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# Special Bulletin: COVID-19 and Leaves of Absence

March 2020

As employers navigate the many ways in which the COVID-19 coronavirus affects their work and their employees, we wanted to provide guidance and explain its approach in working with clients to address leaves of absence and the laws that apply to them.

From a leave administration standpoint, one of the primary questions related to the coronavirus outbreak is whether leave taken due to COVID-19 qualifies for protection under the Family and Medical Leave Act (FMLA). The answer depends on a few factors. In the event that an employee has been quarantined at home or elsewhere, the key question will be: Is that employee symptomatic and showing physical signs of the illness?<sup>1</sup>

## Quarantined employees who are asymptomatic

Quarantined employees who are asymptomatic (or not feeling ill or showing any physical signs of illness) and can work remotely are not in need of leave. As a result, the FMLA and other laws governing job-protected leave generally should not be applied to those employees, even if being remote is a change in how they normally perform their work.

Employees whose jobs do not allow for remote work may require a leave of absence. However, such leaves generally do not qualify under the FMLA or the Americans with Disabilities Act (ADA) because those employees do not have either of the following: 1) a serious health condition that makes them unable to perform the essential functions of their job or 2) a disability for which leave is an accommodation. For such employees, an employer may consider placing them on administrative leave pursuant to its policies, which may also stipulate whether the leave is eligible for income replacement benefits.

## Quarantined employees who are symptomatic

Symptomatic employees likely would have a qualifying condition under the FMLA which would require them to take leave. If the employees are ineligible for the FMLA or have exhausted their 12 weeks, they may still have time under an analogous state FMLA or under the ADA. With regard to the ADA, even though this virus does not seem to manifest in long-term symptoms, the Americans with Disabilities Act Amendments Act (ADAAA) and subsequent case law have generally held that severe illnesses such as COVID-19 would qualify under the law.

We will continue to provide leave-related updates regarding COVID-19 as developments occur. Please contact your account manager with any questions.

<sup>1</sup> Note: The FMLA also applies to leaves related to a family member with a serious health condition, which could include the COVID-19 coronavirus.