

# Operating Your Nonprofit Organization During the COVID-19 Pandemic: Top HR Considerations for Nonprofit Employers

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## Of Note

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As you know, there has been a worldwide health emergency caused by the COVID-19 pandemic. Governments and public health authorities are continuing to issue new laws and guidance around this issue. Accordingly, this area is constantly changing, and is likely to evolve and change this fall/winter.

While this webinar reflects general considerations that nonprofit employers should take into account, employers should ensure that they are using the most up-to-date information when reviewing personnel issues and making employment decisions. Please keep in mind that implementation of such considerations will be industry- and state-specific.

We note that in this webinar, we are only providing general information; the information in this webinar does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, please contact us directly. We also note that we are not medical professionals and are not providing medical advice. Any issues raised are for discussion only as it relates to employment law.

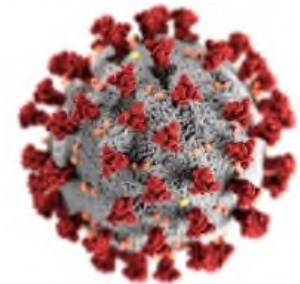
# Today's Agenda



- COVID-19 Pandemic: Current Status
- COVID-19 Pandemic: Current Trends in the Nonprofit Sector
- **Top 7 Questions from Nonprofit Employers**
- Takeaways
- Questions & Answers

# COVID-19 Pandemic: Current Status

- Cases are spiking across the United States
- States are scaling back on reopening, imposing new measures and returning to stay-at-home advisories
  - Curfews, restrictions/limits on gatherings, capacity caps
  - CDC has issued Holiday-specific guidance
  - Travel restrictions
- Vaccine being developed
- Worldwide focus on safety/health including hand hygiene, social distancing, and self-quarantine
- Many employers have reopened while others are continuing to use remote work, closure, layoff, and other options



# COVID-19 Pandemic: Current Trends in the Nonprofit Sector

- A June 2020 report from Johns Hopkins found that U.S. nonprofits maintain their position as the third largest employer in the U.S. economy
- Nonprofits are facing challenges due to the COVID-19 pandemic, with projected job losses of over 1.6 million employees between March and May of 2020
- In another survey based on responses collected between May 27, 2020 and June 9, 2020 from 110 nonprofits with between 500 and 5,00 employees:
  - 67 % of respondents had furloughed staff
  - 51% of respondents had laid off employees



# COVID-19 Pandemic: Current Trends in Nonprofit Sector

- Most nonprofit models depend on fundraising
  - Employees, donors, and other patrons are not attending large fundraising events or other in-person interactions
  - Nonprofits are innovating and creating new ways to connect virtually with donors
- Relief offered to nonprofits from federal, state, and local governments
  - CARES Act: PPP loans, Charitable Giving incentives, Unemployment benefits
  - Many states offering grants, loans, or other relief
- Private funding opportunities are being offered as well



# Question 1: Is My Organization Required to Provide Employees with Paid Leave Under the FFCRA?

- Families First Coronavirus Response Act (FFCRA)
  - Expires December 31, 2020
    - An extension is possible
  - Employers with less than 500 employees
  - Expanded FMLA of up to 12 weeks to care for a child whose school or place of care is closed
  - Emergency paid sick leave of up to 2 weeks (up to 80 hours) for reasons related to contraction of or exposure to COVID-19 for the employee or someone else, to care for a child whose school or place of care is closed, among other reasons
  - Employers pay for benefits, but will be eligible for a payroll tax credit
- Administering FFCRA Leave:
  - Create a leave policy
  - Designate a leave administrator/coordinator
  - Develop appropriate request and designation forms
  - Develop a tracking system
  - Ensure proper records are maintained



## Question 2: Is My Organization Required to Provide Employees with Other COVID-19-Related Benefits or Accommodations?

- Reasonable Accommodations
  - What about employees that are considered more “at risk” than others or that live with individuals?
  - When is telework a reasonable accommodation?
    - What happens when the employer reopens the physical workplace?
  - What if an employee does not feel comfortable returning to work?
    - What if an employee has generalized anxiety?
- What if employees can or want to work from home?
  - Remote Work Arrangements
- What happens if an employee cannot come to the physical workplace?
  - E.g., child’s school or place of care is still closed
- Other Benefits Employers Can Provide
  - PTO
  - Sick leave
  - Flexible work arrangements
  - Childcare options





## Question 3: What Are My Organization's Health and Safety Obligations During COVID-19?

- CDC guidance for businesses and employers and sector-specific or industry-specific rules under state law:
  - Changes to the physical workplace and operations
    - Social distancing
    - Workplace gatherings
    - Sanitization and cleaning measures
    - Face masks and coverings
    - Testing and vaccinations
  - Travel
  - Holiday season
- OSHA Obligations
  - General duty clause
  - Reporting and Recordkeeping
- Training and communicating expectations to employees
  - Should employees sign a policy acknowledging their understanding of the expectations?
- Should employees report violations or considerations/suggestions and how?
  - How should employers investigate these complaints?



## Question 4: Should My Organization Implement COVID-19-Specific Policies, Plans, or Procedures?

- Changes to current policies
  - Health/safety
  - Teleworking/flexible work arrangements
  - Leaving/returning during day
  - Meetings/gatherings & travel
  - PPE and other supplies (sanitizer, tissues, gloves, masks)
  - Reasonable accommodations
  - Leave policies
- Infectious Disease/Emergency Preparedness Plan
  - See CDC, OSHA, and other guidelines
- Workplace Health & Safety During COVID-19 Policy that includes policies on:
  - Travel
  - Health and COVID-19 Exposure Screening
  - COVID-19 Testing
  - Vaccinations
  - Face Masks
  - Social Distancing
  - Hygiene, Cleaning, and Disinfecting
- Policies for Visitors/Non-Employees
- Changes in Vendor or Other Procedures



## Question 5: Can My Organization Screen Employees for COVID-19 or COVID-19 Exposure?

- Conducting Testing/Screening
  - Measuring Temperatures
  - Asking Medical Questions
    - Have you had any COVID-19 symptoms in the past 14 days?
    - What about members of your household?
    - “Close contact”
  - COVID-19 Testing
    - Symptoms-based approach vs. test-based approach
    - Quarantine v. testing
    - Two-test approach
  - Asking about travel
- Can employers restrict employees from the workplace due to COVID-19 or COVID-19 exposure?
  - Requiring Return to Work Letters/Certification
- Managing Visitors/Non-Employees
- Communications with Employees about Outside Activities/Off-Duty Conduct



*Note: We note that we are not providing any medical advice or suggestions but are raising this issue for discussion only as it relates to employment law.*

## Question 6: Does My Organization Have Any Obligations When Conducting Furloughs and Layoffs or When Making Other Workforce Changes?

- Furloughs and Layoffs (e.g., permanent layoffs, converting temporary furloughs into permanent layoffs, temporary furloughs that will last or have lasted longer than 6 months)
  - Notice Requirements
    - WARN Act
    - State notice requirements may apply
  - Benefits
    - COBRA/Loss of health insurance
- Changing benefits
- Changing rates of pay/salary reductions
- Changing hours (e.g., full-time to part-time)
- Changing other terms or conditions of employment



## Question 7: What Types of Financial Assistance/Relief May Be Available to My Organization Under the CARES Act?

- Paycheck Protection Program (PPP)
  - Loans to 501(c)(3) and 501(c)(19) tax-exempt organizations with under 500 employees
  - Loan forgiveness
- Economic Injury Disaster Loans
  - Lending program for eligible nonprofits
- Reimbursements for “Reimbursable Employers”
  - Benefit for nonprofits that have elected to be “reimbursable employers” for purposes of state unemployment insurance taxes.
- Payroll Tax Credit
  - Benefit for organizations that don’t get PPP loans
- Industry Stabilization Fund
  - Loans to nonprofits with 500 to 10,000 employees



## Question 8: What are the Greatest Employment-Related Litigation Threats to my Organization due to the Pandemic?

- Lawsuits related to Leave
  - Allegations related to a failure to comply with obligations under the FMLA, FFCRA, and state– or local-equivalent laws by denying the requested leave, miscalculating employees' pay, requesting improper documentation or retaliating against an employee for taking such leave, etc.
- WARN Act
- Discrimination Charges
- Wage and Hour Complaints
- Workplace Safety



# Where Should Nonprofits Look for Guidance on COVID-19 Related Issues?



- CDC Guidance for Businesses and Employers
  - <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- EEOC: What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws
  - <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last updated Sept. 8, 2020)
- EEOC: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act
  - <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act> (last updated Mar. 21, 2020)
- OSHA: COVID-19 Frequently Asked Questions
  - <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>
- U.S. DOL: Families First Coronavirus Response Act: Questions and Answers
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last updated Sept. 11, 2020)
  - 103 Questions
  - Remember: Leave expires December 31, 2020

# Where Should Nonprofits Look for Guidance on COVID-19 Related Issues?



- Governor Lamont's Executive Orders
  - <https://portal.ct.gov/Office-of-the-Governor/Governors-Actions/Executive-Orders/Governor-Lamonts-Executive-Orders>
- Governor Lamont's Sector Rules
  - <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Sector-Rules-and-Certification-for-Reopen>
- Connecticut DECD Safe Workplace Rules for Essential Employees
  - <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Safe-Workplace-Rules-for-Essential-Employers>
- Connecticut Travel Advisory for Visitors to Connecticut
  - <https://portal.ct.gov/Coronavirus/travel>



# Takeaways



- Nonprofit employers should ensure they have proper COVID-19-specific plans, policies and procedures in place
- Nonprofit employers should be aware of their leave and reasonable accommodation obligations
- Nonprofit employers should implement health and safety precautions, especially in light of the recent spike in COVID-19 cases
- Nonprofit employers should be aware of their obligations when conducting furloughs or layoffs



## Reminder

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At this time, the issues surrounding COVID-19 are changing rapidly and are state-and industry-specific. Employers should remain up-to-date on all laws that may impact their decisions and seek legal guidance.

# Questions?



# Thank You

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