

WORKPLACE SAFETY, DISABILITY ACCOMMODATIONS, AND LEAVES IN THE COVID-19 ERA

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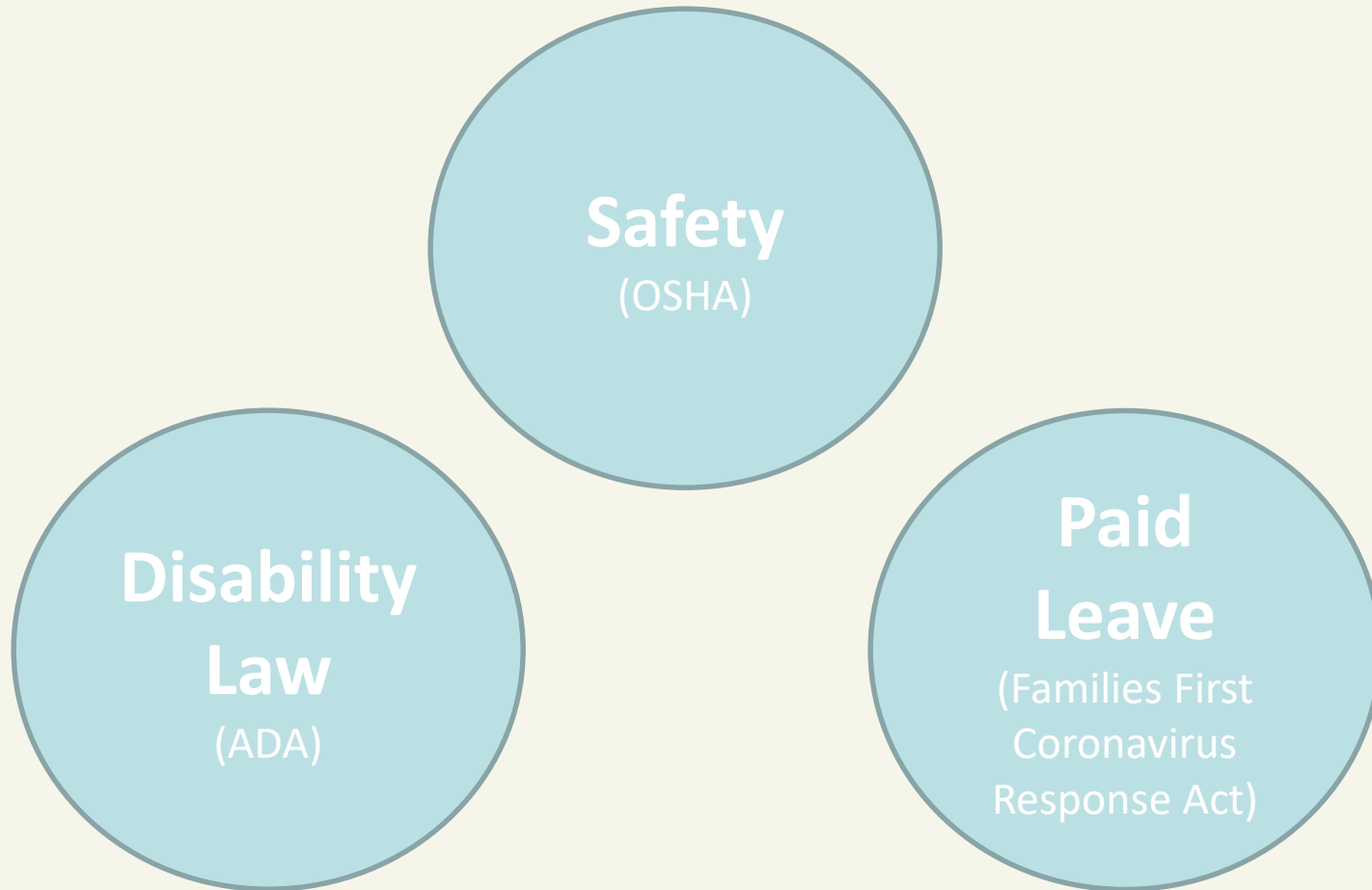
Associated General Contractors of Minnesota HR Forum

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ATTORNEYS AT LAW

Three Critical Areas



Workplace Safety

SAFETY

OCCUPATIONAL SAFETY AND HEALTH ACT

- OSHA covers COVID-19
- OSHA is enforced administratively
- But individuals can sue for retaliation

SAFETY

OCCUPATIONAL SAFETY AND HEALTH ACT

- OSHA has given extensive guidance
- OSHA's general-duty clause
- OSHA's Personal Protective Equipment regulations (e.g., gloves, eye and face protection, respirators)

WHEN DO YOU RECORD ON 300 LOG?

- COVID-19 is a 300 log recordable event *if*
 - “confirmed”
 - **Work-related**
 - One Other Criteria

- How do you know if work related?

- For now, risk assessment

WHAT SHOULD YOU DO . . .

- . . . now? **Partner with an attorney**
- . . . if OSHA knocks? **Same** (15 days to contest)
- . . . at all times? Make employees **feel** safe.

Disability Accommodations

DISABILITY LAW AND COVID-19

- COVID-19 arguably a “disability”
- But unlikely to trigger ADA
 - “direct threat” according to EEOC
 - Only guidance. Not binding



EEOC PRACTICAL GUIDANCE

SEND HOME?

- May an ADA-covered employer send an employee home if she has COVID-19 or symptoms associated with it?

- Yes.

EEOC PRACTICAL GUIDANCE

SYMPTOM QUESTIONS?

- May an ADA-covered employer ask an employee who reports feeling ill at work, or who calls in sick, questions about their symptoms to determine if they have or may have COVID-19?
- Yes.

EEOC PRACTICAL GUIDANCE

SYMPTOM QUESTIONS?

- EEOC Acknowledged Symptoms:
 - Fever
 - Chills
 - Cough
 - Shortness of Breath
 - Sore Throat

EEOC PRACTICAL GUIDANCE

TAKE TEMPERATURE?

- May an ADA-covered employer take an employee's temperature to determine whether he has COVID-19?
- Yes.
- (A Word on Confidentiality)

Families First Coronavirus Response Act

(Paid Leave/FMLA Expansion)

WHAT IF AN EMPLOYEE CAN'T WORK OR THE BUSINESS IS SHUT DOWN?

- Paid leaves
- Unpaid leaves
- Unemployment
- Resources for business impacted by COVID-19

FFCRA PAID SICK LEAVE

- **Effective:** April 1, 2020
- **Expires:** December 31, 2020 (no carry over)
- **Applies to private** employers with fewer than 500 EEs
 - DOL will consider waivers for 50-EEs-or-fewer Ers
 - Also non-private component

FFCRA PAID SICK LEAVE

- Two Paid Leaves
 - General (Sick **and** School/Day Care) (Two Weeks)
 - Extended FMLA (**Just** School/Day Care) (Ten Weeks)

FFCRA PAID LEAVE

SICK AND SCHOOL/DAY CARE - TWO WEEKS

- Two weeks of paid leave
 - **Full pay** for employees taking leave **due to their own** quarantine or self-quarantine or symptoms
 - **2/3 pay** for employees **caring for a family member** under quarantine **or a child** whose school or day care is closed due to COVID-19 and for similar conditions that may be identified by federal agencies

FFCRA PAID LEAVE EXTENDED FMLA LEAVE

- Up to 12 weeks of leave for employees who must be off work to care for the employee's child(ren) due to school or day care closures caused by COVID-19
- First ten days/2 weeks unpaid or paid by other available PTO or sick leave
- Then, paid leave at 2/3 the employee's regular rate

EMPLOYER PROVIDED PTO/PAID SICK LEAVE

Follow the policy . . .



And, in Minnesota, allow use of paid sick time
for care of a sick family member

MINNEAPOLIS AND SAINT PAUL SICK AND SAFE TIME ORDINANCES

- Employees who work for more than 80 hours per year in Minneapolis or Saint Paul
- Accrued leave may be taken by an employee who is out of work due to:
 - Coronavirus screening;
 - Care or quarantine due to Coronavirus symptoms or infection;
 - Testing or quarantine following exposure;
 - Need to care for child whose school or day care is closed due to Coronavirus; and
 - Workplace closure by order of a public official due to Coronavirus.
- This leave is paid, except for employers under the Minneapolis ordinance with fewer than six employees.

UNPAID FMLA AND OTHER LEAVES

- Employers with more than 50 employees
- Employees who work at a site with 50 or more employees within 75 miles and who have worked for at least 12 months and 1,250 hours
- 12 weeks unpaid, job protected leave for a serious health condition involving inpatient treatment or ongoing care by a health care provider or to care for a spouse, child or parent with a serious health condition
- Consider application of ADA and MHRA

UNEMPLOYMENT

By executive order, to address the impact of COVID-19:

- The waiting week has been eliminated
- The five-week benefit limit for business owners who have elected coverage has been lifted
- Applicants must still seek suitable employment while receiving benefits, but suitable employment does not pose a risk to your health or the health of others
- Workers temporarily laid off can satisfy the search requirement by staying in contact with their employer

HELP FOR BUSINESSES IMPACTED BY COVID-19

- **Refundable tax credit (and tax withholding) for FFCRA leaves**

“Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.”

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

- **SBA small business loans**

<https://mn.gov/deed/newscenter/covid/employers/>

Questions and Answers

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

NOTICES

- **Where do I post this notice? Since most of my workforce is teleworking, where do I electronically “post” this notice**
 - Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises.
 - An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
- **Posters Here ->**
<https://www.dol.gov/agencies/whd/pandemic>

STAY AT HOME ORDERS DOCUMENTATION REQUIREMENT?

- Minnesota? Not stated.
- Wisconsin? No.

Will I be required to carry documentation to leave my home?

No. Individuals do not need special permission to leave their homes, but they must comply with this order as to when it is permissible to leave home. Similarly, if a business is an essential business or operation as outlined in this order, it does not need documentation or certification to continue work that is done in compliance with this order.

<https://evers.wi.gov/Documents/COVID19/Safer%20at%20Home%20FAQ%203.24.20.pdf>













- AGC MN Exempt Worker Verification Form

COVID-19 TASK FORCE


www.arthurchapman.com/areas/covid-19-task-force

Print SHARE

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News

- > Plan not Panic: Join us this week for two webinars on the changing legal landscape related to COVID-19
- > COVID-19: Plan not Panic
- > COVID-19: FAQ's for Employment, Coverage, and Workers' Compensation

Resources

- > ACKSP 2020 Families First Coronavirus Response Act Alert
- > ACKSP 2020 COVID-19 Resources

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RESOURCES

- FFCRA Paid Leaves Summary and DOL Guidance
 - <https://www.arthurchapman.com/news/families-first-coronavirusresponse-act>
 - <https://www.dol.gov/agencies/whd/pandemic>
- Minneapolis Sick and Safe Time
 - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/covid-19_and_sst_3_18_20.pdf
- Saint Paul Sick and Safe Time
 - https://library.municode.com/mn/st._paul/codes/code_of_ordinances?nodeId=PTIILECO_TITXXIIIPUHESAWE_CH233PUHESAWE_S233.01STLEPUIN

RESOURCES

- Minnesota unemployment
 - <https://www.uimn.org/applicants/needtoknow/news-updates/covid-19.jsp>
- DOL/IRS/Labor Guidance on Tax Credits
 - <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- COVID-19 Small Business Loans
 - <https://mn.gov/deed/newscenter/covid/employers/>

RESOURCES

- Minnesota Chamber of Commerce COVID-19 Business Toolkit
 - <https://www.mnchamber.com/blog/covid-19-business-toolkit>
- FMLA Generally
 - <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>
- OSHA Guidance
 - <https://www.osha.gov/SLTC/covid-19/>
- EEOC Guidance
 - https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitation_act_coronavirus.cfm