

COVID-19 Updates

MMTA Business of Boating Conference

Disclaimer

- This is strictly for informational purposes. The information is intended to be used solely by the subscribers to the Webinar.
- Any answered questions are for hypothetical purposes only. There is no attorney-client privilege information or specific advice.
- If you have specific questions and are a part of Foley & Foley's On-Call Triage Service, then please feel free to reach out to me at wendy@foleylawpractice.com.

FFCRA Updates

○ Emergency Paid Sick Leave

- 2 weeks, full rate for leave for yourself, 2/3 rate to care for an individual.
- Quarantine or isolation order, recommendation of a health care provider, feeling symptoms and seeking a diagnosis, caring for an individual who has to quarantine at the recommendation of a health care provider or government order, or to care for a child whose school has been closed due to COVID-19.

○ Emergency Family and Medical Leave

- 12 weeks, first 2 weeks unpaid, 10 weeks at 2/3 rate
- To care for a child whose school has been closed due to COVID-19.
- Comes from the same FMLA bank.

FFCRA Updates

- Required enforcement of the FFCRA expired on December 31, 2020
- The new COVID Relief Bill extended the FFCRA to March 31, 2021 – AT THE EMPLOYER'S OPTION.
- You are not required to extend the FFCRA, only if you so choose.

FFCRA Updates

- If you do choose to extend the FFCRA:
 - You will still be entitled to a tax credit.
 - You need to implement the law in whole, you cannot take EPSL or EFMLA you have to use both.
 - Employees will not receive replenished banks of leave, so if they have already exhausted their time, they are not entitled to more leave.
 - Same rules and regulations apply.

Massachusetts Travel Order

- If you travel to an at risk state, you need to quarantine for 10 days or produce a negative PCR test 72 hours prior to returning to MA.
- Remember, if you extend the FFCRA and an employee travels for vacation, they are entitled to additional leave if they have to quarantine under the FFCRA since this is considered a government quarantine or isolation order.

Phase 3, Step 1

- The Governor announced on that all businesses are being moved back to Phase 3, Step 1 on Sunday, December 13 and additional regulations on Dec. 26th.
- Important Changes:
 - Indoor Performance Venues and High-Contact Recreational Businesses will be required to close
 - Capacity Limits in Offices, Retail, and most other industries must be reduced to 25%
 - Additional Safety Measures for Restaurants and Venues – requiring mask wearing at all times except when eating, and limiting seating to 90 minutes.

Phase 3, Step 1: Changes to Office Spaces

- Office Capacity must be reduced to 25%
- Employees must wear masks at their place of work when not in their own workspace and alone (this means in a closed office)
- The Governor recommends offering teleworking to employees where possible

Mandatory Safety Standards

- All MA employers must comply with the Mandatory Safety Standards, including:
- Social Distancing
 - All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces
 - Establish protocols to ensure that employees can practice adequate social distancing
 - Provide signage for safe social distancing
 - Require face coverings or masks for all employees
- Hygiene Protocols
 - Provide hand washing capabilities throughout the workplace
 - Ensure frequent hand washing by employees and adequate supplies to do so
 - Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout worksite

Mandatory Safety Standards

○ Staffing and Operations

- Employees who are displaying COVID19-like symptoms do not report to work
- Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan
- Employers should take measures to ensure employees comply with all State-issued rules concerning out of state Travel for any employer-paid or -reimbursed travel

○ Cleaning and Disinfection

- Establish and maintain cleaning protocols specific to the business
- When an active employee is diagnosed with COVID19, cleaning and disinfecting must be performed
- Disinfection of all common surfaces must take place at intervals appropriate to said workplace

How Can You Protect Your Business?

- Even without a state or federal law limiting liability, there are actions that employers can take to limit their liability during the COVID-19 Pandemic.
- Action Items:
 - Follow CDC and state Guidelines for Businesses
 - Create a Health and Safety Plan in compliance with OSHA Guidance
 - Communicate your Safety Measures to Protect Employees
 - Monitor Employee Health for COVID-19 Symptoms
 - Be Transparent in Informing your Workplace about COVID-19 Exposure
 - Comply with State Requirements and COVID-19 Control Plans

Hazard Assessment and CDC Guidance

- Identify where and how workers might be exposed to COVID-19 at work. Once you have identified this, implement controls to reduce exposure.
- What can you implement to perform work in a safer manner:
 - Personal Protective Equipment
 - Train workers on reducing exposure to COVID-19
 - Social Distancing
 - Separate Sick Employees
 - Physical Barriers
- Create a Response Plan that addresses the level of risk associated with job tasks:
 - Where, how and from what sources COVID-19 workers may be exposed;
 - Non-occupational risk factors at home and community (levels of COVID-19 in the area);
 - Workers' individual risk factors (such as high risk for COVID-19 complications); and
 - Steps needed to address those risks.

Health and Safety Plans

- OSHA has recommended that businesses implement a health and safety plan to show compliance with OSHA requirements and guidelines. These plans are best practices to reduce liability in general, but especially in the context of COVID-19 safety measures.
- A COVID-19 Specific Health and Safety Plan Should Include:
 - Basic Infection Prevention and Hygiene Protocols;
 - Disinfection Procedures;
 - Personal Protective Equipment;
 - Social Distancing and Physical Barriers;
 - ID of Sick Employees; and
 - Flexible Leave for Individuals with COVID-19 Symptoms

Effective Employee Communication

- Distribute updates on COVID-19 Safety measures regularly
- Send Notices to employees about available Leave options, or needs for reasonable accommodation.
- Have a designated officer assigned to answer COVID-19 questions and concerns
- Educate employees about steps they can take to protect themselves at work and at home.

Monitor Employee Health

- Encourage sick employees to stay home
- Put in place daily survey for employees to affirm they have not been exposed to COVID-19 and are not experiencing symptoms
- Consider implementing other health checks, like temperature checks. If you do so, be sure to do so in a way that maintains social distancing guidelines.
- Make employee health screenings as private as possible.
- If an employee has any symptoms, send them home.

Inform your Workplace about Exposure

- If there has been exposure in the workplace, it is a best practice to distribute the information to employees and not let rumors circulate
- You should inform employees:
 - What area and on what days the affected individual was in the workplace;
 - Steps to take to monitor their own health; and
 - When to self-quarantine (either direct contact with affected individual or when experiencing symptoms)
- Do NOT disclose the affected person's identity. This would be a violation of ADA medical confidentiality requirements.

Positive Employee

- Quarantine the positive employee
- Ask the employee who they have been in direct contact with:
 - 48 hours prior to the onset of symptoms
 - Within 6ft
 - More than 15 CUMULATIVE min.
- Inform those employees and have them go home and get tested (3 days after initial contact is best time frame)
- Clean the areas according to the CDC guidelines
- Send an announcement to all staff stating:
 - An employee has tested positive (do not give the name)
 - The affected people have been contacted
 - You are cleaning according to the CDC guidance
 - If an employee feels symptoms, do not come into work and get tested.

OSHA Requirements

How do you know if it's work related?

- OSHA has outlined several factors to determine if it is work-related:
 - When several cases develop among workers who work closely and there is no alternative explanation;
 - Contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case with no alternative explanation;
 - Job duties include having frequent close exposure to the general public in a locality with ongoing community transmission;

OSHA Requirements

Likely Not When:

- If he/she is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public;
- If the employee, outside the workplace, closely and frequently associates with someone who (1) has COVID-19, (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.

OSHA Requirements

WHAT EMPLOYERS ARE REQUIRED TO DO:

- When an employee contracts COVID-19:
 - Ask the employee where they believe they contracted it;
 - Any potential out of work related activities that may be relevant;
 - Review the employee's work environment for potential exposure.
 - Assessment is based on evidence reasonably available to the employer.
- If after a reasonable, good-faith inquiry the employer can still not determine if COVID-19 is work-related then the employer is not required to record the illness.
- Employers are still required, regardless of whether the illness is work related or not, to protect workers and respond appropriately to infection.

Vaccines

When can I get a **COVID-19** vaccine in MA?



PHASE ONE

In order of priority

- Clinical and non-clinical healthcare workers doing direct and COVID-facing care
- Long term care facilities, rest homes and assisted living facilities
- First responders (EMS, Fire, Police)
- Congregate care settings (including corrections and shelters)
- Home-based healthcare workers
- Healthcare workers doing non-COVID-facing care

December - February

Estimated timeframes



PHASE TWO

In order of priority

- Individuals with 2+ comorbidities (high risk for COVID-19 complications), individuals age 75+, and residents and staff of public and private low income and affordable senior housing
- Early education and K-12 workers, transit, grocery, utility, food and agriculture, sanitation, public works and public health workers
- Adults 65+
- Individuals with one comorbidity

February - April



PHASE THREE

Vaccine available to general public

April - June

For more information on vaccine distribution visit [Mass.gov/COVIDvaccine](https://www.mass.gov/COVIDvaccine)



Vaccines

- Can I make getting a vaccine mandatory?
 - Legally, yes provided two exceptions
- Religious Accommodation
- Disability Accommodation

Vaccines

Religious Accommodation

- It needs to be a sincerely held religious belief.
- This is a fairly loose standard and based on the case law employers have to assume that on its face, the belief is sincerely held.
- If the employer has objective reason to believe this is not true then they can ask for supporting information.

Disability Accommodation

- If an employee has a disability that does not allow them to receive the vaccine then you would engage in the same ADA steps as with other disabilities:
 - engage in the interactive process,
 - determine a reasonable accommodation, and
 - determine if it is undue hardship.

Vaccines

- Best Practice:
 - Strongly encourage, provide access to the vaccine, hold meetings for sharing knowledge of the vaccine but do not make it mandatory.
 - Since this vaccine is new, many people are hesitant to receive it. The best way to dispel these notions is with knowledge. Ask a health care provider to meet with employees or hold a town hall discussing the vaccine.
 - It is human nature to resist force so consider that before mandating.

Q&A