FFCRA and COVID-19
Employment Law Issues
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- AV Preeminent rated by Martindale Hubbell since 2004.
- Fellow in the College of Labor and Employment Lawyers.
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- More than thirty years of experience and expertise in representing public and private employers in labor and employment law and human resource management.
- Negotiated over 500 labor contracts.
- Represents employers in arbitrations, organizing campaigns, and administrative hearings.
- Defends employers in state trial and appellate courts, courts, the Ohio Supreme Court, federal district courts and the United States Court of Appeals for the Sixth Circuit.
- Recognized many times over as a subject-matter expert, Jonathan is designated as one of the Best Lawyers, Top 50 Central Ohio Lawyers, and an Ohio “Super Lawyer” every year since 2004.
About Zashin and Rich

Zashin & Rich Co., L.P.A. (“Z&R”) has over 30 attorneys who specialize in labor and employment law with offices in Columbus and Cleveland, representing both private and public employers.

Z&R represents its clients in labor negotiations, human resources matters, and civil service. Attorneys of Z&R have collectively negotiated over 1000 contracts and have represented private and public employers in arbitrations, impasse proceedings and litigation.

Attorneys represent private employers, universities and colleges, state agencies, special districts, cities, counties, townships, housing authorities, hospitals and others. Attorneys handle matters at the National Labor Relations Board, the State Employment Relations Board, State Personnel Board of Review, and local civil service commissions.
IMPACT OF COVID-19 AGENDA

- FFCRA – Family First Coronavirus Response Act
  - Emergency Family Medical Leave Expansion Act
  - Emergency Paid Sick Leave
- Worker’s Compensation
- Unemployment Compensation
- ADA
- FMLA
- FLSA
- Union Contracts
COVID-19 Unknowns

Most cases are never counted

- Deaths
- Severe
- Cases with symptoms (e.g. fever)
- Mild cases (hardest to count)

Cases detected in mainland China early in the outbreak

Source: Imperial College London
COVID-19 Unknowns

ABBY SOMETHING...

ABBY NORMAL!!!

makeameme.org
COVID-19 Comparison

COVID-19 looks a lot closer to the season flu than to previous coronavirus outbreaks

<table>
<thead>
<tr>
<th>Condition</th>
<th>Fatal cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>COVID-19</td>
<td>3.4%</td>
</tr>
<tr>
<td>Seasonal flu</td>
<td>0.1%</td>
</tr>
<tr>
<td>SARS</td>
<td>10%</td>
</tr>
<tr>
<td>MERS</td>
<td>34%</td>
</tr>
</tbody>
</table>

COVID-19, SARS, and MERS data are global and total to date. Seasonal flu data are U.S., for the 2018-2019 season.

Chart: Elijah Wolfson for TIME • Source: CDC and WHO • Created with Datawrapper
Family First Coronavirus Response Act (FFCRA) – General Information

Link to DOL poster

Link to text of H.R. 6201:
FFCRA consists of 3 components that impact employers

– Family and Medical Leave Act Expansion: EFMLEA
– Public Health Emergency Paid Sick Leave Act: EPSLA
– Coverage of Testing for COVID-19

Effective Date: April 1 until December 31, 2020

Definition of Public Health Emergency

“An emergency with respect to COVID-19 declared by a Federal, State, or local authority.”
Family and Medical Leave Expansion Act –  
EFLMEA H.R. 6201 amends FMLA 29 U.S.C. 2611

Expansion of the reasons for the use of Family Medical Leave for “public health emergency”.

It does not provide an additional 12 weeks for the separate reason of public health emergency.

“Eligible Employee” for public health emergency
An employee who has been employed for at least 30 calendar days who is requesting “Public Health Emergency Leave”

“Covered Employer” (see section 3102)

All public Employers

Private sector is “fewer than 500 employees”

Employer threshold - Section 110 (a) (1) (B)
Exclusions: The Secretary of Labor is authorized to issue regulations that would exclude:

- Certain *health care providers and emergency responders* from the definition of eligible employees
- Employers with fewer than 50 employees from the requirements of the act when the requirements would jeopardize the viability of the business

- Exclusions from FMLEA: the bill *allows* employers of employees who are *health care providers or emergency responders* to exclude such employees from the application of the public health emergency leave provisions.  Sec. 3105
• **Emergency Responders** (definition Homeland Security Act)
  – According to U.S. Homeland Security Presidential Directive HSPD-8: The term *first responder* refers to those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. § 101), as well as emergency management, public health, clinical care, public works, and other skilled support personnel (such as equipment operators) that provide immediate support services during prevention, response, and recovery operations.
  – According to 6 U.S.C. § 101(6): The term *emergency response providers* includes Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies, and authorities.
EFLMEA - Family Medical Leave Exclusions Defined (Sec. 3102, Sec. 110(a)(3))

- Health Care Providers (definition from FMLA)
  - A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices
  - Any other person determined by the Secretary to be capable of providing health care services
EFLMEA - Family Medical Leave
“Qualifying Need”
for Public Health Emergency Leave
(Sec. 3102, Sec. 110(a)(2)(A))

• FMLA qualifying need - when an employee is unable to work or telework due to a need for leave to care for the son or daughter under 18 years of age if the child’s school/place of care has been closed or if the child care provider of the child(ren) is unavailable due to a public health emergency (29 USC 2612(a)(1)(F))

• Employees continue to have FMLA leave under their own or their family’s “serious medical condition”
  – Adhere to a required or recommended quarantine due to exposure or symptoms of coronavirus or
  – Care for an at-risk family member who is adhering to a required or recommendation to quarantine due to exposure to or symptoms of coronavirus
EFLMEA - Family Medical Leave

Amount of Public Health Emergency Leave

(Sec. 3102, Sec. 110(b) & (c))

• First 10 days of employee leave may consist of unpaid leave
  – Employee may elect to substitute accrued paid leaves during this 10 days

• Law does not reference whether the employer may pay the employees during the first 10 days

• After the 10 days, for the remainder of the 12 weeks of leave, Employers must pay employees at least 2/3 of the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled.
  – Cap at $200 per day and $10,000 in the aggregate for each employee
Employees with irregular schedules: Calculate based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA

- For employees who have worked less than six months use the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work

Employee required to provide notice where foreseeable and practicable
Employers with 25 or more employees must return employees to the same or equivalent position upon return to work (same as traditional FMLA)

Employers with fewer than 25 employees are generally excluded from this requirement if the position no longer exists due to an economic downturn or other circumstances caused by a public health emergency.

– This exclusion subject to the employer making reasonable attempts to return the employee to an equivalent position and requires the employer to make efforts to return the employee to work for up to a year following the employee’s leave.
Part 2: EPSLA
Emergency Paid Sick Leave Act
(Sec. 5101)

• Effective April 2, 2020
EPSLA: Reasons Requiring Paid Sick Time
(Sec. 5102(a))

• Employer must provide emergency paid sick time to employees unable to work or telecommute because the employee is:
  1. Subject to a Federal, state, or local quarantine/isolation order related to COVID-19
  2. Under the advice of a health care provider to self-quarantine
  3. Experiencing symptoms of COVID-19 and is seeking a medical diagnosis
  4. Caring for an individual who is in self-quarantine on the advice of a health care provider or due to a federal, state, or local order
     Note ➔ not limited to just family members
  5. Caring for a child if the school or place of care has closed or if the child care provider of the child is unavailable due to COVID-19 precautions
  6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services

• An Employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection (Sec. 5102(a))
 EPSLA: Reasons Requiring Paid Sick Time
(Sec. 5102(a))

- Full time employees = 80 hours at regular rate
- Part time employees = the number of hours that such employee works, on average, over a 2-week period
- For categories 1, 2, and 3 - Employee’s own COVID-related condition, employers must pay at the regular rate
  - Capped at $511 per day or $5,110 in aggregate
- For categories 4, 5, and 6 - caring for another and “substantially similar conditions”, Employers must pay at least 2/3 of the employee’s regular rate
  - Capped at $200 per day or $2,000 in aggregate
- No carryover to the following year
EPSLA: Eligibility and Coverage

• Employee Eligibility – no minimum time for work
  – Employees are entitled to emergency paid sick leave regardless of how long the employee has been employed by the employer

• Employer Coverage
  – Includes any public employer that employs one or more employees, and any private employer that employs fewer than 500 employees
EPSLA: Notice Requirement & Prohibited Acts
(Sec. 5102(d) – Sec. 5104)

• **Notice:** Employers required to post a notice of the requirements described in the Act
  – Secretary of Labor to publish such a notice within one week

• **Prohibited Acts**
  – Cannot require employee to use other paid leaves provided by the employer before the employee uses emergency paid sick leave
  – Cannot require an employee to find a replacement employee while the employee is using leave under the Act
  – Cannot discharge or discipline employees taking leave in accordance with Act
Nothing in the Act shall be construed to:

- In any way diminish the rights or benefits that an employee is entitled to under any:
  - Other Federal, State, or local law;
  - Collective Bargaining Agreement; or
  - Existing employer policy

- Require financial or other reimbursement to an employee from an employer upon the employee’s separation from employment for paid sick time under the Act that has not been used by such employee
Determining an Employee’s Pay Under the Emergency Paid Sick Leave Act (EPSLA)

Start Here
Does the employee qualify under one of the six reasons (below) for leave under the EPSLA?

NO

The Employee is not entitled to Emergency Paid Sick Leave and must use accrued leaves.

YES

Does the employee qualify for reasons 1, 2, or 3 in the EPSLA?

NO

Does the employee qualify for reasons 4, 5, or 6 in the EPSLA?

YES

Does the employee work full time or part time?

Part Time

Full Time

The Employee is entitled to 80 hours of Emergency Paid Sick Leave at their regular rate of pay. (Max $511/day & $5,110 total)

The Employee is entitled to Emergency Paid Sick Leave at two thirds (2/3) their regular rate of pay. (Max $200/day & $2,000 total)

Qualifying reasons to take Emergency Paid Sick Leave (all relating to COVID-19):
(1) The employee is subject to a Federal, State, or local quarantine or isolation order.
(2) The employee has been advised by a health care provider to self-quarantine.
(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
(4) The employee is caring for an individual who is subject to such an order in (1) or such advice in (2).
(5) The employee is caring for their child whose school or place of care has closed or is unavailable.
(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
Determining an Employee’s Pay Under the Emergency Family and Medical Leave Expansion Act (EFMLEA)

Start Here

- Has the employee been on payroll for at least 30 calendar days?

  YES

  Is the employee requesting leave to care for their child whose school or place of care has closed or is unavailable due to COVID-19?

  YES

  The employee is entitled to 12 weeks of EFMLEA leave. Has the employee already used Emergency Paid Sick Leave from the EPSLA?

  YES

  Does the employee have accrued balances of paid leaves?

  NO

  The first 10 days (2 weeks) of EFMLEA leave may be unpaid.

  THEN

  The employee can use two weeks of EPSLA leave during the first two weeks of EFMLEA leave. This is paid at 2/3 the employee’s regular rate.

  THEN

  The following 10 weeks must be paid at 2/3 the employee’s regular rate of pay.

  THEN

  The following 10 weeks must be paid at 2/3 the employee’s regular rate of pay.

NO

The employee is not eligible for leave under the EFMLEA.

NO

The employee is not eligible for leave under the EFMLEA.

NO

The employee can use two weeks of EPSLA leave during the first two weeks of EFMLEA leave. This is paid at 2/3 the employee’s normal leave rates.

NO

The employee can use their accrued paid leave during the first two weeks. This is paid at the employer’s normal leave rates.

THEN

The following 10 weeks must be paid at 2/3 the employee’s regular rate of pay.

Note: Payments to employees under the EFMLEA may not exceed $200 a day or $10,000 total.
<table>
<thead>
<tr>
<th>Qualifying Reasons for:</th>
<th>Weeks 1 and 2</th>
<th>Weeks 3 through 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency Paid Sick Leave (EPSL)</td>
<td>(80 hours)</td>
<td>(additional 10 weeks)</td>
</tr>
<tr>
<td>1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19</td>
<td>Paid EPSL at regular rate</td>
<td>No EFML</td>
</tr>
<tr>
<td>2. has been advised by a health care provider to self-quarantine related to COVID-19</td>
<td>Paid EPSL at regular rate</td>
<td>No EFML</td>
</tr>
<tr>
<td>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis</td>
<td>Paid EPSL at regular rate</td>
<td>No EFML</td>
</tr>
<tr>
<td>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)</td>
<td>Paid EPSL at 2/3 regular rate</td>
<td>No EFML</td>
</tr>
<tr>
<td>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons</td>
<td>Paid EPSL at 2/3 regular rate</td>
<td>Unpaid EFML</td>
</tr>
<tr>
<td>This is Also the Only Qualifying Reason for Emergency Family Medical Leave (EFML)</td>
<td></td>
<td>PAID EFML at 2/3 regular rate</td>
</tr>
<tr>
<td>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services</td>
<td>Paid EPSL at 2/3 regular rate</td>
<td>No EFML</td>
</tr>
</tbody>
</table>
Employers offering group health insurance benefits are prohibited from imposing any cost sharing requirements (including deductibles, co payments, and coinsurance) for the following items/services furnished during the COVID-19 health emergency:

1. In vitro diagnostic products and their administration
2. COVID-19 testing that is “approved, cleared, or authorized” by the FDA
3. Items and services furnished to an individual that result in an order for administration of testing under item (1) at any of the following:
   » Health Care Provider Office Visits (in person and telehealth visits)
   » Urgent Care Center Visits
   » Emergency Room Visits
COVID-19 and Tax Credits

• Tax Credit for cost of providing paid sick leave as required by the Family First Coronavirus Response Act is **NOT** available to public employers
  – Sec. 7001(e)(4)

Congress has been asked to reconsider this provision
If Police/EMS/Corrections/firefighter contracts COVID-19 in the course of performing his/her duties (to the extent that can be confirmed) is treatment and wage loss covered by WC.?

• NO. It would be considered an occupational disease rather than an injury. For an OD to be compensable, the OD must be unique to the employment and the employment must create a risk of contracting it in a greater degree and in a different manner than the general public.

• Being a pandemic makes the risk applicable to the entire population.
The BWC has an exposure policy pursuant to which it pays for testing of first responders exposed to bodily fluids, etc. which can lead to a claim. The BWC could implement something similar to the way needle sticks and other exposures are treated with respect to first responders.

BWC issued a Covid19 FAQ dated 3-20-2020

ORC 4123.06 defines emergency medical worker
ORC 2935.01 defines police officer.

The BWC Exposure Policy is Policy No. CP-05-02.
4167.06 Right to refuse to work under unsafe conditions.

(A) A public employee acting in good faith has the right to refuse to work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that such conditions are not such as normally exist for or reasonably might be expected to occur in the occupation of the public employee.
As of March 15 Order of Governor DeWine

- Individual waiting period for unemployment suspended
- Requirement to seek work suspended for applications related to the coronavirus outbreak
- Unemployment allow for employees not offered paid leave and are quarantined by Dr. or employer
- Unemployment allowed for employees not offered paid leave and their employer temporarily closes
COVID19 and UNEMPLOYMENT

As of March 15 Order of Governor DeWine

▪ Employees who chose self-quarantine not eligible

▪ Payments paid to employees as result of shutdown will be paid from the “mutual” account

▪ Fees for late reports and late payments will be waived

SEE - http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm
Layoffs & severance payments & Unemployment:

From current ODJFS manual

4. Severance pay allocated by the employer or the department to week(s) of unemployment is deductible from unemployment benefits. Severance pay allocated by the employer to the last week or day of employment will only be deductible for that week and will not affect benefits beyond that week.

http://www.odjfs.state.oh.us/forms/num/JFS08201/pdf/ - page 37, number 4
Layoffs & Unemployment:

On the Ohio Unemployment Comp website:
Employers, please distribute this form to employees laid off because of the COVID-19 pandemic to expedite their claim process:
http://www.odjfs.state.oh.us/forms/num/JFS00671/pdf/

See also: jfs.ohio.gov/ohio/CoronavirusAndUI.stm
Covid19: When to Consider Paid Leaves or Extension of Leaves

1. Employee presents COVID, is exposed, isolated
2. Employee self-concern absence
3. Child care - Parental care
4. “Compromised health condition” self or family

When may employees access paid leaves and what time limits on the use

Check applicable union contracts & policies
Covid 19: Considerations for Paid Leaves or Extension of Leaves

- Authority to grant paid leave RC 124.3888
- Requirement to use accumulated leave first
- Leave without pay
- Reduction in pay / layoff / furlough
  - (private sector WARN act)
- Reduction in pay/position – Public RC 124.34
- Unilateral grant of benefit
  - possible ULP if unions
- Exigent circumstances
Covid19 and Remote Work

- Allow or not
- Require or limit
- Technical support
- Security – hackers
COVID-19 and Union Contracts

Emergency or Exigent circumstances

- Management Rights
- Sick and Other Leaves
- Work Assignments / Bargaining unit work
- Hours of Work / Alternate provisions
- Remote Work provisions
- Insurance Payments
- Force Majeure provisions
- Emergency or Exigent conditions provisions
  - Declared by the Governor/President
ADA - What is a “Disability”

1. Physical or mental impairment that substantially limits a major life activity; OR
2. A “record of” such impairment; OR
3. Being “regarded as” having such an impairment.

* * Only #1 is entitled to a reasonable accommodation

Is C-19 a disability? – “regarded as” or “actual”? 

3/27/2020 COVID 19 & Employment Law Issues
Americans with Disabilities Act Considerations:

– Medical Questions
– Medical Examinations
– Stereotyping
– Adverse actions against employees with a disability
– Direct threat of infected employee

Is C-19 a disability – “regarded as” or “actual”? 
EEOC Guidance - Pandemics

- **EEOC Guidance**  ADA still applies, but does not “interfere or prevent” employers from following the suggestions of the CDC

- **EEOC relies on guidance from 2009:**
  Addressed Swine Flu/H1N1
  Specifically, addressed pandemic planning before, during, and when it “appears imminent.”
  https://www.eeoc.gov/facts/pandemic_flu.html#q16
Disability Related Inquiries Include:

– Medical examinations

  • Q. temperatures? A. depends

– Test: Questions likely to elicit disability information
Is a Temperature Test a Medical Examination Under the ADA?

- ADA does not define “medical examination.”
- EEOC defines “medical examination” as a “procedure or test that seeks information about an individual’s physical or mental impairments or health.”

The Centers for Disease Control and Prevention defines a fever as 100.4°F/38°C or higher.
EEOC Guidance – ADA

Disability Related Inquiries

During employment
– Inability to perform essential job functions
– Pose a direct threat

Focus – direct threat:
- “Significant risk” of “substantial harm” to the health and safety of employee/others
- Which cannot be eliminated by a reasonable accommodation

➤ Disability Leave  or  Injury Leave
The 2009 EEOC Guidance Focuses on:

- Severity of the illness
  - Similar to seasonal influenza or H1N1 influenza
  - not a direct threat
- Current advice from CDC and local officials
- Appropriate for location
Before a Pandemic:

– Can’t ask about immune systems
– Can ask if employee is high risk under CDC guidelines
– Can plan
  • Contamination/cleaning
  • Workforce planning
  • Consider potential accommodations
    – work from home
    – leave as an accommodation
During a Pandemic:

- Can send employees home with symptoms
- Can ask about symptoms
- Can take temperature
- Can ask questions about exposure after travel
- Can’t ask employee who does not have symptoms about other conditions, unless public health officials determine so
EEOC Guidance – ADA
Disability Related Inquiries

- During a Pandemic:
  - Can require employees to wash hands
  - Can ask for a return to work not infected
    • But, CDC is recommending against this
FMLA Guidance

Is C19 a “serious medical condition”?  

An illness, injury, impairment or physical or mental condition that involves either

– inpatient care  OR

– continuing treatment by a health care provider

Q. If an employer requires that an employee stay home, should this be paid or unpaid?

Q. Would this be FMLA leave?  Depends if it meets the Emergency FML.
FMLA Considerations

Q. Could an employee refuse to come to work because of fear of contracting the virus?
   Yes - if reasonable or compromised health condition

Q. Would this raise the question of work-at-home as an ADA accommodation?
   Possibly – Depends if valid disability

Q. Could an employer mandate that an employee wear protective gear, such as a face mask or latex gloves? Is this a problem under the ADA?
   No - unless job related or preventive measure
Question: Does the FMLA cover an employee who has contracted COVID-19 or takes leave to care for a family member who has contracted COVID-19?

Answer: Yes – if qualified under the new provisions under the EFMLEA, Emergency Family Leave.
Question:
Does the Family Medical Leave Act ("FMLA") cover an employee that stays home from work as a precautionary measure to avoid contracting COVID-19?

Answer: NO
<table>
<thead>
<tr>
<th>Completed?</th>
<th>Attendance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y</td>
<td>Notify employees about absences relating to quarantine for potential COVID-19 exposure, contracting the disease or caring for a spouse or minor child in the same household that has contacted COVID-19</td>
</tr>
<tr>
<td>N</td>
<td>Inform employees policies in instances where the schools in their geographic area are closed due to COVID-19</td>
</tr>
<tr>
<td>N</td>
<td>Promptly address any leave/accommodation employee requests</td>
</tr>
<tr>
<td>N</td>
<td>Advise employees about PTO and vacation and how those policies will interact with COVID-19 related absences</td>
</tr>
</tbody>
</table>
**FMLA Checklist – Managing Illness**

<table>
<thead>
<tr>
<th>Completed?</th>
<th>Managing Illness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y</td>
<td>Instruct employees to stay home if ill, especially if experiencing flu-like symptoms (fever, and any other symptoms, for at least 24 hours)</td>
</tr>
<tr>
<td>N</td>
<td>Recommend frequent and thorough hand washing, and regular use of hand sanitizer</td>
</tr>
<tr>
<td>Y</td>
<td>Advise employees to cough/sneeze into a tissue, or if unavailable, into your elbow/shoulder, and not toward others; avoid others if ill</td>
</tr>
<tr>
<td>N</td>
<td>Avoid touching eyes, nose, and mouth with unwashed hands, and also any shared tools or areas until hands are cleansed; limit touching items in common areas only as necessary</td>
</tr>
<tr>
<td>Y</td>
<td>Educate employees that facemasks are not necessary to avoid contamination</td>
</tr>
<tr>
<td>N</td>
<td>Inform employees they will be sent home if they arrive at work sick or develop symptoms as the workday progress</td>
</tr>
</tbody>
</table>

3/27/2020
1. Does the FLSA require an employer to pay a non-exempt employee if the employee is **sent home** due to illness/symptoms consistent with COVID-19 and performs no additional work for the rest of the day or week?

   NO

   **BUT** Check applicable union contracts local ordinances and policies
2. Does the law require the employer to pay a non-exempt employee if the employer closes due to the COVID-19 outbreak, and the employee performs no additional work for the rest of the day or week?  NO

3. Does the law require the employer to pay an exempt employee if the employee is sent home due to illness/symptoms consistent with COVID-19?  YES
4. Does the law require the employer to pay an *exempt* employee if the employee is **sent home** due to illness/symptoms consistent with COVID-19?

   **YES**

5. Does the law require the employer to pay an *exempt* employee if the employer **closes** due to the COVID-19 outbreak?

   **YES**
6. Does the law require the employer to pay *any employee* who is under government-imposed *quarantine* and cannot work?  
   **NO**

7. Can the employer legally *send employees home* if they are ill or appear to have *symptoms* associated with COVID-19?  
   **YES**
8. Can the employer *legally ask employees* who _report feeling ill_ or who call in sick whether they are experiencing symptoms consistent with COVID-19?

YES
EEOC/CDC Guidance – Putting It All Together

- Have a plan
  - Compare to emergency or strike plan
- Make sure the plan is consistent with EEOC guidelines and CDC recommendations
- Use CDC Risk Assessment as a guide in decision making