



CRISIS MANAGEMENT FOR COVID-19

Phase 19 (Week 22): Updated Guidance, Legal Changes, and Legislation

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

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Congressional
Update, Executive
Orders, and Relief

2

HR Scenarios:
Dealing with COVID

3

PPP, Legal Tidbits,
and Kentucky Update



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Congressional Inaction, Presidential Action, and Potential Relief



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House left DC for Summer Vacation without any relief

- Ongoing negotiations started at the end of July, 2020, and ran through the first week of August, 2020 between and among Democratic leaders and White House
- Numerous efforts to strip out unrelated relief were rejected (release of incarcerated illegal immigrants, mail-in voting, bankruptcy relief for large cities, marijuana funding, etc.)
- Numerous requests to pass specific bills directed toward unemployment, PPP extension, etc., were also rejected “unless a comprehensive bill is approved”
- In response, on August 6, 2020, Speaker declared House in Recess through September 8, 2020
- Senator McConnell declared cancellation of Senate August Recess until relief bills addressed
- On August 7, 2020, negotiations between Democrats and the Administration broke down
- On August 8, 2020, President Trump issued Executive Orders addressing the gap measures rejected by the House

1 Presidential Executive Orders

On Saturday, August 8, 2020, President Trump Signed into law, Four Executive Orders Affecting Businesses, Employers, and Employees

- Due to the inability of Congress to reach a resolution, President Trump took executive action
- The legality of these actions may (or will) be challenged, but immediately affects businesses, individuals, and families
- Congress controls the “purse strings,” so Executive Orders are limited to isolated emergencies
 - Utilizing the previous rulings regarding emergency orders for temporary assistance

1. Federal Unemployment Continuation:

- \$400 weekly Federal Unemployment Aid. Requires 25% (\$100) to be paid by the states, which could present issues in states, such as Kentucky, with wholesale UI incompetency
 - Authorized by diverting \$44B from FEMA’s Disaster Relief Fund (DRF)
- Lasts until the earlier of 12/6/2020 or when the DRF balance drops to \$25B
- This aid is in addition to any state UI Benefit (Kentucky is capped at \$552)

1 Presidential Executive Orders

COVID-19 Executive Orders Affecting Businesses, Employers, and Employees (Cont'd)

2. Payroll Tax Holiday:

- ***Deferred*** SSI and Medicare Tax from 9/1/2020 (possibly 8/1) through 12/31/2020 for employees earning less than \$100K per year (approx. \$1,200 additional per employee)
 - Addresses possible forgiveness (due to inability in Executive Order for “waiver”)

3. Renter and Homeowner Assistance

- CARES Act provided a 120-day temporary eviction moratorium on Federal Housing Assistance Programs. That moratorium expired in July
- Executive Action “encourages” federal efforts to help renters and homeowners avoid eviction or foreclosure and directs Administration to provide temporary financial assistance

4. Extension of Student Loan Relief:

- Suspends all Federal Student Loan payments and extends 0% interest rate through 12/31/20

Questions & Answers





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HR Scenarios: Dealing with COVID



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HR Scenarios: Dealing with COVID

Do you trust your coworkers to respect your boundaries around the Covid-19 situation?



Do you think people who return earlier will be favored by management?

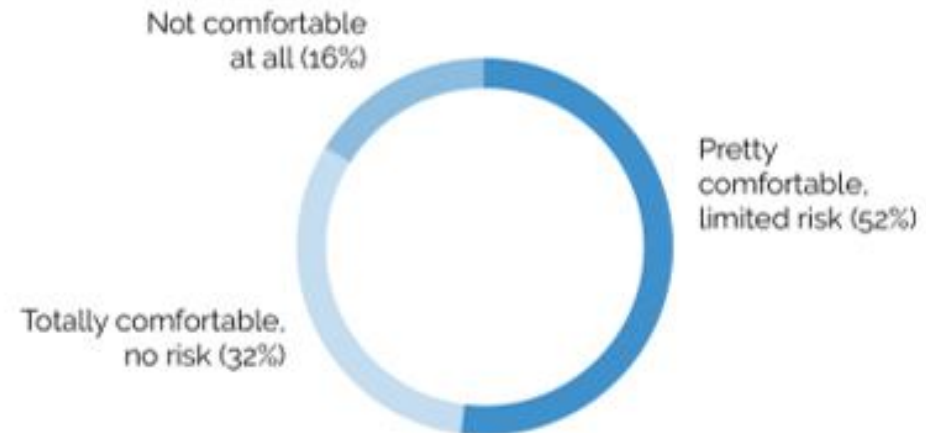


Would you support a staggered 4-day work week to limit people in the office?



The Employee Perspective

If a coworker tested positive for antibodies, how would you feel?



JDP 2020 Back to Work Survey

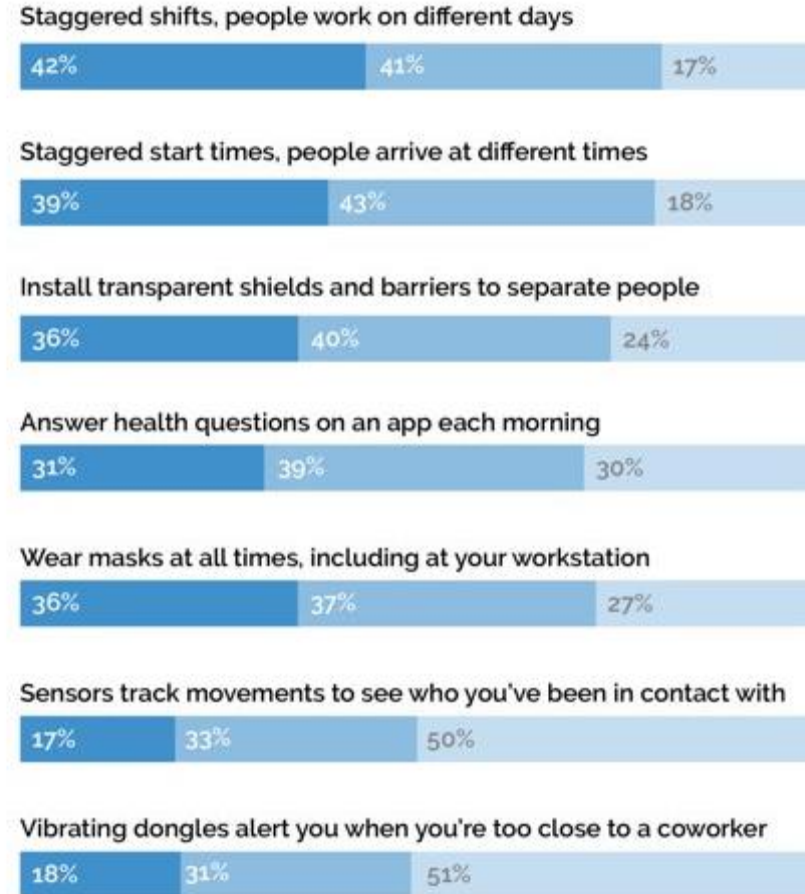
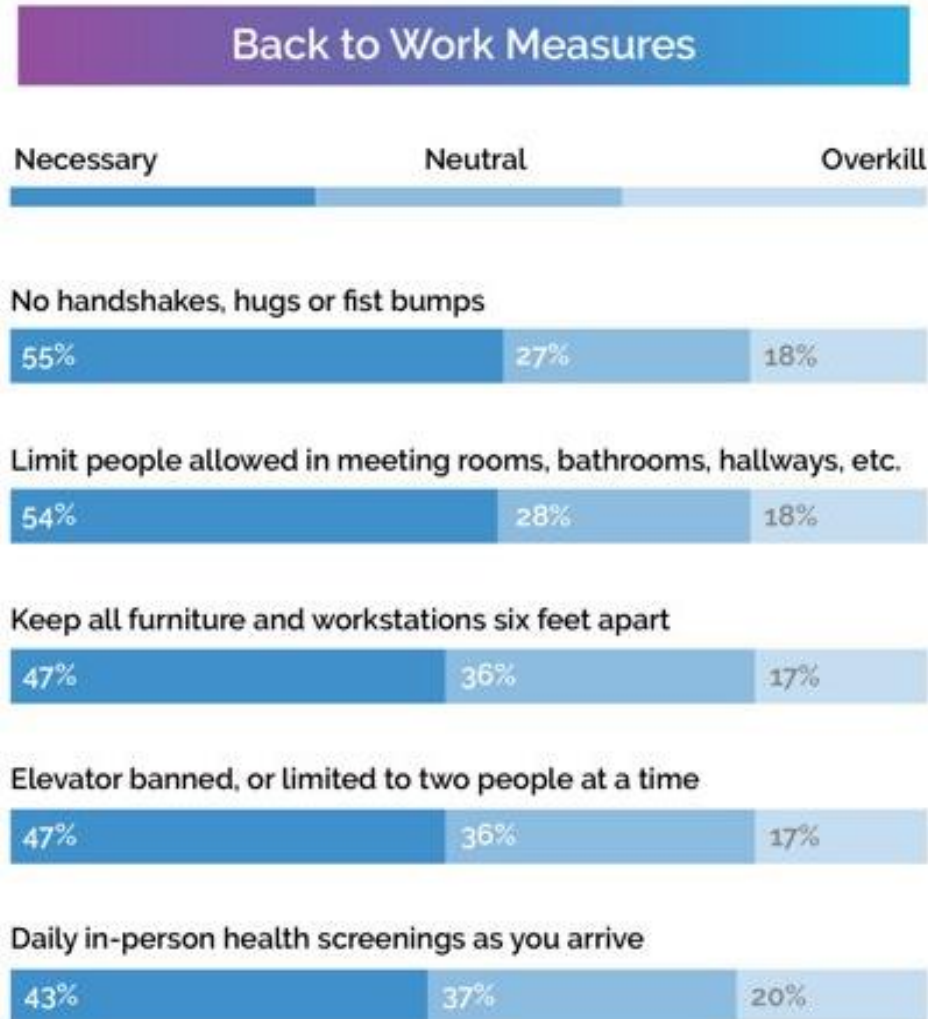


Source: JDP, <https://www.jdp.com/blog/return-to-work-statistics/>

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HR Scenarios: Dealing with COVID

The Employee Perspective



JDP 2020 Back to Work Survey



Source: JDP, <https://www.jdp.com/blog/return-to-work-statistics/>

2 HR Scenarios: Dealing with COVID

Contact Tracing Tip!

2 HR Scenarios: Dealing with COVID

Travel Policies - Considerations

- Require employees to report travel
 - Who report to?
 - Report all out of state, or only to hot spot?
- How define hot spot?
 - Governor
 - CDC
 - Other reputable source
- Employees and paid leave
 - PTO
 - Unpaid
 - Special type of leave
- Length of quarantine
 - Some sources say 14 days, some say 10 days
 - Infection versus exposure
 - Release with negative test after so many days?

Travel Policies - Sample

- Employees required to report travel outside of the state to HR or Supervisor in advance
- Hot spot defined as an area where cases within the last 7 days fall into the top category based on the CDC tracker at the following link: <https://www.cdc.gov/covid-data-tracker/index.html#cases>
- Encouraged to work remotely during quarantine; if cannot, must use PTO and if no PTO, time will be unpaid
- Employees who travel to hot spot will be required to self-quarantine for 14 days upon return to KY in an abundance of caution
 - Employees who have travelled to a hot spot but have no reason to believe they have had any direct exposure to COVID-19 and are not experiencing any related symptoms may choose to quarantine for 5 days and then take a COVID-19 test. Assuming the test is negative and a health care provider releases them, the employee may then return to the worksite/end their quarantine.
- Employees who experience symptoms of COVID-19 at any time, regardless of recent travel, are asked not to report to work or, if at work when symptoms develop, to leave work immediately and reach out to their health care provider to determine next steps.

2 HR Scenarios: Dealing with COVID

Travel Policies - Issues/Questions

- What length of time constitutes 'travel out of state' for this purpose?
 - Cross state lines to visit grandma for an afternoon versus travelling for multiple days
- How discipline those who don't report if we discover there was travel?
- Different levels of exposure risk
 - Going to private beach house versus going to Disney World
 - Driving versus flying. Etc.

2 HR Scenarios: Dealing with COVID

Travel Policies - GOALS

- FOCUS ON SAFETY!
- Create a policy employer feels they can justify
- Apply the policy consistently
- Adapt the policy as the situation changes

Questions & Answers





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PPP, Legal Tidbits and Kentucky Update



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Reminder of FFCRA requirements:

- Two weeks (up to 80 hrs) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms; or
- Two weeks (up to 80 hrs) of paid sick leave at 2/3 of the employee's regular rate of pay for care of a quarantined individual or care for a child whose school or childcare provider is closed due to COVID-19; **and**
- For all employees employed more than 30 days, up to an additional 10 weeks of paid expanded family and medical leave at 2/3 of the employee's regular rate of pay where an employee is unable to work due to the need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

An employee qualifies for paid sick leave if they are unable to work (or telework) for these reasons related to COVID-19:

1. is subject to a quarantine or isolation order;
2. is advised to self-quarantine;
3. is experiencing symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in number 1 or 2 above;
5. is caring for a child whose school or place of care is closed; or
6. is experiencing any other substantially-similar condition, **and**

An employee qualifies for **expanded family leave** if they are caring for a child whose school or place of care is closed

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PPP Loan Forgiveness FAQ Updates

On August 4, 2020, the SBA and US Treasury Issued Additional FAQ Related to PPP Forgiveness

General Loan Forgiveness

- FAQ 1: Sole proprietors, independent contractors, or self-employed individuals with no employees complete Loan Forgiveness Application Form 3508EZ or lender equivalent
- FAQ 2: PPP lenders can use scanned copies of documents, E-signatures, or Econsents in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).
- FAQ 3: If a borrower submits a timely loan forgiveness application, the borrower does not have to make any payments on its loan prior to SBA remitting the forgiveness amount. If the loan is fully forgiven, the borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the disbursement of the loan and SBA remittance of the forgiveness amount.

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PPP Loan Forgiveness FAQ Updates

Loan Forgiveness Payroll Cost FAQ

- FAQ 1 & 2: Payroll costs (1) incurred during and paid at the next payroll period after, or (2) incurred before but paid during the Alternative/Covered Period are covered
- FAQ 3: Calculation of payroll costs over split pay periods explained (1x monthly vs. weekly)
- FAQ 4: Cash compensation is gross amount before deductions for taxes, employee benefits payments, and similar payments.
- FAQ 5: Payroll costs include all forms of pay: tips, commissions, bonuses, and hazard pay.
- FAQ 6: Group health care benefits paid or incurred by the employer are eligible payroll costs
- FAQ 7: Employer-paid retirement benefits. ***Forgiveness is not provided for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period.***
- FAQ 8: Owners Compensation depends upon the business type and whether the PPP is utilizing the 8-week or 24-week Covered Period. ***Capped at \$20,833/\$15,385.***

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PPP Loan Forgiveness FAQ Updates

PPP Non-Payroll Costs FAQ

- FAQ 1 & 2: Nonpayroll costs (mortgage interest, rent, lease, utilities) (1) incurred prior to the Covered Period, but paid during, or (2) incurred during, but paid at the next billing date after, the Covered Period are eligible for loan forgiveness
- FAQ 3: The Alternative Payroll Covered Period applies only to payroll, ***not nonpayroll costs***.
- FAQ 4: Unsecured credit is not eligible for loan forgiveness. Although interest on unsecured credit incurred before February 15, 2020 is a permissible use, this expense is not eligible.
- FAQ 5: Payments made on recently renewed leases or interest payments on refinanced pre-2/15/2020 mortgage loans are eligible for loan forgiveness.
- FAQ 6: “Distribution of ... Transportation” under CARES Act was intended to refer to transportation utility fees assessed by state and local governments.
- FAQ 7: The entire electricity bill is eligible for loan forgiveness (even if invoiced separately).

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PPP Loan Forgiveness FAQ Updates

PPP Loan Forgiveness Reductions FAQ

- FAQ 1: A borrower may exclude any reduction in FTE if there is a good faith inability to rehire prior employees or to hire new equivalent employees prior to 12/31/2020 (tattle tail rule)
- FAQ 2: Seasonal employers must use the same calculation period for reduction calculation
- FAQ 3: FTE Reduction Exceptions apply to all employees, including more than \$100K
- FAQ 4: If wages are reduced by more than 25% during the Covered Periods, the portion in excess of 25% reduces the eligible forgiveness amount unless Safe Harbor applies (multiple pages of “examples” of such application)
- FAQ 5: For purposes of calculating the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees, ***only take into account decreases in salaries or wages.***

Quick Updates on COVID-19 Actions

- August 3, 2020: EEOC announced resumption of Investigation Closure Actions (Right to Sue) that had been suspended during or as a result of COVID-19
- August 3-8, 2020: CDC issued ongoing “updates” on numerous aspects (too many to include)
- August 6, 2020: OSHA issued new guidance for Automotive Service Workers
- August 7, 2020: CDC issued Youth/Adult Sports Guidance
 - No sharing of equipment; no physical closeness; hygiene; stay home if sick
- August 8, 2020: CDC issued new guidance on Cleaning, Disinfection, and Hand Hygiene in Schools (nothing earth shattering)
- August 8, 2020: CDC issued new “COVID-19 Forecasting” Explanations

Quick Court-Related Updates on COVID-19 Actions

- August 3, 2020: Southern District of NY struck down substantial portions of FFCRA DOL Guidance
 - Declared unlawful the provision that employees are ineligible if there is no work available
 - “Health Care Provider” Definition broadly defining the exclusion to FFCRA rejected
 - Rejected the requirement that an employer agree to intermittent leave under FFCRA
 - Rejected the requirement of documentation in support of FFCRA leave
 - Stay tuned, as these challenges will continue, until clarification is provided by SCOTUS
- July 29, 2020: Southern District of NY issued a nationwide injunction prohibiting enforcement of the “Public Charge Rule” – which barred immigrants utilizing public support

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Kentucky Update

Kentucky Actions in Response to Uptick in COVID-19 Cases

- On Friday, August 7, 2020, the Kentucky Supreme Court issued an Order scheduling Oral Argument in the challenge to Beshear's Executive Orders for September 17, 2020
 - Reiterated the ban on any other actions declaring Beshear's actions unconstitutional
- On July 27, 2020, Executive Orders were issued that extended through August 11, 2020:
 - Bars closed
 - Restaurants returned to only 25% of pre-pandemic capacity
 - Recommended no in-person school education until at least the third week of August
- I anticipate a "new" Executive Order extending limitations within the next day or two

Questions & Answers



SHRM CODE: 20-XS3DC
HRCI: 530456 (Strategic)



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