

General Address to Clients of the Firm

Good morning - we hope all of you are doing well. As you are certainly well aware, it is a changing world in which we live. In an effort to keep all our clients fully advised, we would like to bring to your attention some important changes - particularly for employers - under the present "shelter-in-place" directives.

As you know, on March 11, 2020 Congress passed the Family First Coronavirus Response Act (FFCRA). One legal commentator has defined this Act as "FMLA on steroids." An employer must be aware of what the Act requires - some aspects of the Act have been well publicized, such as paid leave, the closing of "non-essential" businesses and the stimulus. Others, however, have not.

A major aspect of the Act that has not been as well publicized is that all requirements of the ADA and OSHA remain in full force and effect. In fact, COVID-19 (coronavirus) has been determined to be a "direct threat" under OSHA. Accordingly, employers have a duty to make sure that employees who are coming to work are not ill themselves or are not residing with someone who has tested positive for the coronavirus. An employer essentially has a duty to ask these questions of any employee and WILL NOT violate HIPAA by doing so. In addition, any employee who appears to have the symptoms of coronavirus but has answered negative to any questions MUST be questioned further. Any employee having a temperature of higher than 100.4 degrees must be sent home or an employer risks a violation. Coronavirus has in and of itself been deemed to be a direct threat to one's self or others. Accordingly, social

distancing must be maintained in the workplace – even for essential employees – or an OSHA violation has occurred and is enforceable under the FFCRA.

On the flip side, an employee has a duty to notify an employer if the employee is, in fact, showing any symptoms of the coronavirus. However, that duty will not eliminate the employer's duty to inquire as set forth above – as the employer has a duty to protect *all* its employees.

In the event an employee actually tests positive for coronavirus, an employer also has a duty to notify any other employee who has routinely come within six feet of that infected individual and does so for more than 10 minutes in any given work day. Practically speaking, if someone tests positive its probably going to spread like wildfire through the rumor mill. However, that does not eliminate an employer's duty to notify others as indicted above. Please note that this is all that the law requires at this time and, as such, it would be inappropriate to send out a universal notification if someone has tested positive – particularly if the employer operates from multiple sites or units where some employees would have never come in contact with the infected employee. Therefore, there is no need for a company-wide notification.

In the event an employee files a workers' compensation claim alleging that he or she contracted the coronavirus in the workplace, your workers' compensation insurance carrier will cover and defend. However, it will be extremely difficult for anyone to be successful in such a claim (outside of those employees who were actual medical care providers to coronavirus patients) because a petitioner will have to prove that the contact came *solely* as a result of his/her employment.

Hopefully, the restrictions imposed under the “shelter-in-home” order will soon end. However, even when members of the “vulnerable population” (which has been defined as individuals over 65 years of age, individuals with immune issues and anyone with a physical frailty) return to work, it may be

necessary to provide safe accommodations for them - such as including the social distancing and mask requirements even after it has been lifted for others.

All employers should make a strict effort to follow OSHA and the ADA under the confines of the Family First Coronavirus Response Act (FFCRA) and, most importantly, maintain uniformity in the implementation of those guidelines so as not to invite future charges of violation.

If you have any questions, please do not hesitate to contact this office. As always, we are here to help. Stay safe!

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