

MAJ WEBINAR: “WHAT ABOUT MY EMPLOYEES?”

*Guidance for the Maryland Legal Community During the
COVID-19 Outbreak*

Presented by R. Scott Oswald, Esq.

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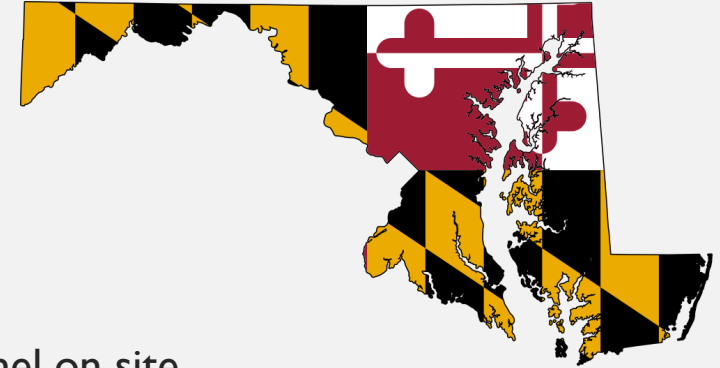
202-261-2806

<https://www.employmentlawgroup.com>



INTERPRETIVE GUIDANCE FOR THE ORDER MADE BY THE GOVERNOR OF MARYLAND

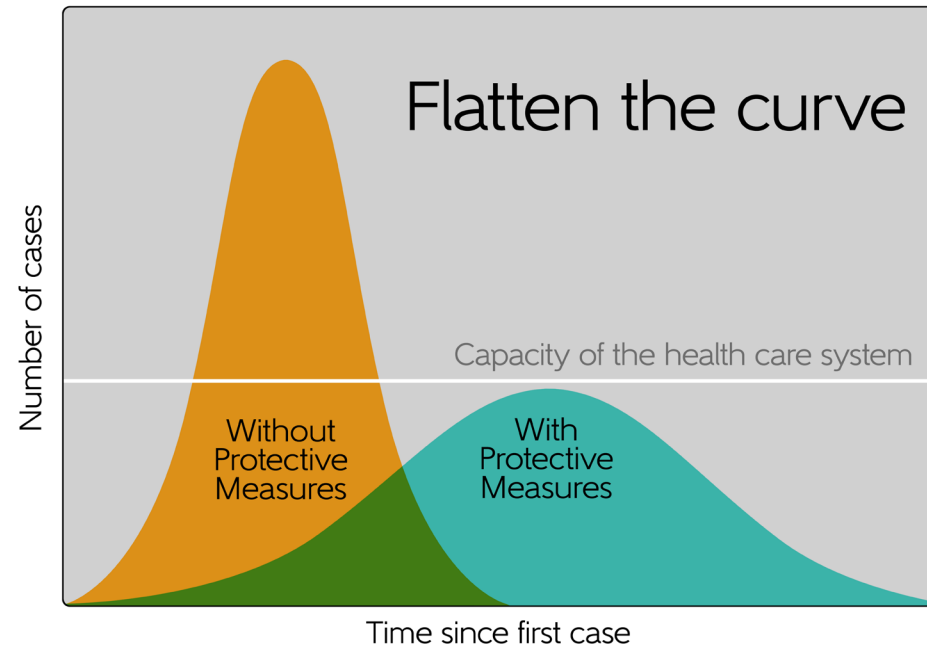
- Law Firms are critical infrastructure sectors, and thus are [not required to close](#)*
- The Government Facilities Sector also encompasses private persons and entities that support the judicial system including, but not limited to:
 - **Lawyers and law firms.**
 - Court reporters.
 - Bail bondsmen
- Options available
 1. Remain in full on-site operation
 2. Implement discretionary teleworking policy- retain essential personnel on site
 3. Require employees to telework
 4. Consider furloughs, reduction in workforce
 - Make sure to check with benefits providers about your obligations, if any, for continuation of benefits under COBRA



* <https://governor.maryland.gov/wp-content/uploads/2020/03/OLC-Interpretive-Guidance-COVID19-04.pdf>

GENERAL MARYLAND DEPARTMENT OF HEALTH GUIDELINES*

- Avoid handshaking, hugging, and other intimate types of greeting
- Avoid non-essential travel
- Avoid crowds, especially in poorly ventilated spaces
- **Work from home if possible for your situation**
 - [*https://coronavirus.maryland.gov/#Prevention](https://coronavirus.maryland.gov/#Prevention)
- Avoid unnecessary errands — consider ways to have essential items, like food and other household supplies, brought to your house through online delivery services or through family or social network



MOSH GUIDELINES: EMPLOYER RESPONSIBILITIES



- Law firms are required to afford employees a safe, healthful workspace
- Best practices, as outlined by [Maryland Occupational Safety and Health \(MOSH\)](https://www.dlir.state.md.us/labor/mosh/teenemp.shtml) :<https://www.dlir.state.md.us/labor/mosh/teenemp.shtml>
 - **Provide a workplace free from all recognized hazards and follow all MOSH/OSHA safety and health standards**
 - Find and correct safety and health hazards immediately
 - Inform employees about hazards in the workplace and train them about applicable MOSH/OSHA standards
 - Provide safety training on workplace hazards
 - Provide the required personal protective equipment (PPE) and pay for most types of required PPE

REDUCING TRANSMISSION AMONG EMPLOYEES: WORKPLACE CLEANLINESS

- Routinely clean/disinfect all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails, and doorknobs.
 - If surfaces are dirty, clean with a detergent or soap & water prior to disinfection.
 - **For disinfection, use [products that meet EPA's criteria*](#) for use against SARS-Cov-2**, the cause of COVID-19, and are appropriate for the surface. Provide disposable wipes so commonly used surfaces can be wiped down by employees before and after each use
 - Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
- * <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them regularly

SOCIAL DISTANCING IN THE WORKPLACE*

Social distancing: avoiding large gathering and maintaining distance (approximately 6 feet or 2 meters) from others when possible (e.g., breakrooms and cafeterias). Strategies that business could use include: (link to CDC)

- Implementing flexible worksites (e.g., telework)
- Implementing flexible work hours (e.g., staggered shifts)
- **Increasing physical space between employees at the worksite**
- Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events)
- Downsizing operations
- **Delivering services remotely (e.g. phone, video, or web)**

* <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>



TELEWORK GUIDANCE

Lead with **COMMUNICATION**, support with **TRUST**, **TRACK** performance and time (hours/billables) closely, **TIMELY** discipline those who fall short

- Provide Written Expectations/Guidelines
 - Work from home rules
 - Responsiveness policies
 - Billable hours/time capture expectation
- Audio/Video Conferencing
- The Right Tools
- Regular Check ins
- Be more attentive to compliment good work and provide feedback
- Resources



* OPM: <https://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/planning/managing-teleworkers-requires-topnotch-performance-management-skills/>

COVID-19 PUBLIC HEALTH EMERGENCY PROTECTION ACT (3/19/2020)*

- No Fees or Co-pays for COVID-19 Tests or Future Immunization for Certain Individuals (link)
- Out-of-State Health Care Professionals able to provide COVID-19 telehealth within Maryland
- No Price-Gouging - Prohibits price-gouging for food, fuel, medicine, cleaning products and other essential supplies
- **Workers Cannot be Terminated - Guarantees that Marylanders cannot be terminated from their jobs “solely” because they have been isolated or quarantined**
- Permits Maryland Department of Health to set Alternate Workweek for state health care employees
- Unemployment Benefits - Will allow the Secretary of Labor to extend unemployment benefits to workers who cannot work because their employer temporarily ceases operations or the employee is quarantined, at risk for exposure, or to care for a family member with COVID-19

* http://mgaleg.maryland.gov/2020RS/Chapters_noln/CH_13_sb1080e.pdf



DOL FFCRA EMPLOYEE RIGHTS POSTER*

DOL Released an employee rights poster on the FFCRA this week that employers are legally required to post prominently in their physical office location, similar to other employment posters

- Note, if some or all of your staff WFH then it is the best practice to either email the poster to your staff in addition to posting in the office, or adding to your firm intranet and emailing your staff to alert them that it has been posted

*https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WHI422_Non-Federal.pdf

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">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; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
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▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:

1-866-487-9243

TTY: 1-877-889-5627

dol.gov/agencies/whd



WHI422 REV 02/20

UNDERSTANDING EXISTING & NEW LEGISLATION*



Maryland Healthy Working Families Act

- Coverage - 15 or more employee
- 40 hours of paid leave a year
- Care for the physical or mental health of the employee or a family member
- No requirement for payout if employee terminated

Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Amends the FMLA
- Aimed at employees who must care for children under 18 years old because of coronavirus-related restrictions such as school closures

Emergency Paid Sick Leave Act (EPSLA)

- Applies to employees who must take leave for themselves **or** to take care of a family member — not just a child — for specified coronavirus-related reasons
- Reasons include childcare necessary because of school closures

* <https://www.employmentlawgroup.com/in-the-news/articles/what-the-new-coronavirus-paid-leave-laws-mean-for-employees/>

	'Regular' FMLA	EFMLEA	EPSLA
Effective date	1993	3/18/2020†	3/18/2020†
Effective through	No expiry	12/31/2020	12/31/2020
Type of leave covered			
Medical leave for self	Yes	No	Yes
Leave to care for family	Yes	Childcare only	Yes
Key provisions			
Leave is required if conditions are met?	Yes	Yes	Yes
Leave period covered by law	12 weeks	12 weeks	2 weeks
Leave must be paid?	No	After 2 weeks	Yes
Required rate of leave pay	N/A	2/3	Full‡
Maximum required leave pay	N/A	\$200/day	\$511/day‡
Discrimination/retaliation forbidden?	Yes	Yes	Yes
Job protection?	Yes*	Yes*	Yes*
Part-time employees covered?	24+ hrs/wk	Yes**	Yes**
Employers covered			
Private employers			
0-49 employees	No	Yes****	Yes****
50-499 employees	Yes	Yes	Yes
500+ employees	Yes	No	No
Government employers	Yes††	Mostly no††	Yes
Other			
Minimum period of employment for coverage	12 months	30 days	None
Employee can sue employer for violation?	Yes	Yes	Yes

QUESTIONS?

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