

# 5 CRITICAL ISSUES FOR BUSINESS DURING THE COVID-19 CRISIS

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# The New York Times

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- ***“One in Five Americans Ordered to Stay Home In Coronavirus Crackdown”***
- **Strict new directives, in New York, California, Illinois and other states, were intended to slow the spread of the coronavirus.**
  - ***March 21, 2020***

# 22 STATES HAVE NOW SHUT DOWN ALL “NON-ESSENTIAL OPERATIONS” IN THEIR STATES

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- Illinois, California, NJ, Connecticut, Oregon, and New York
- Over weekend, **LOUISIANA and OHIO** issues shelter at home orders
- Since them, several other states joined in (**DE, MA, MI, KY, IN, VA, WA, ID, NM, KA, FL, WV, HA, WI.**)
- Many large cities have imposed stay at home orders (Philadelphia, Miami, Houston, St. Louis, Denver, Atlanta)
- Jefferson County
- Only “essential” operations allowed to continue
  - Healthcare, police, fire, gas stations, grocery, transportation, public works, jails
- Non-Essential??
  - Most anyone who can work at home
  - Good to have temporary “**telework**” policies in place

MERCEDES SHUT DOWN FROM  
MARCH 23RD UNTIL APRIL 6TH.

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# COURTHOUSES ACROSS STATE HAVE CLOSED

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- State and county courthouses are shut down to the public
  - Limited actions
  - No face to face
  - Hearings held over the phone
- Federal court same
  - Extended many deadlines
- US Supreme Court and 11<sup>th</sup> Circuit closed to public
  - On line oral arguments



# WHAT CRITICAL ISSUES MUST EMPLOYERS ADDRESS NOW??

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- 1. What about worker's compensation claims of exposure?
- 2. How do I handle temporary layoffs of workers?
- 3. If I layoff some workers, do I have to give notice?
- 4. Do I have to pay any employees who miss work due to sickness or if their schools or daycares close?
- 5. What else can I do to protect my business?

# I. WORKER'S COMPENSATION DURING THE COVID-19 PANDEMIC

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# WAS THE EXPOSURE FROM “THEIR WORK?”

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- In Alabama, an occupational disease is defined as “a disease arising out of and in the course of employment... which is due to hazards in excess of those ordinarily incident to employment in general and is peculiar to the occupation in which the employee is engaged but without regard to negligence or fault, if any, of the employer.”
- For the coronavirus to be considered compensable in Alabama, the employee would have to be able to prove that contracting it was due to hazards in excess of those ordinarily incident to employment in general and that it is peculiar to the employee’s occupation.
- It will be difficult for an employee to show that contracting the virus resulted from a risk of employment. The reason being that, like the flu, you face the same sort of risk when you go home or when you walk about in public.
- Some state laws have presumptions for health care workers or first responders. Alabama is not one of those states. Without a statutory presumption in place, it would be nearly impossible to prove causation.



# WHAT ABOUT NOTIFYING OSHA OF AN EXPOSURE?

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- OSHA, like the state worker's comp, only covers illness or injury arising out of employment
- OSHA recently stated that a POSITIVE test for COVID-19 can be a reportable incident or illness
- **BUT, again, it should be reported ONLY IF the virus positive arose from the employee's employment**
- This will be most likely in health care

# 2. UNEMPLOYMENT COMP CLAIMS

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# FRIDAY, COMMISSIONER FITZGERALD WASHINGTON OFFICIALLY ANNOUNCED CLAIMS WILL NOT BE CHARGED AGAINST EMPLOYERS

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- That is great news for businesses
- DOL made it easier for employees to make claims
- They will be covered
- Unemployed through “no fault of their own”
- Now official, your experience rating will NOT increase due to these claims



**Alabama Department of Labor**



# FEDS WILL FUND STATE UNEMPLOYMENT

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- **Emergency Unemployment Insurance Stabilization And Access Act Of 2020**
- This section provides \$1 billion in 2020 for emergency grants to states for activities related to unemployment insurance benefit processing and payment, under certain conditions.





# 3. WHAT DO I DO IF I NEED TO LAYOFF EMPLOYEES?

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# FIRST, DETERMINE IF YOU CAN HAVE A CONTINGENT OF WORKERS WORK FROM HOME

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- If so, be sure to give them properly protected computer equipment to be productive
- Be sure your IT person is involved
- Risk of computers being hacked is more serious now that they are accessing from a different device
- Have a **“Temporary” Telecommute Agreement**
  - They have to produce, just like at work
  - Subject to same rules of conduct
  - Limit part of home that is subject to work (i.e., if they are “hurt” doing laundry)



# IF YOU HAVE TO LAYOFF, GIVE THEM SOME NOTICE AND EXPLAIN WHY

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- Count the number
- If you have **over 100 FT employees**, and the layoff is over 50 employees (over a 90 day period), it may be covered by the WARN act
- If less than 6 months, may not be covered
- Will **rely on “unforeseeable business circumstances” exception to 60-day notice provision**



# HOW DO I PAY LAID OFF EMPLOYEES?

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- Wage and Hour laws
- **“EXEMPT” Salaried workers** –
  - If they work ANY part of a work week, even one day, they get whole salary
  - If they work none, they get no pay
  - Send home, instruct NOT TO DO ANY WORK
  - Can use accrued PTO or sick pay during leave
- **Hourly workers**
  - They are called non-exempt
  - They only get paid for time actually worked
  - So if they work 24 hours, they get paid for 24 hours



# CHECK YOUR EMPLOYEE HANDBOOK

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- Look to see if you say anything about pay when closed
- Any limitations on what they can use paid leave for
- Some might provide for severance pay for long leaves



# 4. THE NEW FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

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# NEW LAW THAT CREATES TWO KINDS OF PAID LEAVE FOR CERTAIN EMPLOYEES

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- Becomes effective April 2, 2020 (expires December 31, 2020)
- First, only covers **employers or 500 employees or less**
- Question about whether those under 50 employees would be covered
  - Law is not clear
  - The law amends the FMLA which only applies to employers of 50 or more
- DOL will be coming out with rules for possible “hardship” exceptions
- Must “**jeopardize the viability of the business as an ongoing concern**”
- **Healthcare providers and emergency responders** carved out

# TWO LEAVE PERIODS

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- **FIRST TEN DAYS (EMERGENCY PAID SICK LEAVE)**
  - Full pay 80 hours (reasons 1, 2, 3)
  - Two-thirds pay (reasons 4,5, 6)
  - All employees on payroll
  - Capped at \$511 per day or \$5,110 total per employee for reasons 1, 2, 3
  - Capped at \$200 per day and up to \$2000 total for reasons 4,5,6



# THE 6 POSSIBLE REASONS ARE:

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**An employee is unable to work (OR TO TELEWORK) due to need for leave because the employee is:**

- 1. subject to a federal, state or local quarantine or isolation orders related to COVID-19;
  - 2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
  - 3. experiencing COVID-19 symptoms and seeking medical diagnosis;
  - 4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
  - 5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
  - 6. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
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# SECOND PERIOD FOR WEEKS 3 TO 12 OF FMLA

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- **This is a 12 week period, first two unpaid**
- Employee must be on payroll only 30 days
- First 2 weeks not paid
  - Can use PTO.
  - May be eligible for EMERGENCY SICK PAY
- **JOB PROTECTED LEAVE for 12 WEEKS**
- Only for one reason:
  - **“allow an employee, who is unable to work or telework, to care for the employee’s child (under 18 years of age) if the child’s school or place of care is closed or the childcare provider is unavailable due to a public health emergency.”**
  - **Pay is at 2/3 of regular rate**
  - **Capped at \$200 per day, or \$10,000 in aggregate**

# TAX CREDITS FOR BUSINESSES

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- Private employers with 500 or fewer employees required to provide COVID-19 related paid leave are eligible for a **100 percent refundable payroll tax credit** on the wages paid for leave.
- The tax credits would be administered by the IRS and be **creditable against employer-side payroll tax liability, with any excess refunded to the employer.**
- Tax credits for COVID-19 related pay sunset on December 31, 2020
- **NEW: Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.**

# WHAT DOES THAT MEAN?

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- They will try to accelerate repayments to employers who must pay
- “When employers pay their employees, they are required to withhold from their employees’ paychecks federal income taxes and the employees’ share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns ([Form 941](#) series) with the IRS.
- Under guidance that will be released next week, **eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.**
- **The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.**
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, **employers will be able file a request for an accelerated payment from the IRS.** The IRS **expects to process these requests in two weeks or less.** The details of this new, expedited procedure will be announced next week.”
- What does this mean? In a nutshell, it means that any taxes held in escrow for payment on federal, social security and Medicare taxes now could be used to pay employees taking paid leave under the law effective April 2. Notably, this would allow employers to draw funds from the payroll and income tax they withhold from or pay on behalf of all employees and not just those to whom they must provide paid leave under the new statute.



# 5. WHAT ELSE CAN I DO TO PROTECT MY BUSINESS

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# SEVERAL THINGS TO CONSIDER

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- 1. Check to see if you carry **business interruption or loss of income insurance**
- 2. Small Business Association may be offering temporary emergency loans
- 3. Keep in contact with your employees, don't lose them during this crisis
- 4. Continue to watch proposed ECONOMIC STIMULUS LEGISLATION
- 5. Continue to communicate on social media about the impact of your employees, your value to community
- 6. **Be flexible** with policies during this period. It is hard on everyone.
- 7. Be calm. We will win this!