



Legal Issues During  
These COVID Times  
– What is an  
Employer’s  
Responsibility?

October 27, 2020

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# HB 606

Ohio Law Shields Employers  
from COVID-19–Related Liability

## HB 606

- State-law immunity from civil actions brought by customers, **employees**, or others "for damages for injury, death, or loss" related to "the exposure to, or the transmission or contraction" of the novel coronavirus "**unless it is established that [the exposure, transmission, or contraction] was by reckless conduct or intentional misconduct or willful or wanton misconduct** on the part of the person against whom the action is brought."
- The law extends protections to all Ohio entities, including schools, nonprofit and for-profit entities of any size, **governmental entities**, religious entities, colleges and universities.

# HB 606

- Public health orders issued by the executive branch (i.e., the governor and the Ohio Department of Health), as well as public health orders "from counties and local municipalities, from boards of health and other agencies, and from any federal government agency, **do not** create any new legal duties for purposes of tort liability." **The law is retroactive to the date of the declared state of emergency in Ohio, March 9, 2020, and will expire on Sept. 30, 2021.**
- In addition to the above protections, the law provides for **a complete bar of class actions** based in whole or in part on allegations that a health care provider, business, government entity or person caused "exposure to, or the transmission or contraction of" COVID-19.

## HB 606

- The new law makes it clear that government orders **may not** be construed as creating new causes of action for plaintiffs to invoke in place of ordinary negligence causes of action, and it provides that a government order is inadmissible as evidence that a new cause of action, legal duty or legal right has been established.

# Employers Must Investigate Whether Coronavirus Infections Are Work-Related



## New OSHA Guidance – Complete Reversal from Previous Guidance

- All employers, not just those with high levels of coronavirus exposure in the workplace, now must determine whether employees who have COVID-19 contracted it at work. The new Occupational Safety and Health Administration (OSHA) requirement reverses previous guidance.



# Same Standards Enforced by the Ohio Public Employment Risk Reduction Program (PERRP)

PERRP incorporated all federal OSHA standards found in the Code of Federal Regulations (CFR) Title 29 Parts 1910, 1926 and 1928 as Ohio Employment Risk Reduction Standards.

Under the new guidance, a COVID-19 case must be recorded on the 300 log if three criteria are met

A confirmed case of COVID-19.

Work-relatedness.

Illness resulting in death, days away from work, restricted work or the transfer to another job, medical treatment beyond first aid, or the loss of consciousness.

# How detailed must the investigation be?

## Do's

- Ask the employee limited questions about how he or she believes COVID-19 was contracted
- If the employee responds that someone in his or her household contracted it recently, the employee's coronavirus likely is not work-related
- Make inquiries about the employee's work and nonwork activities, and possible exposure, leading up to the diagnosis
- Consider whether other employees in the work area have tested positive, the employee's job duties and exposure to the public, and whether the work areas are crowded and do not facilitate social distancing

# How detailed must the investigation be?

## Don'ts

- Do not ask whether an employee's spouse or child has COVID-19
- Avoid extensive medical inquiries that violate an employee's right to privacy and the Americans with Disabilities Act or other laws
- Do not forget to update the investigation if later learn more information related to an employee's COVID-19 illness.

# Bureau of Worker's Compensation

- Since the Public Employer – State Agencies program operates on a pay-as-you-go basis, BWC will include any costs related to COVID-19 claims in the development of their contribution rates.

# Bureau of Worker's Compensation

- Public Employers (PEC) participating in the Drug-Free Safety Program, One Claim or EM Cap programs for the Jan. 1, 2020 policy year will be permitted to complete online safety training to satisfy in-person training.

# Can an employer require employees to be tested for COVID-19?

Yes - According to guidance issued by the EEOC, testing is considered job-related and consistent with business necessity if, for example, it is used to confirm an employee's negative COVID-19 status so that he or she can come to the workplace. This includes both initial testing to determine if a worker may enter the workplace and periodic testing to determine if worker's presence in the workplace poses a threat of infection to others in the workplace.

The EEOC has stated that mandatory COVID-19 testing must be administered consistent with current guidance from the CDC. The tests themselves must also be considered accurate and reliable.

If an employee tests positive for COVID-19, can we require him or her to have a negative test before returning to work?

Although federal law and many local laws do not prohibit employers from requiring an employee who has had COVID-19 to test negative before returning to work, the CDC suggests instead requiring employees to be symptom-free for a certain number of days before returning to work.

The CDC recommends employers use this symptom-based strategy due to the possible scarcity of COVID-19 testing and because employees may continue to test positive for COVID-19 long after they have recovered from the infection.



# Does an employer have to provide PPE?

- Perform a "hazard assessment" of the workplace to identify and control physical and health hazards.
- Identify and providing appropriate PPE for employees.
- Train employees in the use and care of the PPE.
- Maintain PPE, including replacing worn or damaged PPE.
- Periodically review, update and evaluate the effectiveness of the PPE program.

# The FFCRA in a Nutshell

## Paid Sick Leave

- Provides employees up to 80 hours of paid sick leave (or the equivalent of two weeks of hours for part-time employees) for use under the following circumstances.
- **Paid full wages up to \$511 per day or \$5,110 total when:**
  - The employee is subject to a shutter-in-place order issued by a federal, state or local government.
  - The employee was advised by his or her doctor to self-quarantine due to COVID-19 symptoms.
  - The employee is symptomatic and seeking a diagnosis of COVID-19.

# The FFCRA in a Nutshell

## Paid Sick Leave

- **Paid two-thirds wages up to \$200 per day or \$2,000 total when:**
  - The employee is caring for someone who is subject to a shutter-in-place order or has been advised by a doctor to self-quarantine.
  - The employee must provide care for a son or daughter because his/her school or daycare has been closed due to COVID-19.
  - The employee is experiencing any other similar condition that the Secretary of Health and Human Services may subsequently deem eligible for leave.

# The FFCRA in a Nutshell

## Extended FMLA

- Employees who are unable to work at their jobsite – **or telework** – may take up to 12 weeks of leave to care for a son or daughter whose school has been closed due to the public health emergency created by COVID-19.
- A hybrid option where the school offers students an option to attend either remotely or in person does not entitle an employee to EFMLA.
- The first two weeks of leave can be unpaid, but the remaining ten weeks must be paid at two-thirds the employee's regular rate of pay **up to \$200 a day or a total of \$10,000**.
- An employee can use accrued time during the first two weeks at his or her discretion.
- Importantly, employees are eligible for this benefit after only **30 calendar days** of employment. Employees taking this leave must provide the employer with “notice of leave as is practicable.” The employer's existing policies regarding notice should apply in this scenario.

## What if the employer decides to close?

- If an employer prohibits employees from reporting to work on-site due to COVID-19 concerns, and employees are otherwise unable to work remotely, the new leave entitlements do not apply.
- In those situations, the employer should default to company policies or collective bargaining agreements.

Questions?

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