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COVID-19 & SMALL BUSINESS OPERATIONS 2021

Goldblatt Martin Pozen LLP
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Keys Success in the Next Two Quarters

- Controlling costs to the extent possible with:
 - Rent,
 - Workforce planning and strategically ramping back up.
- Flexibility in terms of:
 - Medical and other leave policies,
 - Regulatory burdens and new laws,
 - Job roles and duties.

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Covid-19 Explained.

- What is COVID-19?
 - Respiratory disease caused by the SARS-CoV-2 virus that spreads from person-to-person most likely during close contact with an infected person.
 - Person-to-person transmission is believed to be achieved through droplets that are dispersed through coughing and sneezing, like the flu.
 - Evidence also suggests transmission by touching surfaces or objects contaminated with SARS-CoV-2 and then touching the mouth, nose, or eyes.
- What are the risk factors?
 - Job duties involving close contact with infected people.
 - Social conditions in areas of high population like bars, cinemas, densely populated office buildings.
 - Age.
 - Preexisting medical conditions including immunocompromising conditions.

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COVID-19 Impact on the Workplace

- In the absence of a vaccine, outbreak may be an extended event. During an outbreak employers may experience:
 - Absenteeism resulting from employee illness, care for sick family members, at-risk family members at home, or fear of possible exposure.
 - Change in customer demand because the need for services and goods have changed.
 - Change in supply/delivery resulting from delay or cancellation of delivery.

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COVID-19 Prevention Measures

- Frequent and thorough hand washing;
- Use of hand sanitizer containing at least 60% alcohol;
- Encourage workers to stay home if sick;
- Cover coughs and sneezes;
- Telework;
- Flexible worksites;
- Regular house-keeping practices;
- Face coverings.

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ReOpen DC Advisory Group Stages

- Stage 1 (ended June 21)
 - Declining virus transmission
 - Work from home strongly recommended
- **Stage 2 (began June 22)**
 - **Only localized transmission**
 - **Work from home recommended but up to 25% capacity in office spaces allowed with distancing**
- Stage 3
 - Sporadic transmission
 - Work from home encouraged but up to 50% capacity in office spaces allowed with distancing
- Stage 4
 - Effective vaccine or cure
 - New normal

<https://coronavirus.dc.gov/reopendc>

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Stage 2 Mayor's Order

- Generally:
 - All individuals must maintain a distance of at least 6 feet from persons not in their household
 - Mass gatherings of 50 persons are prohibited
- **Essential Businesses** include professional services, including legal services, but only when necessary to assist in compliance with legally mandated activities, Essential Businesses, or Essential Government Functions.
- **Nonessential businesses**, including certain professional services:
 - Must cease all activities at D.C. facilities, except minimum basic operations.
 - Must continue to have employees telework to the greatest extent consistent with their business operations

<https://coronavirus.dc.gov/phasetwo>

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DC Health Stage 2 Guidance for Offices

- Continue telework to the greatest extent possible.
- Conduct a thorough assessment of the workplace to identify potential hazards.
- Ensure the building manager has a workplace health and safety manager.
- Include all employees in workplace communication plans.
- Follow [CDC Interim Guidance for Businesses and Employers](#).
- Everyday prevention measures include:
 - Sick or exposed employees should stay home
 - Employees should maintain 6 feet distance
 - Employees and visitors should wear masks when distancing
 - Promote phone calls rather than face-to-face meetings

https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/06152020_COVID-19_DC_Health_Guidance_for_Office_Building_Reopening.pdf

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Workplace Health and Safety

- Safety and health conditions are federally governed by the Occupational Safety and Health Act (OSH Act) or programs approved by the Occupational Safety and Health Administration (OSHA).
- OSH Act was enacted to implement workplace standards to protect workers against unsafe working conditions.
 - Creates separate but dependent responsibilities between employers and employees.
 - E.g., employers are tasked with providing a workplace that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees
 - E.g., employees may be required to use safety equipment, personal protective equipment, and other measures

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Infectious Disease Response Plan

- Develop a Pandemic/Infectious Disease/Emergency Response Plan that includes
 - Up-to-date information about the disease including transmission method, symptoms, testing availability;
 - Interim telework or flexible hours to increase social distancing;
 - Confidential reporting mechanism for employees to report when they are sick or experiencing symptoms of COVID-19 or may have been exposed to someone with COVID-19 symptoms;
 - Flexible sick leave policies that are consistent with public health guidance (encourage workers who are feeling ill to stay home);

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Infectious Disease Response Plan

cont'd

- Procedure for isolating an employee who may have been exposed to or tested positive for COVID-19;
- Internal method of separating positive cases from those who may have been exposed to someone with COVID-19 without a positive test;
- Policy for notifying employees of potential exposure to COVID-19 without breaking confidentiality;
- Identify other notice responsibilities (i.e., notice requirements to clients);
- Emergency communication plan;
- Definition of essential vs non-essential personnel;
- Regular remote-check-ins with employees.

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Disability Related Inquiries

- Disability-related inquiries or medical examinations during employment are generally prohibited during employment unless it is job-related and consistent with business necessity.
- All information must be kept confidential and collected and maintained on separate forms and in separate medical files.
- According to the EEOC, during the pandemic, an employer may:
 - Send home an employee with COVID-19 or associated symptoms
 - Ask employees who report feeling sick or call in sick questions about their symptoms to determine if they have or may have COVID-19
 - Take employees' temperatures to determine if they have a fever

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“Direct Threat”

- A “direct threat” is a significant risk of substantial harm to health or safety that cannot be eliminated or reduced by reasonable accommodation.
- An individual who poses a direct threat despite reasonable accommodation is not protected by the ADA.
- According to the EEOC, the COVID-19 pandemic meets the direct threat standard.

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Return to Work Procedures for Employers

Personal Protective Equipment (PPE) that employers require employees to use in the workplace must be provided by the employer. Each failure to provide PPE may be considered a separate violation. 29 CFR 1910.9(a).

- Rotating work schedules;
- Provide PPE based on the hazard to the worker (in many cases, face coverings and gloves are advised);
- Hand sanitizer;
- Space workstations no closer than 6 feet apart;
- Provide facial tissues and trash receptacles;
- Implement the cleaning recommendations set forth in CDC guidance: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

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Families First Coronavirus Response Act

- **Applicability:** Employers with fewer than 500 employees
- **Reasons:** Unable to work because:
 1. Employee is subject to federal, state or local quarantine or isolation order;
 2. Employee has been advised by a health care provider to self-quarantine;
 3. Employee is experiencing symptoms and is seeking a medical diagnosis;
 4. Employee is caring for an individual subject or advised to quarantine or isolation;
 5. Employee is caring for a son or a daughter whose school or place of care is closed, or the childcare provider is unavailable; or
 6. Employee is experiencing substantially similar conditions as specified by the Secretary of HHS in consultation with the Secretaries of Labor and Treasury

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Families First Coronavirus Response Act

- **Eligibility:** All employees are eligible for Emergency Paid Sick Leave (EPSL). Expanded Family Medical Leave (EFML) requires that an employee be employed for 30 calendar days and is only available for reason 5.
- **Duration:** Up to two weeks, plus up to an additional 10 weeks for reason 5.
- **Paid:** The employee's regular rate of pay up to \$511 per day or \$5,110 in aggregate for reasons 1–3, and two-thirds the employee's regular rate of pay up to \$200 per day or \$2,000 in aggregate for reasons 4 and 6, and two thirds the employee's regular rate of pay up to \$200 per day or \$12,000 in aggregate for reason 5.

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D.C. COVID-19 FMLA

- **Applicability:** All employers
- **Reason:** Unable to work during the emergency period due to:
 1. A recommendation from a health care provider that the employee isolate or quarantine, including because the employee or an individual with whom the employee shares a household is at a high risk for serious illness from COVID-19
 2. A need to care for a family member or an individual with whom the employee shares a household who is under a government or health care provider's order to quarantine or isolate
 3. A need to care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee
- **Eligibility:** Individual must have been employed for at least 30 days with an employer
- **Duration:** Up to 16 weeks of D.C. FMLA
- **Paid:** Unpaid

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D.C. Paid Public Health Emergency Leave

- **Applicability:** Non-healthcare employers with 50 to 499 employees
- **Reason:** Unable to work during the emergency due to any FFCRA reason.
- **Eligibility:** Employees who have been employed for 15 days
- **Duration:** 2 weeks
- **Paid:** Paid at employee's regular rate
- An employee may only use emergency sick leave concurrently or after exhausting any other paid leave to which the employee may be entitled for FFCRA-specified reasons under Federal or District law or an employer's own policies.

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Notice Regarding a Possible or Positive Case

- Identify the severity of the situation;
 - Possible exposure;
 - Known exposure to a positive case;
 - Symptomatic but untested;
 - Symptomatic negative test result;
 - Positive test result.
- Direct the employee to stay home and seek medical advice;
- Identify others whom the employee came into contact with;
- Notify staff or others whom employee met with.

Note: Information about the health or medical condition of the employee must be kept confidential by the employer to the extent possible.

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Responding to a Positive Case

COVID-19 has been categorized as a recordable illness subject to OSH Act's recordkeeping requirements so long as:

1. The case is confirmed as a COVID-19 illness;
2. The case is work-related (caused by an event or exposure in the work environment); and
3. The case involves one or more of the recording criteria in 29 CFR § 1904.7 (death, days away from work, restricted work, etc.).

OSH Act does not require that employers undertake extensive medical inquiries. It is sufficient to do the following:

1. Ask the employee how (s)he believes (s)he contracted the illness;
2. While respecting the employee's privacy, discuss work and out-of-work activities that may have led to illness; and
3. Review the employee's work environment for potential SAR-CoV-2 exposure.

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COVID-19 Notice to Staff

- Depending on the severity of the situation, a notice may be circulated to inform staff a possible exposure.
- The notice should include:
 - Extent of the exposure (janitorial services, client, visitor, staff member, etc.);
 - Direct employees who are not
 - Processes and procedures in place to protect staff from COVID-19;
- Steps taken to protect all staff

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Additional Workplace Safety and Health Resources

- OSHA compliance assistance specialists: www.osha.gov/complianceassistance/cas or call 1-800-321-OSHA (6742).
- No-Cost On-Site Safety and Health Consultation Services for Small Business: www.osha.gov/consultation or call 1-800-321-OSHA (6742).

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Questions & Discussion

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