical condition that would pose a direct threat to health or safety
  - Therefore, employers can implement screening consistent with CDC guidance

See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

Return to Work

- Employers are allowed to require a doctor's note certifying fitness for duty
  - Medical inquiry permitted under the ADA either because it is not disability-related or, in the case of a pandemic, it is justified under the ADA standards for disability-related inquiries
  - Allow flexibility regarding timing of documentation as health care professionals may be too busy to promptly provide fitness-for-duty documentation

See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, EEOC (updated Apr. 17, 2020).

Recommendations

COALITION OF GREATER MN CITIES

Recommendations

- Designate key officials responsible for safety
- Compile external and internal guidance
- Conduct assessments
  - Prepare checklists
- Establish or modify policies, procedures, and practices and notify employees
- Train
- Monitor compliance
- Record incidents

Q&A’s

COALITION OF GREATER MN CITIES

Resources

- Visit the CGMC website (https://greatermncities.org) for additional information on the Coalition, including resources related to:
  - Labor & Employee Relations
  - Economic development
  - Local Government Aid & Property Tax Relief
  - Environment & Energy
  - Transportation
  - Annexation & Land Use
- CGMC COVID-19 Advice & Tools for Cities, including future Webinars: https://greatermncities.org/resources/covid-19/