



NEBRASKA COVID-19 LEGAL UPDATE

OSHA'S GUIDANCE AND INTERPLAY OF FEDERAL FAMILIES FIRST
CORONAVIRUS RESPONSE ACT

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OSHA COVID-19 GUIDANCE ON WORKPLACE SAFETY

- OSHA Guidance preparing workplaces for COVID-19 (March 2020)
<https://www.osha.gov/Publications/OSHA3990.pdf>
- Preventing worker exposure to COVID-19 (March 2020)
<https://www.osha.gov/Publications/OSHA3989.pdf>
- Both resources are also available in Spanish

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FOLLOW EXISTING OSHA STANDARDS

- No specific OSHA standard covering COVID-19 exposure
- Applicable OSHA Standards
 - Personal Protective Equipment (PPE)
 - OSHA's general duty clause

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CENTERS FOR DISEASE CONTROL AND PREVENTION

- Interim guidance for businesses and employers to plan and respond to COVID-19
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Purpose: Help prevent workplace exposures to COVID-19 in non-healthcare settings
 - Use guidance to determine risk of COVID-19 infection in an objective manner
 - Prevent stigma and discrimination in the workplace
 - Prepare the workplace and #FlattenTheCurve

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PREPARING WORKPLACES FOR A COVID-19 OUTBREAK

Business Goals to #FlattenTheCurve and Minimize Workplace Impact:

- Reduce transmission among employees
- Maintain healthy business operations
- Maintain healthy work environment

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REDUCE TRANSMISSION AMONG EMPLOYEES

- Actively encourage sick employees to stay home
- Identify where and how workers might be exposed to COVID-19 at work
- Separate sick employees
- Educate employees on how they can reduce the spread of COVID-19

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MAINTAIN HEALTHY BUSINESS OPERATIONS

- Identify a workplace coordinator
- Implement flexible sick leave and supported policies and practices
- Discuss your essential functions
- Determine how you will operate if absenteeism spikes
- Consider establishing policies and practices for social distancing

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MAINTAIN A HEALTHY WORK ENVIRONMENT

- Consider improving engineering controls using building ventilation system
- Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors
- Perform routine environmental cleaning and disinfection

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MAINTAIN A HEALTHY WORK ENVIRONMENT

- Perform enhanced cleaning and disinfection after person suspected or confirmed to have COVID-19 have been on the job site
- Advise employees before traveling to take additional preparations
 - Check CDC Travel Notices
 - Understand Where Outbreaks are in the U.S.
- Take care when attending meetings and gatherings
 - If 9 year olds can learn to use Zoom on their own, so can you.

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RECORDING WORKPLACE EXPOSURES TO COVID-19

- OSHA recording requirements mandate covered employers record certain work-related illnesses and injuries on OSHA 300 log
- COVID-19 can be recordable illness if a worker is infected as a result of performing their work-related duties

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RECORDING WORKPLACE EXPOSURES TO COVID-19

- Employers are only responsible for recording cases of COVID-19 if all of the following are met:
 1. Case is a confirmed case of COVID-19 (CDC information)
 2. Case is work-related
 3. Case involves one or more of the general recording criteria (e.g., medical treatment beyond first aid, or days away from work)

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RECORDING WORKPLACE EXPOSURES TO COVID-19

Case is work-related

1904.5(a): "You must consider an injury or illness to be work-related if an **event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness...**"

1904.5(b)(2) (exceptions)

- "The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment."
- "The illness is the common cold or flu (**Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work.**)"

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RECORDING WORKPLACE EXPOSURES TO COVID-19

Case is work-related

1904.5(b)(3)

How do I handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work?

In these situations, you must evaluate the employee's work duties and environment to decide **whether or not one or more events or exposures in the work environment** either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.

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WORKER'S RIGHTS UNDER OSHA

- OSHA prohibits employers from retaliating against workers for raising concerns about safety and health conditions

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Effective April 1, 2020, to December 31, 2020
- Two Different Acts:
 - FMLA Expansion (Daycare/Childcare)
 - Emergency Paid Sick Leave (Up to two weeks (80 hours), or a part-time employee's two-week equivalent of paid sick leave)
- Interrelatedness between the Acts, but they're different.

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PAID LEAVE ENTITLEMENT

- 100% for the following reasons, up to \$511 daily and \$5,110 total:
 - Subject to a federal, state, or local quarantine or isolation order related to COVID-19
 - Advised by health care provider to self-quarantine related to COVID-19
 - Experiencing COVID-19 symptoms and is seeking a medical diagnosis

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PAID LEAVE ENTITLEMENT

- 2/3 pay for the following reasons, up to \$200 daily and \$2,000 total:
 - Caring for an individual subject to a quarantine or isolation order related to COVID-19
 - Experiencing any other substantially-similar condition specified by U.S. Department of Health and Human Services

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PAID LEAVE ENTITLEMENT

- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for the following reason, up to \$200 daily and \$12,000 total:
 - Caring for his or her child whose school or place of childcare is closed (or a childcare provider is unavailable) due to COVID-19 reasons.
 - *NOTE: Interplay with Expanded FMLA's first 10 days of unpaid leave*

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ELIGIBLE EMPLOYEES

- Employees of employers with fewer than 500 employees are entitled to two weeks of full or partially paid sick leave
- Employees who have been employed for at least 30 days prior to their leave request are entitled to additional ten weeks of partially paid expanded family and medical leave to care for his or her child whose school or place of care is closed (or a childcare provider is unavailable) due to COVID-19 related reasons

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ENFORCEMENT

- U.S. Department of Labor's Wage and Hour Division has authority to investigate and enforce compliance
- Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave, files a complaint, or institutes a proceeding under or related to this Act.

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TEMPORARY NON-ENFORCEMENT

- WHD will observe a period of non-enforcement of the Act for March 18 to April 17, 2020
- **SO LONG AS** the Employer has made reasonable, good faith efforts to comply with the Act

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TEMPORARY NON-ENFORCEMENT

- Employer acts "reasonably" and "in good faith" when the following facts are met:
 - Employer remedies any violations, including by making all affected employees whole as soon as possible
 - Violations of the Act were not "willful" (employee "either knew or showed reckless disregard for the matter, whether its conduct was prohibited")
 - Department receives a written commitment from the employer to comply with the Act in the future

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NOTICE OF ACT

Where to post:

- Post in conspicuous place in the premises
- Email/direct mail to employees
- Post on an employee information internal or external website
- Multiple language posting (not required to post in multiple languages)
- Laid-off individuals – no need to share notice with recently laid-off individuals

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NOTICE OF ACT

Where to post:

- New applicants – no need to share with prospective employees
- New hires – must convey notice to new hires
- Small business – all employers (less than 500 employees) are required to post the notice
- Updated notice – check www.dol.gov/agency/whd

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NOTICE OF ACT

Where to post:

- Different worksite locations – not necessary to display notice at different worksite locations if able to see at the main office
- Notices in a binder – cannot put federal notices in a binder – must be displayed where they are easily visible to all employees
- Breakroom posting – if all employees regularly use a lunchroom, then you are not required to post the notice in breakrooms on each floor or in another location where they can be seen by employees

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NOTICE OF ACT

Where to post:

- Multiple buildings – posting required if separate buildings where employees report to work
- Date to post – April 1, 2020

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INTERMITTENT LEAVE WHILE TELEWORKING

- Permissible if employer allows it and employee is unable to telework his/her normal scheduled hours due to one of the qualifying reasons under the Act
- Example: Telework from 1:00 p.m. to 2:30 p.m., take leave from 2:30 p.m. to 4:00 p.m., and then return to teleworking.

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SICK LEAVE (EXCLUDING TELEWORKING)

- Paid sick leave must be taken in full-day increments (unless teleworking)
- Must use the full amount of paid leave or no longer have a qualifying reason for taking paid leave
- Allowed to take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs

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SICK LEAVE (EXCLUDING TELEWORKING)

- Exception: If employer agrees, employee may take paid sick leave to care for a child whose school or place of care is closed because of COVID-19 related reasons
- Example: Employee takes paid sick leave on Mondays, Wednesdays, and Fridays to care for the child, but works at the normal worksite on Tuesdays and Thursdays

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SICK LEAVE RIGHTS AFTER WORKSITE CLOSURE

- As of the date employer closes the worksite, employees are no longer entitled to paid sick leave or expanded family and medical leave
- Same with a furlough or if the employer tells employees it will reopen at some time in the future
- Once employer reopens, employee resumes work, employee would then be eligible

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STATE DIRECTED HEALTH MEASURES

- o Cass, Douglas, and Sarpy Counties effective March 19, 2020, to April 30, 2020
- o Dodge, Lancaster, Saunders, and Washington Counties effective March 25, 2020, to May 6, 2020
- o Butler, Hall, Hamilton, Merrick, Polk, Seward, and York Counties effective March 28, 2020, to May 6, 2020
- o Burt, Cuming, Madison, and Stanton Counties effective March 29, 2020, to May 6, 2020
- o Panhandle Counties (12) effective March 30, 2020, to May 11, 2020
- o Directed health measures do not apply to “construction jobs” and “traditional office settings”

THANK YOU!



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