



# COVID-19 Guidance for Employers

ZUMPARNO  CASTRO  
ATTORNEYS AT LAW

Presented by:  
Carlos Zumpano & Kellee Cueto  
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# AGENDA

## Part I

Operational Concerns  
*Communication is Key*

## Part II

Legal Requirements  
vs. Best Practices  
*Flexibility is Key*

## Part III

Specific HR Concerns  
*Consistency is Key*

## Part IV

Q & A

Part I –  
Operational Concerns  
*Communication is Key*

Operational  
Concerns  
*Communication  
is Key*



COVID-19 & CDC Guidelines



Communication to Employees  
and Clients



IT Consultation and Support



Policy Review

General Policies  
Disaster  
Preparedness Plans



Contingency Planning (and  
Testing)

Part II –  
Legal Requirements  
vs. Best Practices  
*Flexibility is Key*

**Legal  
Requirements  
vs. Best  
Practices**  
*Flexibility is  
Key*

- Current Legal Requirements – Status Quo
  - ADA, FMLA, FLSA, OSHA, WARN, OWPBA, Title VII, etc. all still in effect
- Continue to consult with Regis for HR matters
- Consult with Legal Counsel for Legal matters

**Legal  
Requirements  
vs. Best  
Practices**  
*Flexibility is  
Key*

- New (and Proposed) State and Federal Laws
  - **Check State Law - States Have Passed or May Be Passing “Emergency” Paid Sick Leave**
    - Ex. Colorado – Passed: 4 days; keep EEs out of workplace during testing; remains in effect for 30 days or longer depending on emergency declaration

**Legal  
Requirements  
vs. Best  
Practices  
*Flexibility is  
Key***

- FMLA Expansion - Not Yet Law (H.R. 6201)
  - Effective Date – 15 Days after Signing
  - Sunset Date – December 31, 2020
  - Covered Businesses – Government employers and employers with fewer than 500 employees; Secretary of Labor may later exempt businesses with less than 50 employees when providing such leave may close the business altogether.



# Legal Requirements vs. Best Practices

*Flexibility is Key*

- FMLA Expansion - Not Yet Law (H.R. 6201) – Employee Eligibility
  - Employees who have worked for 30 calendar days. (change to FMLA)
    - Note: it is unclear if it needs to be consecutive days or days within a certain period of time.
  - Leave Entitlement – 12 weeks (no change from regular FMLA)

**Legal  
Requirements  
vs. Best  
Practices**  
*Flexibility is  
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- FMLA Expansion - Not Yet Law (H.R. 6201) - Expansion of Reasons for Taking Leave
  - Quarantine due to exposure to or symptoms of coronavirus or coronavirus diagnosis
  - Care for at-risk family member who must quarantine due to exposure to or symptoms of or diagnosis of coronavirus;
  - Care for a child of an employee if the child's school or place of care has been closed, or the childcare provider is unavailable due to coronavirus

**Legal  
Requirements  
vs. Best  
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*Flexibility is  
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- FMLA Expansion - Not Yet Law (H.R. 6201) – Employee Pay
  - FMLA is usually UNPAID Leave
  - First 14 Days – Remains Unpaid unless employee elects to run accrued PTO concurrently; employer CANNOT require employee to take accrued PTO during this time
  - After 14 Days – Employees get paid at least 2/3 of the employee’s usual pay

**Legal  
Requirements  
vs. Best  
Practices  
*Flexibility is  
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- FMLA Expansion - Not Yet Law (H.R. 6201) – Other Changes
  - Expands the definition of “parent” to include parent-in-law of the employee, a parent of a domestic partner of the employee, and a legal guardian or other person who served as the employee’s parent (also known as in loco parentis) when the employee was a child

**Legal  
Requirements  
vs. Best  
Practices**  
*Flexibility is  
Key*

- Emergency Paid Sick Leave Act – Not Yet Law (H.R. 6201)
  - Effective Date – 15 Days after Signing
  - Sunset Date – December 31, 2020
  - Covered Businesses – Government employers and employers with fewer than 500 employees
  - Employee Eligibility – All current employees regardless of days of service
  - Leave Entitlement – 2 weeks (80 hours for full time employees; pro rata for part time employees)

# Legal Requirements vs. Best Practices *Flexibility is Key*

- Emergency Paid Sick Leave Act – Not Yet Law (H.R. 6201) - Approved Reasons for Paid Leave
  - To quarantine due to coronavirus diagnosis
  - To seek diagnosis or preventative care for coronavirus symptoms
  - To comply with a recommendation or order from a public health official/health care provider that employee should work at home due to coronavirus symptoms or exposure (meeting certain risk factors)
  - To care for at-risk family member who must quarantine due to exposure to or symptoms of or diagnosis of coronavirus;
  - To care for a child of an employee if the child’s school or place of care has been closed, or the childcare provider is unavailable due to coronavirus
  - **Amount of Pay**
    - Employee’s Own Health (First Three Reasons Above) – Employee’s Regular Rate
    - Care for Family Member or Child (for reasons outlined above) – 2/3 of the Employee’s Regular Rate of Pay

# Legal Requirements vs. Best Practices *Flexibility is Key*

- Expanded Unemployment (Not Yet Law)
  - While states administer their own state unemployment insurance program, they all follow the same guidelines established by federal law. The DOL published guidance reminding of the flexibility that federal law allows for states to amend their laws in the COVID-19 environment. Specifically, the publication states that federal law does not require an employee to quit in order to be eligible for benefits and that unemployment benefits are available where:
    - An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
    - An individual is quarantined with the expectation of returning to work after the quarantine is over; and
    - An individual leaves employment due to a risk of exposure or infection or to care for a family member.
  - For more information, see:

<https://www.dol.gov/newsroom/releases/eta/eta20200312-0>

**Legal  
Requirements  
vs. Best  
Practices  
*Flexibility is  
Key***

- Pros and Cons of Exceeding Legal Requirements
  - Decisions made could have long lasting impact on individual employees and their families
  - Sticking to “Bare Minimum” Legal Requirement May Not Be in Best Interest of Business In Long Run
  - Exceeding Legal Requirement for One Employee May Open Employer Up to Discrimination Claim if Same Treatment is Not Provided to All
  - Know What is Required and See if A Balance Is Practical/Affordable



Part III –  
Specific HR Concerns  
*Consistency is Key*

# Specific HR Concerns *Consistency is Key*

- Workplace Safety Issues
- Travel Policies (Business vs. Personal Travel)
- Work from Home/In Office Distancing/Children in the Workplace
- FLSA Implications
- Furloughs/Temporary Shutdowns/Layoffs/WARN Implications
- Healthcare and Privacy Concerns
- Workers' Compensation
- Unemployment Compensation

# Part IV – Q & A

# Frequently Asked Questions

***Q. What do we do if an employee comes to work with COVID-19 symptoms?***

A. You are permitted to require employees to leave the workplace and ask them to seek medical attention, including getting tested for COVID-19. Train managers not to overreact and maintain a sense of calm. If an employee has the virus, there are additional steps the employer will need to take to notify others who may potentially have been exposed. If it is possible/practical, obtain a list of all other employees, clients, visitors, etc. that the ill employee has been in contact with during the previous 14 days (the incubation period for the illness).

***Q. Can I check the temperature of each employee daily as they come into and leave work?***

A. This depends on whether the CDC has determined that COVID-19 has become widespread enough within the community such that it has become a “direct threat” to the health and safety of the individual or others. Because many individuals with COVID-19 are asymptomatic and/or have symptoms that do not include a fever, we do not recommend taking an employee’s temperature at this time. This guidance may change based on the CDC’s recommendation.

# Frequently Asked Questions

***Q. What do we do if an employee tests positive for COVID-19?***

A. All employees who worked closely with that employee for the previous 14 days (the incubation period) must be sent home to prevent further spread of the infection. The employee who tested positive should provide a list of all individuals who may be impacted. Be mindful of privacy laws and do NOT disclose the employee who tested positive when notifying other employees. You will also want to deep clean and disinfect (or outsource the deep cleaning and disinfecting of) affected workspaces.

***Q. What do we do if an employee wants to return to work after having COVID-19 symptoms?***

A. You are permitted to request a physician note advising that the employee is healthy and able to return to work.

***Q. What precautions should we take for employees who need to take public transportation?***

A. Remind employees of basic hygiene protocols. Be sure to have handwashing and/or hand sanitizer (with minimum 60% alcohol) available for employees upon arrival to the office. Evaluate remote work or other opportunities to limit interactions between employees in the workplace (videoconferencing vs. conference rooms, etc.).

# Frequently Asked Questions

***Q. What do we do if an employee is afraid to come into work for fear of contracting COVID-19?***

A. Most workplaces will not meet the elements required to permit an employee to legally refuse to work, however, this would need to be determined on a case-by-case basis.

***Q. Can I prevent employees from going into the workplace following their return from domestic or overseas travel?***

A. Yes. Take a look at your current policies. If they do not address travel, your policies can be modified to require a period of self-quarantine following return from certain travel.

***Q. Can I restrict employees from traveling on their personal time?***

A. No, you cannot restrict employees from traveling on their personal time, but you can restrict whether they can return to the office based on to where they have traveled and your company policies regarding return to work and self-quarantine.

# Frequently Asked Questions

***Q. What do we do if school is closed but workplace is open?***

A. This is currently impacting many people and this issue may be addressed in the proposed expansion to FMLA and Emergency Paid Sick Leave Federal Legislation. This is an area where it makes sense for employers to be flexible while also making sure they are treating employees consistently and not opening themselves up to discrimination claims. Remote/telework, alternating schedules, and other alternatives should be explored.

***Q. Can we set up a daycare or kid friendly area in our office for our staff that does not have alternative childcare due to COVID-19 related shutdowns?***

A. No. Daycares need to be licensed and while this is well-intentioned, one purpose of closing schools is to encourage social distancing to help prevent the spread of the virus. There may also be insurance issues to take into account. Again, alternatives to working in the office should be explored, and this question ultimately may be made moot by the proposed FMLA expansion.

***Q. What do we do if an employee requests leave to care for a family member diagnosed with COVID-19?***

A. You should probably consult with your HR representative and/or legal counsel to walk you through this one as whether (current) FMLA applies depends on the fact specific inquiry that you would ordinarily undertake BUT this may change with the proposed FMLA Expansion.

# Frequently Asked Questions

***Q. Do I need to continue paying employees who are not working?***

A. The FLSA has not changed, so for the most part, the answer is no, BUT – there are circumstances in which you are required to be paying. Examples would include salaried, exempt employees who have worked a partial week, contractual obligations pursuant to an employment agreement, or a collective bargaining agreement. Before making a decision to NOT PAY, consult with your HR representative to determine whether additional legal support is necessary.

***Q. What do we do if there is a shelter in place order or my place of business is otherwise required to shut down due to a municipal or geographical quarantine?***

A. If employees are unable to come into the place of business or the place of business is required to be closed, a determination needs to be made whether the business can support remote work and/or remote operations. Company policies should be reviewed to address remote work and/or whether employees may use PTO under these circumstances. If you want to avoid having employees use PTO under these circumstances, your policies should be reviewed and/or updated immediately.



# Frequently Asked Questions

***Q. What options do I have for pay cuts, temporary closures, furloughs, and layoffs?***

A. If business operations must cease temporarily or if adjustments need to be made to headcount to support operational and financial need, there are several options including pay cuts (still need to pay minimum wage), temporary closures, furloughs, and layoffs. Notice requirements of WARN and state specific mini-WARN laws may apply, so we recommend consulting with legal counsel when discussing these options.

***Q. When should employees start applying for unemployment?***

A. This is state specific, but the DOL has encouraged states to expand employee eligibility. This may also be addressed in the pending federal legislation.



**Carlos Zumpano, Partner**

Carlos.Zumpano@zumpanocastro.com  
(305) 503-2991



**Kellee Cueto, Of Counsel**

Kellee.Cueto@zumpanocastro.com  
(305) 704-3348

**ZUMPANO  CASTRO**  
ATTORNEYS AT LAW