

# COVID-19 – Getting Your Business Ready for Coronavirus

March 13, 2020



While the information provided in this presentation is intended to be accurate, it should not be considered legal advice. NFIB and the NFIB Small Business Legal Center cannot be held responsible for any errors or omissions.

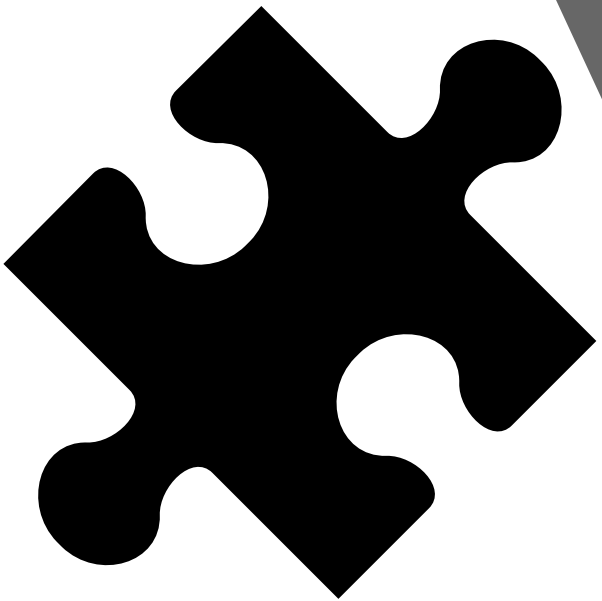


# Agenda



- Background information on COVID-19, including symptoms, transmission, and mitigation.
- Focus on steps that businesses can take to deal with COVID-19.
- Highlight legal issues related to COVID-19 business responses.

What is COVID-19?



# What is COVID-19?

- Commonly known as the 2019 coronavirus.
- Symptoms include:
  - 90% fever
  - 70% dry cough
  - 30% trouble breathing
- Spreads from person-to-person

# Coronavirus (COVID-19)



- How Coronavirus spreads is still unclear.
- Based on similar past viruses, Coronavirus is believed to spread from person-to-person within close contact (~6ft).
- Person-to-person spread is thought to be caused by respiratory droplets from coughs or sneezes.
- The CDC believes symptoms may appear as soon as 2 days after transmission or as long as 14 days.

# Covid-19, Different Than the Common Flu

- More contagious
- Symptoms more severe
- Higher mortality rate

# CDC Prevention Recommendations



- The CDC has recommended some everyday actions to prevent the spread of respiratory viruses, including Coronavirus.
- Wash your hands often with soap and water for at least 20 seconds (especially after going to the bathroom), before eating, and after blowing your nose, coughing or sneezing.
- If soap and water are not available, use an alcohol-based hand sanitizer with at least 60% alcohol.
- Avoid touching your eyes, nose and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.

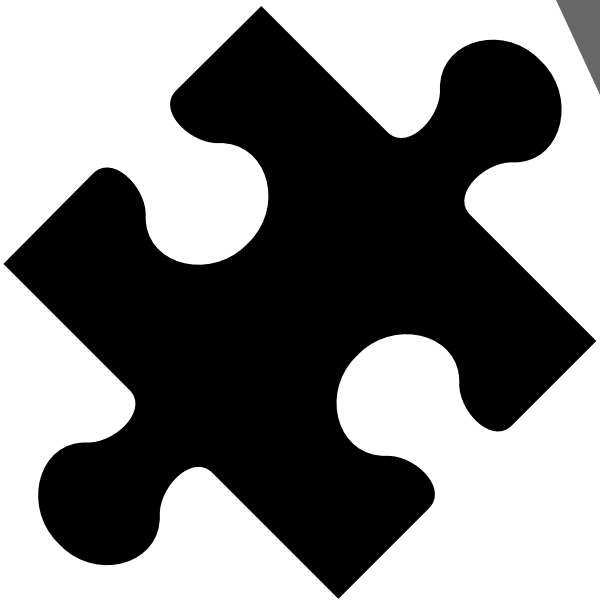


# Workplace Mitigation Measures



- Sick employees stay home
- Employees with sick family members stay home
- Send symptomatic employees home
- Encourage coughing and sneezing in elbow
- Encourage frequent hand washing
- Increased cleaning of common surfaces
- Encourage calls to health-care providers

# What Your Business Can Do



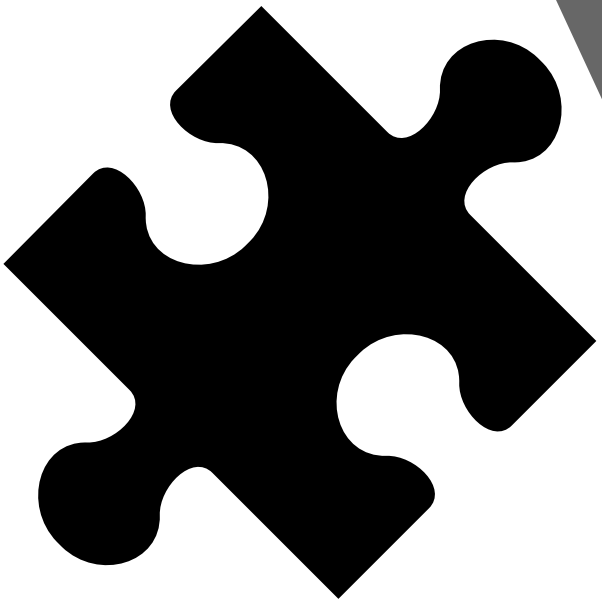
# What should your business be doing?

1. Communicate with employees, customers, and suppliers/vendors.
2. Take steps to protect your business from workforce or economic disruptions. Check with suppliers, identify contracts implicated (force majeure event), determine key financial risks including a landlord, bank and vendors.
3. Check insurance (business interruption) policies for coverage. Many insurance plans don't cover pandemics or disease but it's worth a review of your policy or a quick call to your agent to be prepared.

# What should your business be doing?

4. Create or review HR policies to make sure they fit any potential outbreak disruption including PTO time, sick leave, or telework opportunities. Consider “relaxing” or modifying policies depending on current CDC and public health recommendations. BE FLEXIBLE.
5. Assess your ability to support alternative work arrangements including telework, staggered shifts, and reduced hours.
6. Evaluate your ability to access your facility during a major outbreak in your area. Consider alternative work facilities.

# Potential Legal Issues



# Americans with Disabilities Act (ADA)

- The ADA prohibits discrimination against individuals with a disability.
- It also prohibits employers from making disability-related inquiries and requiring medical examinations unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.

# Americans with Disabilities Act (ADA)

- You can ask an employee how they are feeling and you should encourage employees with flu-like or respiratory illness such as fever, sweating, and coughing symptoms to seek medical attention, and instruct them to stay home until symptom free.
- An employee diagnosed with COVID-19 should stay home for the 14-day incubation period, or until their doctor releases them to return to work.
- According to CDC guidance, if an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the ADA. Employers should not identify or explain to other employees the reason an employee is not at work.



# Occupational Safety and Health Act (OSHA)

- OSHA requires that all employers provide employees with workplace free from “recognized hazards” that cause or are likely to cause death or serious physical harm (general duty clause).
- The Occupational Safety and Health Administration [guidance](#) states that all workers with reasonably anticipated occupational exposure to COVID-19, such as hospital and health care workers, should be trained about the sources of exposure to the virus, the hazards associated with that exposure and appropriate workplace protocols to prevent or reduce the likelihood of exposure.



# Occupational Safety and Health Act (OSHA)

- Employees are generally only entitled to refuse to work if they believe they are in “imminent danger.”
- OSHA prohibits employers from retaliating against workers for raising concerns about safety and health conditions.
- Coronavirus is a recordable illness when a worker is infected on the job.

# Family and Medical Leave Act (FMLA)

- An employee who is sick, or whose family members are sick, may be entitled to leave under the FMLA. The FMLA entitles eligible employees of covered employers (50 or more employees) to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a “serious health condition.”
- FMLA does not cover employees who take off from work to care for healthy children, for example when schools have shut, but “given the potential for significant illness under some pandemic influenza scenarios, employers should review their leave policies to consider providing increased flexibility to their employees and their families.” <https://www.dol.gov/agencies/whd/fmla/pandemic>

# Fair Labor Standards Act (FLSA)

- **Non-exempt (hourly) Employees:**
- Must be paid for all hours worked.
- Options for partial pay:
  - Substitute PTO/vacation/sick leave for missed work
  - Compensate employees at a reduced rate
  - Reduce hours

# Fair Labor Standards Act (FLSA)

## **Exempt (salaried) Employees:**

- Must receive a salary of at least \$684 per week for any workweek in which any work is performed.
- If NO work is performed in a week, then the employer does not have to pay salary.
- 7 situations for permissible deductions:
  1. When an employee is absent from work for one or more full days for [personal reasons](#) other than sickness or disability;
  2. For absences of one or more full days due to [sickness or disability](#) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
  3. To offset amounts employees receive as [jury or witness fees, or for temporary military duty pay](#);



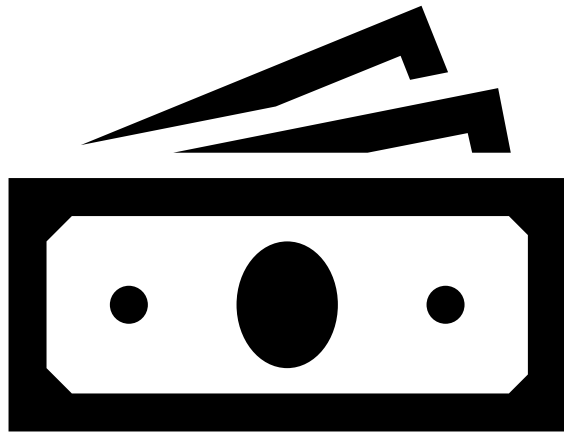
# Fair Labor Standards Act (FLSA)

## Exempt (salaried) Employees:

4. For penalties imposed in good faith for [infractions of safety rules](#) of major significance;
5. For unpaid disciplinary suspensions of one or more full days imposed in good faith for [workplace conduct rule infractions](#);
6. In the employee's initial or terminal week of employment if the employee does not work the full week, or
7. For unpaid leave taken by the employee under the Federal [Family and Medical Leave Act](#).

# FLSA and Supporting Work from Home

---



- Explain expectations and responsibilities for working at home: must record all hours work and comply with meal and rest break laws.
- Consider including agreed-upon hours of work during this time period and refrain from emailing or calling these employees outside of the agreed-upon hours to avoid claims for overtime compensation.
- Evaluate insurance/liability issues.

# Unemployment Insurance

- On March 12, the U.S. Department of Labor gave states flexibility to amend their laws to provide unemployment benefits in events related to the coronavirus.
- States can pay benefits in cases of temporary unemployment because the coronavirus is preventing employees from coming to work.
- Individuals quarantined with the expectation of returning to work after the quarantine is over can also receive unemployment benefits as well as those leaving employment due to a risk of exposure or infection or to care for a family member.
- [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8893](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893)

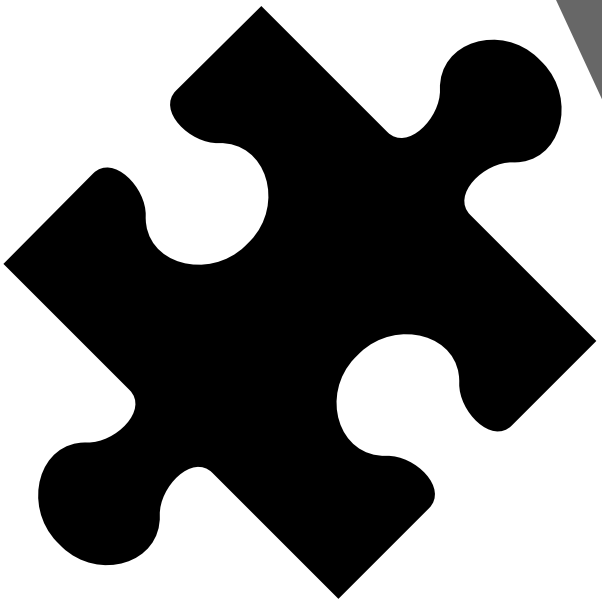


# Workers' Compensation

- Employees maybe eligible for state workers' compensation if they contract the virus while at work.



# Federal Government Actions



# Travel Restrictions

## Widespread sustained (ongoing) spread and restrictions on entry to the United States

CDC recommends that travelers avoid all nonessential travel to the following destinations. Entry of foreign nationals from these destinations has been suspended.

- China ([Level 3 Travel Health Notice](#))
- Iran ([Level 3 Travel Health Notice](#))
- Most of Europe ([Level 3 Travel Health Notice](#))

## Widespread sustained (ongoing) spread

CDC recommends that travelers avoid all nonessential travel to the following destinations:

- South Korea ([Level 3 Travel Health Notice](#))

## Sustained (ongoing) community spread

CDC recommends that older adults or those who have chronic medical conditions consider postponing travel to the following destinations:

- Global Outbreak Notice ([Level 2 Travel Health Notice](#))

## Limited community spread

Travelers should practice usual precautions



# Federal Action

Congress and Treasury Dept currently negotiating a relief package to help affected businesses and employees.

# Additional Information

---



- The CDC has information that employees can access here:
  - <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>
  - <https://www.cdc.gov/coronavirus/about/index.html>
- Sign up for CDC email updates:
  - <https://www.cdc.gov/other/emailupdates/index.html>

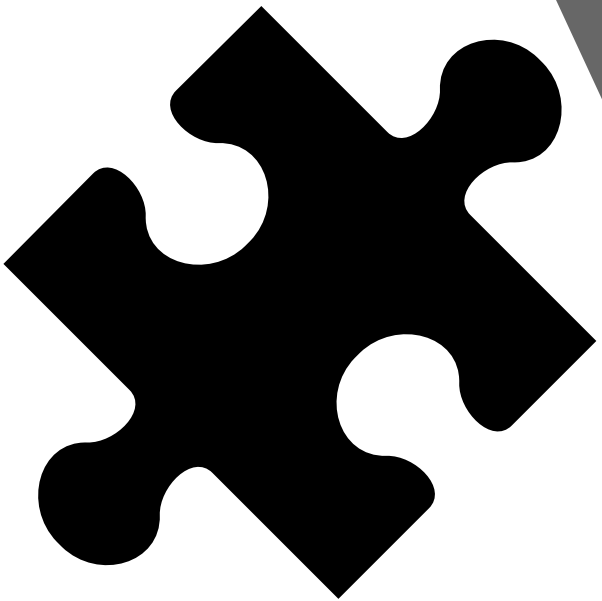
# Additional Steps for Employers\*

Employees will look to their employers for guidance. Communication is critical to maintaining business operations and protecting employees.

- ❑ Communicate to employees and visitors regarding personal preventive measures.
  - ❑ CDC: Stop the spread of germs
  - ❑ Encourage a no-handshake policy in the workplace.
- ❑ Educate employees about the symptoms of COVID-19 and provide facts about the virus.
  - ❑ CDC: Symptoms of Coronavirus Disease
  - ❑ CDC: What you need to know
- ❑ Communicate to employees about your leave policies and steps to take if they become ill.
  - ❑ Employees should stay at home when sick.
  - ❑ Inform employees who they should contact at work if sick.
- ❑ Workplace safety
  - ❑ Perform routine cleaning (workstations, countertops, doorknobs).
  - ❑ Provide hand sanitizer, tissues with no-touch receptacles for disposal, and disinfectant wipes for employees.
  - ❑ Identify an isolation area in the event a person presents with symptoms at work.

• \*Source: Lockton, Coronavirus Employer Guide (Updated March 9, 2020) [http://s3-us-west-2.amazonaws.com/lockton-corporate-website/Compliance-Alerts/030920\\_Coronavirus\\_Employer\\_Guide.pdf](http://s3-us-west-2.amazonaws.com/lockton-corporate-website/Compliance-Alerts/030920_Coronavirus_Employer_Guide.pdf)

# Frequently Asked Questions



Beth Milito  
(202) 406-4443  
elizabeth.milito@nfib.org

Holly Wade  
(202) 314-2022  
holly.wade@nfib.org



Thank you!

