



COVID-19 Actions & Insurance Implications

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If you missed our Webinar, COVID-19: What the H@! Do We Do Next? [CLICK HERE](#) for a recording.

Recent News

- Employers cannot exclude employees from working solely for having an underlying medical condition that may pose a higher risk of severe COVID-19 symptoms. [Click Here](#)
- The IRS is allowing companies to claim up to a \$5,000 tax credit for furloughed employees if the employer is maintaining employer provided health benefits. [Click Here](#). The FAQs from the IRS can be found here: [Click Here](#)
- The SBA has issued guidance for PPP loans to organizations whose laid off employee refuse to be rehired. [Click Here](#)
- The SBA has extended the safe harbor for returning PPP funds until May 14th. [Click Here](#)
- A carrier in a COVID-19 suit argued that business losses are an “economic side-effect” of a state “stay at home” order and argued that carry out operations at a restaurant evidenced a lack of physical impact as a result of the virus. [Click Here](#)
- A variety of organizations are continuing to lobby to reverse the IRS’s rule on deductibility of expenses paid with PPP loan funds. [Click Here](#)
- Formal talks on additional stimulus measures are currently on hold. [Click Here](#)
- Demand for PPP loans has fallen due to duplicate applications, concerns about forgiveness, and restrictions related to publicly traded companies. [Click Here](#)
- The leisure and hospitality sector lost 47% of its jobs during April, pointing to possible extended downward trends for landlords with holdings concentrated in that sector. [Click Here](#)

Actions & Analysis – Week in Review

- If considering an invocation of force majeure or faced with another party claiming force majeure in a contract be sure to review other possible options for legal recourse with counsel. A summary of possible alternatives can be found here: [Click Here](#)
- If planning to conduct COVID-19 testing of employees or others, be sure to address all appropriate legal guidance to avoid unnecessary lawsuits. [Click Here](#)
- If a PPP loan has been obtained, be sure to read the latest guidance on forgiveness especially if laid off employees refuse offers to be rehired.

Temperature checks have quickly become a popular consideration for employers as reopening of the country begins. While not foolproof, the detection of a fever i.e. over 100°F could indicate a COVID-19 infection. At the same time, other options such as antibody tests are quickly becoming available. The EEOC has allowed the use of the tests. However, the implementation of a testing regime is not without hazards. First, the EEOC said that the tests must comply with the Americans with Disabilities Act, thus requiring that the tests of employees be “job-related and consistent with business necessity.” That guidance alone invites interpretation, especially in terms of what may or may not constitute “business necessity.”

However, a litany of additional issues await employers beyond that gateway decision. For instance, no guidance is provided regarding who should administer the tests and how the tests should be administered. It seems like trained personnel should be required, but then the question begs what constitutes suitable training. Large corporations may have access to a broad variety of medical professionals, either by contract or as in-house staff; but smaller organization do not currently possess such capabilities. Additionally, policies must be implemented to address workers’ privacy and how data will be stored. Of course, tests of all kinds can provide false positives and negatives resulting in potential confusion among employees and employers. Finally, issues such as frequency of testing also remain. Overall, the idea of testing may seem simple and straight forward, but by initiating a robust testing regime, organizations can open themselves to a broad variety of litigation without careful planning or consideration of the repercussions of that testing regime.

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