BATEMAN, GORDON & SANDS, INC.
INSURANCE

Important Updates On Coronavirus and the Workplace

March 20, 2020

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Introduction

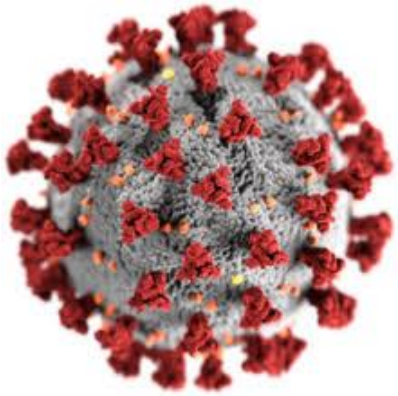
Agenda

- Coronavirus Basics
- Best Practices for Addressing Risks
- Families First Coronavirus Response Act
- Agency Guidance on Existing Workplace Laws

Coronavirus Basics

COVID-19

- Illness caused by a novel coronavirus (a new coronavirus that has not been previously identified)
- Symptoms: fever, cough, shortness of breath



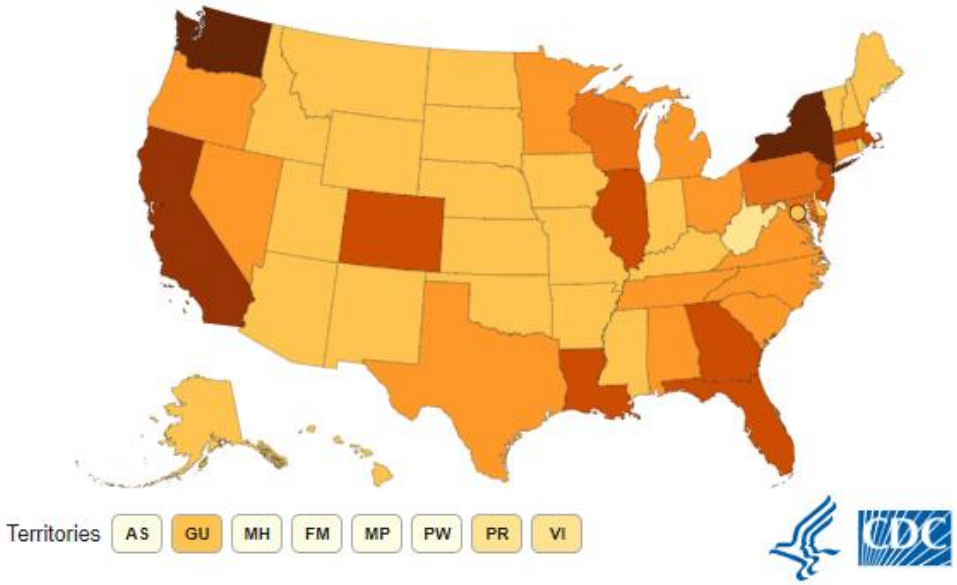
Spread of COVID-19

United States

- Over 10,000 confirmed cases
- Cases in all 50 states and D.C.
- Community spread in multiple states

"Community spread"

- People have been infected with the virus in a specific geographic area



How is COVID-19 diagnosed?

Do you have symptoms?

- Contact with sick person?
- Recent travel to area with known cases?

Contact healthcare provider if you have symptoms

- Doctor determines symptoms of COVID-19 and whether testing is required
- Higher risk individuals should contact their healthcare providers early

Current Treatment

- No vaccine or specific treatment yet
- Supportive care

Best Practices for Addressing Risks

Federal Guidelines

15 Days to Slow the Spread

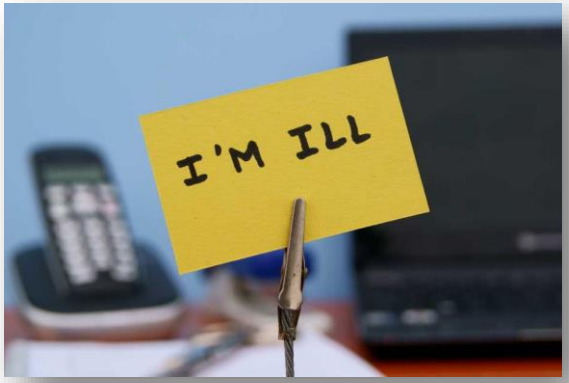
- Listen to and follow the directions of your **STATE AND LOCAL AUTHORITIES**.
- **IF YOU FEEL SICK**, stay home. Do not go to work. Contact your medical provider.
- **IF YOUR CHILDREN ARE SICK**, keep them at home. Do not send them to school. Contact your medical provider.
- **IF SOMEONE IN YOUR HOUSEHOLD HAS TESTED POSITIVE** for the coronavirus, keep the entire household at home. Do not go to work. Do not go to school. Contact your medical provider.
- **IF YOU ARE AN OLDER PERSON**, stay home, and away from other people.
- **IF YOU ARE A PERSON WITH A SERIOUS UNDERLYING HEALTH CONDITION** that can put you at increased risk (for example, a condition that impairs your lung or heart function or weakens your immune system), stay home and away from other people.

Federal Guidelines (cont.)

- Work or school **FROM HOME** whenever possible.
- **Critical infrastructure**
  - Defined by Department of Homeland Security (includes healthcare, pharmaceutical and food supply)
  - Maintain normal work schedule, follow CDC guidance
- **Avoid social gatherings** in groups of more than **10 people**.
- **Use drive-thru, pickup, or delivery options.** Avoid eating in restaurants.
- **Avoid discretionary travel**, shopping trips, and social visits.
- **DO NOT VISIT** nursing homes or retirement or long-term care facilities unless to provide critical assistance.
- **Practice good hygiene**
  - Wash hands
  - Avoid touching your face
  - Sneeze or cough into a tissue or the side of your elbow
  - Disinfect frequently used items and surfaces

Effects on the Workplace

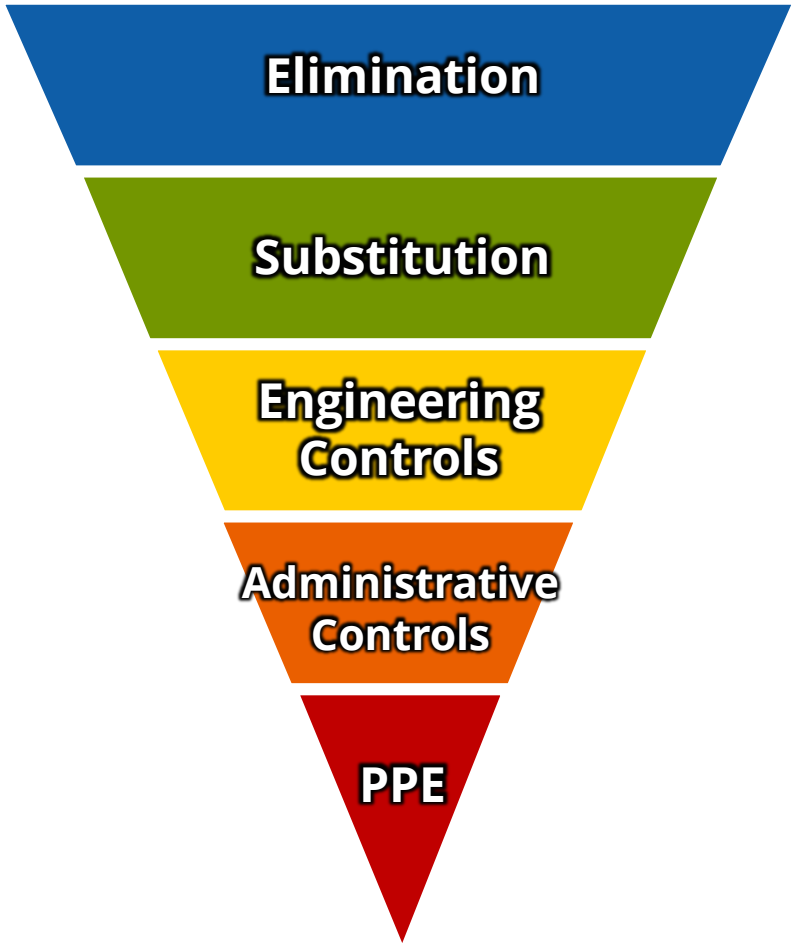
Absenteeism



Change in patterns of commerce

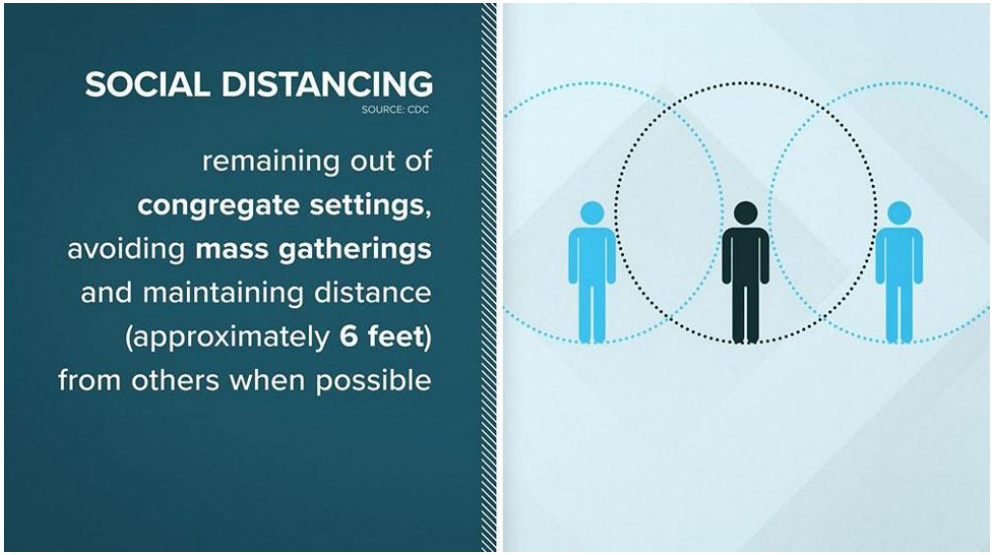
Supply chain disruption

Administrative Controls



Goal: Change the way people work

- Promote awareness
- Manage behaviors
- Not as effective, but perhaps quicker to implement



CDC Guidance

Recommended Strategies you can use NOW

- Actively encourage sick employees to stay home
- Separate sick employees
- Emphasize good etiquette
  - Stay home if sick
  - Hand hygiene
  - Cough/sneeze into tissue or elbow
- Perform routine environmental cleaning
- Advise employees before traveling

CDC Guidance (cont.)

Planning Considerations

- Objectives:
  - Reduce transmission
  - Protect people at higher risk
  - Maintain business operations
  - Minimize adverse effects in supply chain
- Key Considerations
  - Disease severity
  - Disease impact
  - Prepare for possible increased absenteeism
  - Local control for satellite offices and branches
  - Coordination with state and local health officials

CDC Recommendations

Infectious Disease Outbreak Response Plan

- Ensure the plan is flexible
- Involve employees in developing and reviewing the plan
- Ensure policies and practices conform to public health recommendations
- Share your plan with employees, explain policies and flexibilities
- Share best practices with other businesses in community
- Identify possible work-related exposure and health risks
- Explore whether you can establish flexible policies and practices (remote work, staggered shifts, increased employee distancing)
- Identify essential business functions, essential jobs or roles, and critical elements within your supply chains

Recommendations (cont.)

- Set up authorities, triggers, and procedures for activating and terminating the company's infectious disease outbreak response plan
- Establish a process to communicate information to employees and business partners
- Consider canceling non-essential business travel (check government travel advisories)
- Learn about your community's outbreak response plan
- Determine how you will operate if absenteeism (sick employees, caring for sick family members, staying home to watch children dismissed from school)
- Engage with state and local health departments to confirm communication (information dissemination) channels

Families First Coronavirus Response Act

Coronavirus Relief Bill

- Signed into law on March 18
- Contains several provisions to provide relief for effects of coronavirus situation
- Includes:
  - Funding for federal programs and unemployment compensation
  - Emergency paid sick leave
  - Expanded FMLA rights
  - Coverage for COVID-19 testing
  - Tax credits for employers that provide required leave (including self-employed individuals)

Emergency Paid Sick Leave

- Covered employers must provide paid sick time when an employee is unable to work (or telework) due to COVID-19
- Effective April 2 (or sooner?) through Dec. 31, 2020

Definitions

Covered employer: government agency of any size or person engaged in/affecting commerce who employs fewer than 500 employees

Employee: government employee or as defined by FLSA

- Regardless of length of employment

Exemptions:

- Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
- Employers can choose to exempt medical provider and emergency responder employees

Reasons for Paid Sick Leave

- The employee has been ordered or medically advised to self-quarantine or isolate due to COVID-19 (or is caring for someone who has)
- The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis
- The employee is caring for his or her minor child if the school or child care is unavailable due to COVID–19

Duration of Paid Sick Leave

- **Full-time employees:** 80 hours
- **Part-time employees:** the number of hours the employee works over a 2-week period (on average)

Sick time does not carry over from one year to the next

Required Compensation

- Based on regular rate of pay, federal minimum wage or state/local minimum wage (whichever is higher)
  - 100% of pay if employee is sick or quarantined/isolated (up to $511/day and $5,110 aggregate)
  - 2/3 of pay if employee is caring for a family member (up to $200/day and $2,000 aggregate)
- DOL to issue guidelines on calculating pay

Other Paid Sick Leave Rules

- **Employer may not:**
  - Require EE to search for/find a replacement EE for leave period
  - Require EE to use other paid leave first
  - Retaliate against EE for using leave
- **Employer may:**
  - Require EE to follow reasonable notice procedures after first day of leave

Other Paid Sick Leave Rules

- Employer must post and keep posted a notice of the paid sick leave requirements
  - In conspicuous places on the premises of the employer where notices to employees are customarily posted
  - DOL will issue a model notice
- Special rules apply to collectively bargained employees
- Unused paid sick leave does not have to be paid out at termination

Expanded FMLA

- Requires partially paid FMLA leave for eligible employees who cannot work due to closure of school or child care
- Expands definitions of eligible employee and covered employer
- Effective April 2 (or sooner?) through Dec. 31, 2020

Expanded FMLA - Definitions

- **Eligible employee:** an employee who has been employed for 30+ calendar days
- **Covered employer:** person engaged in/affecting commerce who employs fewer than 500 employees
- Exemptions:
  - Regulations may exempt medical providers, emergency responders and small businesses with fewer than 50 EEs
  - Employers can choose to exempt medical provider and emergency responder employees

Expanded FMLA - Definitions

- **Qualifying need related to a public health emergency:** employee is unable to work (or telework) due to a need to care for his or her minor child if the school or child care provider is unavailable due to a public health emergency
- **Public health emergency:** an emergency with respect to COVID–19 declared by a Federal, State, or local authority

Expanded FMLA - Paid Leave

- The first 10 days of expanded FMLA leave may be unpaid
  - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave
- Paid leave must be provided after 10 days
  - At least 2/3 of the employee's regular rate based on normally scheduled hours
  - Pay capped at $200/day and $10,000 overall

Expanded FMLA – Other Provisions

- Employee must provide notice of leave "as is practicable"
- FMLA restoration rights do not apply to employers with fewer than 25 employees if conditions are met
- Special rules for collectively bargained employees

COVID-19 Testing

- Group health plans and health insurance issuers **must cover COVID-19 testing**
- Plans and issuers may not impose:
  - Cost sharing (such as deductibles, copayments or coinsurance)
  - Prior authorization or other medical management requirements
- Applies to all group and individual plans or policies
- Testing also covered under government health programs

Unemployment Compensation

- The Act provides federal funds to help states pay for increased UI claims caused by the outbreak
- The Act encourages states to waive limitations on UI benefits for COVID-19-related claims.
- Other DOL guidance says states may allow UI benefits in non-standard situations

Agency Guidance on Existing Workplace Laws

Affected OSHA Standards

- General Duty Clause
- Illness Reporting and Recording
- Personal Protective Equipment
- Toxic and Hazardous Substances
- Environmental Controls – Sanitation

Work-related Incidents (OSHA)

An incident is presumed to be work-related if it results from events or exposure that occur in the **work environment** and the work environment

Caused or contributed to the resulting condition

OR

Significantly aggravated a pre-existing injury or illness

Remote Work – Wages (DOL)

- FLSA generally applies to hours actually worked
  - Exempt salaried employees must receive their salary each week
- Employers can require/encourage employees to telework
  - Do not single out employees for working at/away from office
  - Salary/compensation remains the same
  - Beware of overtime work caused by remote access

When not all employees can work from home, the DOL encourages social distancing (e.g., staggered work shifts)

Transportation Industry (FMCSA)

- March 13 – Emergency exemption
  - Drivers directly assisting in relief efforts
  - Waiver from hours of service regulations
- Direct assistance (expanded March 18)
  - Medical supplies, equipment, patients and personnel
  - Supplies and equipment for community safety, sanitation, and prevention
  - Food, paper products, and other groceries for emergency restocking
  - Raw materials for the manufacture of essential items;
  - Fuel

Workers' Compensation

- Generally governed by State law
- Usually cover only if infection work-related
- States relaxing rules for
  - Healthcare workers
  - Emergency responders

ADA: EEOC Pandemic Publication and FAQs

- The ADA normally prohibits asking employees or applicants for medical information
- During a pandemic, different rules apply
  - Employers may ask employees and applicants for info on symptoms
  - Employers can require sick employees to stay home or provide fitness for duty information
  - Employers may delay start dates or withdraw offers if it needs an applicant to start immediately
- Must keep employee information private

FMLA

- **COVID-19 or Other Public Health Emergencies and the FMLA Q&As**
- Applies prior pandemic influenza guidance to COVID-19
- Employees may be entitled to FMLA leave if they or a family member are sick
- Leave taken to avoid exposure would not be protected under the FMLA
- Standard FMLA rules apply in most situations
- Employers should consider flexible leave policies for their employees

HIPAA Privacy and Security

- **HHS Bulletin: HIPAA Privacy and Novel Coronavirus issued February 2020**
- Reiterates that the Privacy Rule still applies during a pandemic or emergency situation
- Privacy Rule applies to covered entities and business associates
- PHI can be shared for specific reasons under the Privacy Rule under existing rules
- Most information employers have is not PHI
- Must apply technical safeguards under Security Rule

Disclosure of PHI

- Permissible disclosures:
  - For treatment
  - Public health activities
  - To people involved in an individual's care and for notification
  - To prevent a serious and imminent threat
- Disclosures to the media or others not involved in the care of the patient or notification are generally prohibited
- Most disclosures must be "minimum necessary information"

ACA – Essential Health Benefits

- **CMS FAQs issued March 12**
- EHB generally includes coverage for the diagnosis and treatment of COVID-19
  - Exact coverage details and cost-sharing amounts for individual services may vary
- EHB includes quarantine/isolation in a hospital (not at home)
- Any future COVID-19 vaccine would be covered as EHB if recommended CDC
  - Required to be covered beginning with plan year that is 12 months after recommendation issued
  - Plans can cover sooner

HDHPs and COVID-19 Costs

- **IRS Notice 2020-15 issued March 11**
- HDHPs can pay for COVID-19 testing and treatment before plan deductible is met
- These plans remain HSA compatible
- Future COVID-19 vaccine costs
  - Count as preventive care
  - Can be paid for by an HDHP without cost sharing

Federal WARN Act

- Covered employers must provide **60 days' advance notice** of imminent covered plant closings and mass layoffs
- Applies to employers with 100 or more employees
- Some states have their own requirements
  - May apply to more employers
  - NJ will require severance pay (July 2020)

Health Plan Coverage

- ERISA plans must be administered in accordance with their terms
- Maintenance of benefits during leave will depend on the situation
- COBRA or state continuation coverage may be available for employees who lose coverage due to job loss or reduction in hours of employment

Questions?

Thank You!

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