

## EMPLOYER PLANNING FOR CORONAVIRUS WEBINAR Q&A

On March 11, 2020, Pepper attorneys Tracey E. Diamond, Susan K. Lessack and Lee E. Tankle hosted a webinar to provide guidance to employers on what they should be doing now to address the threat of coronavirus in the workplace, including issuing employee communications; addressing sick time, ADA and FMLA issues; ensuring policies are compliant with wage and hour laws; and implementing rules governing business travel and telecommuting.

The webinar included a number of questions from the audience, and we have included the text from that part of the webinar below.

**Question:** I have employees that work in multiple facilities, skilled nursing facilities and assisted living, etc. If a facility is quarantined, are there any requirements today to pay them?

**Answer:** The pay requirements are the same as what we have discussed previously, and it would depend on whether the employees are nonexempt or exempt. If they are nonexempt employees, they need to be paid for all time worked, including overtime pay, at least over 40 hours in a work-week or more, depending on what state you are in. If an employee is an exempt employee, he or she needs to be paid in full-week increments if a facility is closed.

**Question:** Can you require older employees to work from home given the higher risk to older people?

**Answer:** The answer to that is no. You cannot treat people differently based on their age or whether they have an underlying health condition or any other protected category, such as national origin. You should only require people to work from home if you are requiring it for everyone or if the employee advises that he or she is sick or has been exposed to the virus. If an employee asks to work from home because they are in a high risk category as indicated by the CDC, such as if they have an underlying health condition, are pregnant, or over age 60, then the employer may (but is not required to) grant that request.

**Question:** Are employees eligible for unemployment compensation if they are not showing any symptoms but are being asked to stay home to self-quarantine for 14 days after exposure?

**Answer:** That will depend on what state you are in. In most states, if an employee has been separated under circumstances that are not due to willful misconduct or voluntary resignation, the employees are likely going to be eligible for unemployment compensation. For example, the state of Washington, which is experiencing the most cases of coronavirus, has implemented some emergency measures regarding unemployment compensation laws to ensure that individuals impacted by COVID-19 will be able to get unemployment benefits.

**Question:** Can you ask an employee for a doctor's note if he calls in with the flu and is absent for three days?

**Answer:** The answer to that is yes if that is your policy or typical practice. However, the CDC and other government agencies are suggesting that employers may want to consider waiving the requirement to provide doctor's notes because they anticipate that health care providers will be inundated with requests for those notes. You can, if you choose, require doctor's notes as long as you do so consistently.

**Question:** If you have an employee who has exhausted the attendance policy or is not eligible for FMLA and they need to be off of work due to coronavirus or concerns, can you grant exceptions versus terminating if they have exhausted leave?

**Answer:** In a non-unionized work force, you certainly can grant exceptions, as long as you do it on an equal basis without regard to an employee's protected category or type of illness or disability. You are not limited to what is required by law; you can have a more generous policy. For employees that are in a unionized work force, you would want to work in conjunction with the union to make sure that they are on board with any changes that you make to these policies.

**Question:** If nonexempt employees cannot perform their work remotely, should they still be paid and should some documents be provided to them to ensure job security if they cannot perform work?

**Answer:** If nonexempt employees are not working, you do not have to pay them, but you may choose to do so. In terms of the document, we would recommend that employers prepare a policy to deal with all of the coronavirus issues. That policy could address whether nonexempt employees who have to be home and are not able to work remotely will be entitled to job protection. That policy should preserve the ability to terminate the employee because you do not know the length of time that the employee might need to be home. But you want to balance that with the need to give employees comfort that, by staying home, they are not putting their jobs at risk.