



# COVID-19: Insights and Guidance

An ABC webinar series featuring industry experts to answer your questions about the legal, safety and economic impacts of COVID-19.



# *Covid-19's Impact on Construction Workplaces*

## *A Guide for ABC Contractors*



# Presented by



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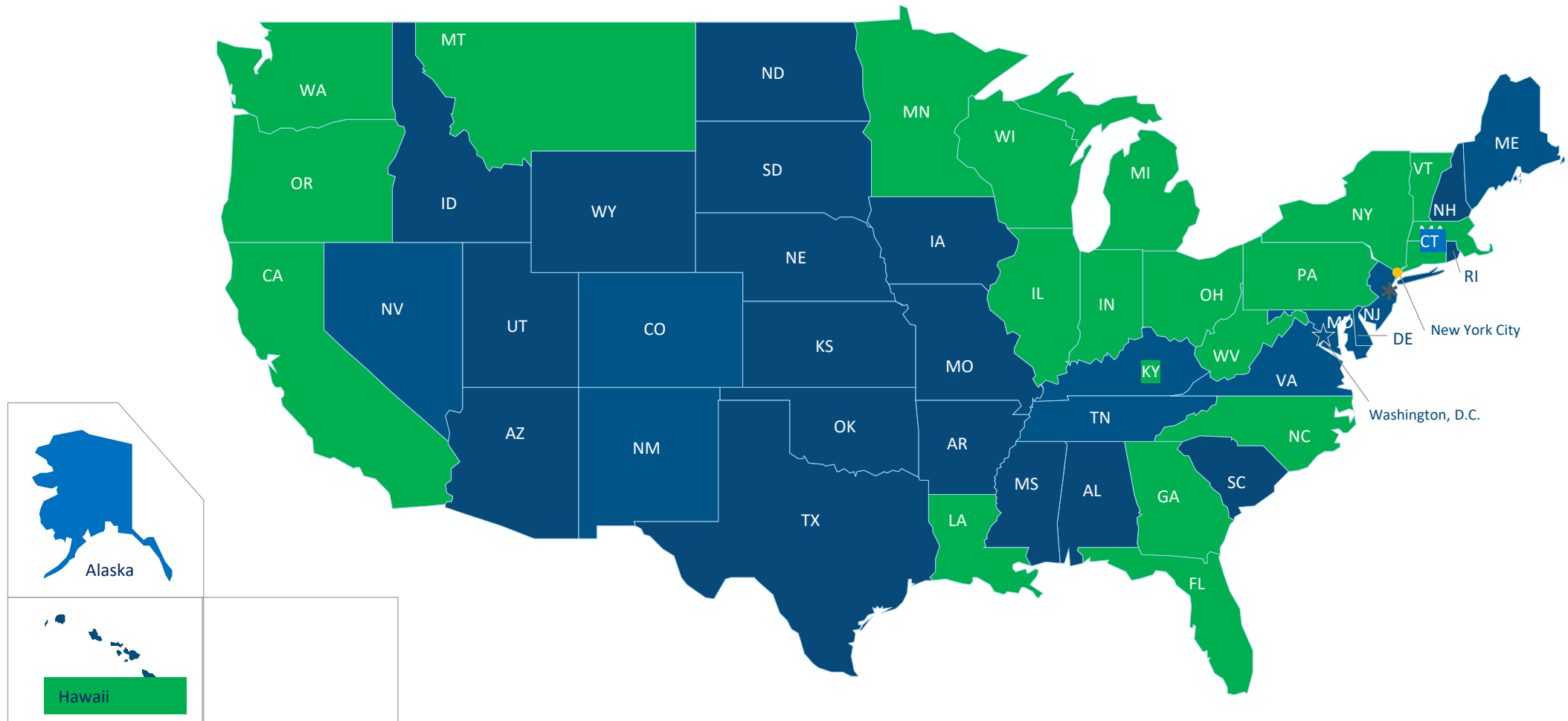
# Agenda



- Keeping Construction “Essential” Under State Orders
- New OSHA and CDC Safety Guidance
- New CARES Act Stimulus Guidance
- New Families First (paid leave) Act - DOL Guidance
- Local variations on Covid leave laws
- RIF Layoff Requirements and Options
- DMV laws governing layoff wage payment issues
- Special issues for telecommuting
- New challenges for apprenticeship and training programs

# State Shutdowns and/or “Shelter in Place”

But see [www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce)



# New OSHA/CDC Guidance

- Section 5(a)(1) of the Occupational Safety and Health Act requires all employers to maintain workplaces free from recognized, serious hazards.
- Other OSHA standards that could apply tangentially:
  - Personal Protective Equipment (29 CFR 1910 Subpart I) – new guidance on non-compliant respirators
  - Bloodborne Pathogens (29 CFR 1910.1030)
  - Hazard Communication (29 CFR 1910.1200)
- Bringing construction sites into compliance with the new CDC guidelines on face masks
- New CDC guidance on “critical infrastructure”
- Local face mask mandates

# Managing Covid-19 Exposure In the Workplace (primary or secondary exposure)



- Can/should the exposed person be disclosed to co-workers? (privacy concerns vs. direct threat)
- Can employees refuse to work upon hearing of an exposed co-worker? (is the fear reasonable)
- Are temperature checks and other screening tests permissible absent exposure? (EEOC says yes)



# CDC Recommended Cleaning Protocols

- Consult CDC guidance for cleaning and disinfecting work environments, including those contaminated with coronavirus.
- <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html#Cleaning>
- The guidelines state that employers should: (1) develop policies for worker protection (2) ***provide training to all cleaning staff on site prior to providing cleaning tasks*** (3) training must include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.

# Do I Need to Record a Positive Case or Report to OSHA?

- *Is COVID-19 Considered an “Illness” under OSHA’s Recordkeeping Rules? (only if confirmed)*
- *When is a COVID-19 Case Considered Recordable? (only if “work-related”; OSHA’s fluctuating guidance)*
- *When is a COVID-19 Case Reportable? (again only if “work related” and also only if it results in a fatality within 30 days or hospitalization within 24 hours)*

# CARES ACT STIMULUS

- **SBA: CARES Act Paycheck Protection**
  - <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
  - Clarifying size standard for eligibility (under 500 “or” receipts)
  - Loan forgiveness based on “before and after” payroll costs
  - No “union neutrality” language in the PPP

# MORE CARES ACT STIMULUS

- **UI:** \$600 weekly extra benefits; waiving some normal eligibility requirements  
<https://www.dol.gov/coronavirus/unemployment-insurance>
- **IRS:** Tax credits under FFCRA, CARES
  - <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>

# Overview of Paid Leave Provisions

## FFCRA

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graph TD; FFCRA[FFCRA] --> EPSL[Emergency Paid Sick Leave]; FFCRA --> EPFMLA[Emergency Paid FMLA];
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### Emergency Paid Sick Leave

- Up to 80 hours (~first 10 days)
  - 6 different reasons
- Full pay or 2/3 pay (depending on reason)—subject to caps

### Emergency Paid FMLA

- Up to 12 weeks (~Days 11 – 60)
  - 1 reason only
  - Weeks 1-2: unpaid
- Weeks 3-12: 2/3 pay—subject to caps

# Eligible Employees

- **EFMLA:** Employed for 30 days
- **EPSLA:** Employed
- **NOTE:** These leaves are only available if the employer has work for the employee to do, but they can't report due to one of the qualifying reasons. If your program is shut down, these leaves are not available.
- **NOTE:** Leaves only available between 4-1-20 and 12-31-20.

# For What Reasons May an Employee Take EPSL

Employee is unable **to work *or telework*** because:

1. Employee subject to a quarantine or isolation order related to COVID-19

2. Employee advised by a health care provider to self-quarantine because of COVID-19

3. Employee experiencing symptoms of COVID-19 and is seeking a medical diagnosis

4. The employee is caring for an individual subject or advised to quarantine or isolation

5. The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precaution (like FMLA+)

6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

# FFCRA – Emergency Paid Family & Medical Leave (FMLA+)

Runs concurrently  
with EPSL

Can be up to 12  
weeks, but pays  
only for weeks  
3-12

Employee eligible  
after 30 days of  
employment

**Only one  
qualifying need:**  
When an  
employee is  
unable to work (or  
telework) because  
must care for a  
minor child if the  
child's school or  
place of child care  
has been closed or  
is unavailable due  
to a public health  
emergency.

Job-protected  
leave, with some  
exceptions for  
employers <25  
employees



# USDOL REGS AND FAQs

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- **New USDOL FAQs address most of the paid leave questions.**
- FAQ 2: How to count to 500: includes part time/full-time employees, temps and seasonals, and affiliated entities. But it is a daily snapshot based on each employee's leave request.
- FAQ 58-59: The under 50 waiver will only be given upon evidence the business is no longer financially viable due to the paid leave
- FAQ 23-28: Furloughed or temporarily (or permanently) laid off employees are not eligible
- FAQ 20-21: Intermittent paid leave only with employer consent
- FAQ 31: The new 80-hr paid sick leave is over and above existing paid leave policies; but
- FAQ 45: The expanded FMLA (for child care only) counts against existing FMLA unpaid leave
- Don't forget new tax credits are available to reimburse for the new paid leave

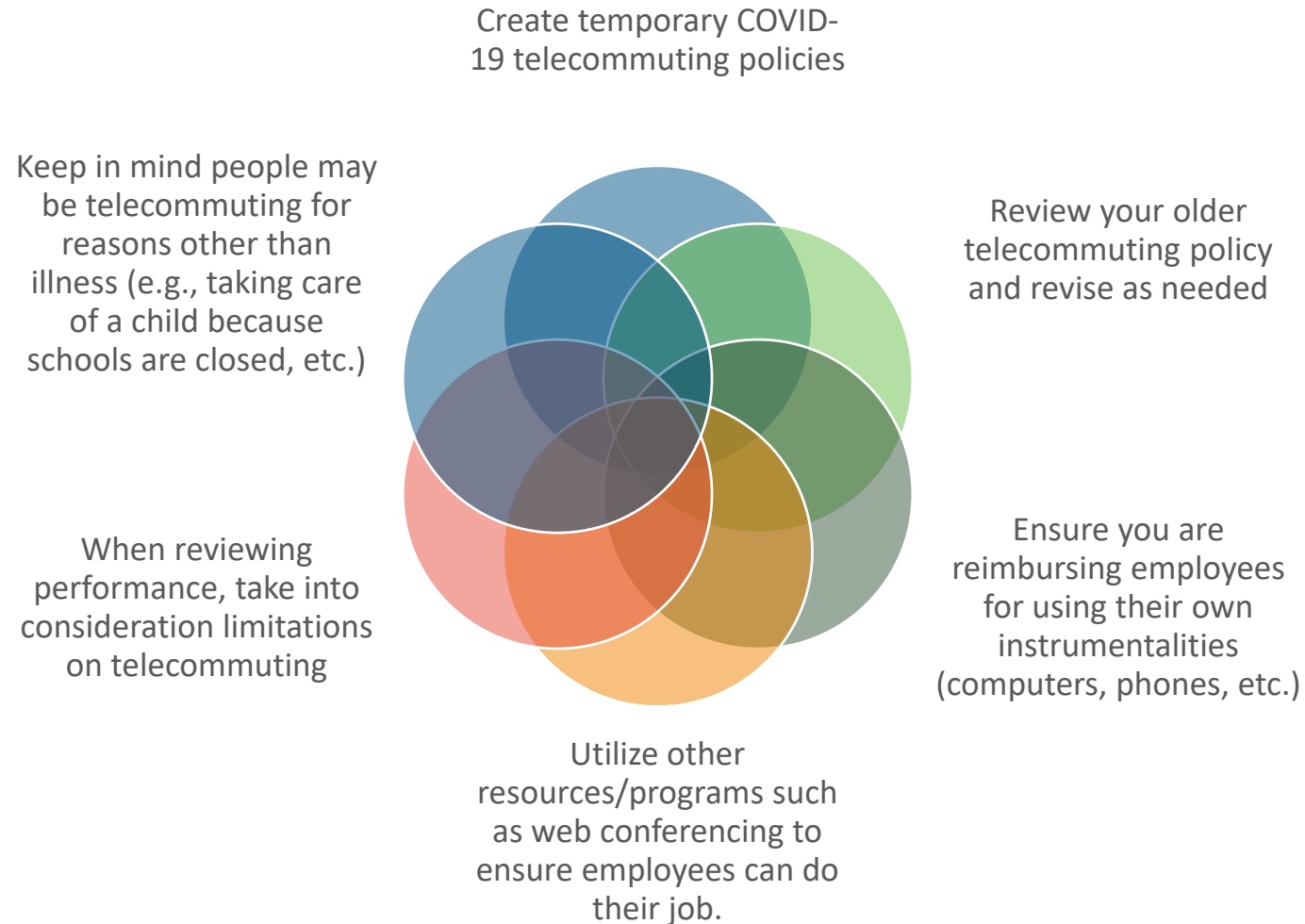
# Expansion of Unpaid Local Leave Laws

- Some local laws have been expanded to cover all employers regardless of size.
- Some local laws have expanded unpaid FMLA time periods.
- Some local laws have suspended their previous length of service eligibility requirements
- Some local laws have created new reasons for “declaration of emergency leave.”
- Employers with more than 500 employees working in multiple states need to monitor all of their jurisdictions.

# Layoff Obligations and Alternatives

- Will WARN (or State WARN) come into play?
  - For employers of more than 100 employees, WARN requires 60-day advance notice for “mass layoffs” (more than 50 if 1/3 of the workforce at a site or facility)
  - Limited exception for temporary construction worksites
  - Partial Exception for unforeseeable business circumstance (UBC) layoffs
- Alternatives to layoffs: wage cuts; reductions in hours; furloughs
  - Impacts on exempt and non-exempt employees
- Compliance with collective bargaining requirements
  - Recent union efforts to bargain mid-term over Covid-19 “effects”
- Beware state and local requirements re notice, final wage payments

# Office Employees Telecommuting and Working from Home?



# Impact on apprenticeship and training?

- Transitioning from classroom training to on-line
- If classes have to be cancelled, what guidance is available?

# Other Labor Laws Still in Effect

- Union election petitions are being processed under the “quickie” election rules; mail ballots more likely; new NLRB rules on elections delayed
- EEOC is processing discrimination claims
- Wage hour and other types of class action suits continue to be filed
- ABC’s Construction Legal Rights Foundation (CLRf) is still funding cases

# How Do I Communicate with my Employees? What Communications Should I Prepare?

Provide email or memorandum to employees

Acknowledge that safety is the Company's highest priority

Inform employees that there is no immediate cause for concern but in an abundance of caution the Company is taking precautionary measures

Provide some background on the Coronavirus

Inform employees of potential 14 day incubation and/or the requirement for a fitness for duty

Inform employees of travel restrictions including business and personal travel

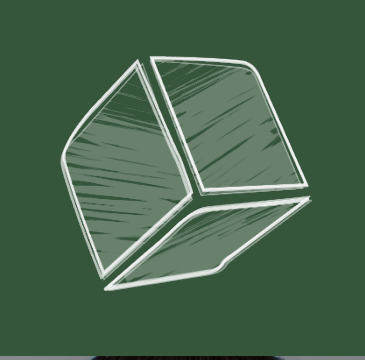
Provide contact information for human resources or other person responsible for action plan.

# MORE RESOURCES

- <https://www.littler.com/coronavirus>
- <https://www.abc.org/Coronavirus-Resources-for-Employers#LiveAccordionContent509612421-la>
- <https://www.cdc.gov/>
- <https://www.dol.gov> (Coronavirus FAQs and Regs)
- <https://www.sba.gov>
- Construction Legal Rights Foundation c/o [Livingston@abc.org](mailto:Livingston@abc.org)







# Thank You!

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