



## VIRTUAL TOWN HALL ON COVID-19

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### Human Resource Q&A

**Panelist:**

- **Don Riddick Esq., *GVMA Legal Expert***

**Q: Employee has fever or isn't taking social distancing seriously/ what is our legal liability if a member of our staff becomes infected or if a client has come in and then tests positive?**

**A:** Firstly, all employers have an obligation to provide a safe workplace. "Your employer must provide a workplace free of known health and safety hazards." OSHA and the Department of Labor issued guidance this week that employers should send employees home who have symptoms that could align with COVID-19.

In addition, any employee who is not following safety protocols can be sent home without violation of labor laws. Every employee can expect an employer to provide protective equipment appropriate for safety in the workplace. You also have a duty to keep invitees safe from unknown (to the invitee) and known hazards, so clients should be informed if they have been exposed while on your premises. Liability can arise from several different causes, failure to provide a safe environment, failure to disclose hazards to invitees, but generally, if you are following safety protocols directed by the CDC and OSHA, along with state health officials, you will be deemed to have met any minimum standards or obligations.

**Q: Do shelter in place restrictions impact what services we offer?**

**A:** Yes, if you are doing farm calls or home visits, you must check that these homes or farms are not exposed by COVID-19 and if they are, you have to take appropriate safety precautions when going to help those clients. You still have an obligation under OSHA to disinfect just as before.

**Q: Are we required to compensate staff who "don't want to work" during the outbreak?**

**A:** Compensating staff who don't want to work should follow the normal guidelines for your practice and labor laws, including vacation, time off, and leave. Several new laws, such as the Family First Act have been passed to allow for leave for care of infected family members, for childcare, and so flexibility is important.

However, staff who just don't want to work with the public are not currently required, beyond unemployment benefits, your general duties as an employer, to be compensated. There are some loans and tax breaks which have been discussed to



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require this, but I am not aware of them passing as of this date. Some reasons under the Family First Act that are legitimate include:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under FFCRA—if they don't want to work for the above reasons, you absolutely have to pay them. If they are caring for an individual that is subject to one of the things that I just mentioned or a child who is out of school or their place of care is closed, you may have to continue for some period of time—generally for 80 hours to pay for an additional 10 weeks at 2/3 of the pay rate for certain employees who have been employed for more than 30 days.

Now the IRS has said that the child care leave provision doesn't apply in some cases—particularly for employers with less than 50 employees where providing that pay for leave requirements related just for school closings would jeopardize the viability of an employer's business as an ongoing concern. The IRS has specific guidance on their site about FFCRA and if the employee says they can't work for that reason, you must pay them so look for that guidance there. FMLA and existing leave requirements also still need to be followed.

If people just don't want to work with the public right now, you can allow them to take PTO or an unpaid furlough. If you do that or provide paid leave for any of the above reasons or you let anyone go or reduce their hours from full time to part time—under an emergency order from the GA Department of Labor, you are required to report it in advance as soon as you know on a weekly basis for those reductions in hours or for someone who might potentially ask for unemployment. In a case where someone just doesn't want to work for no protected reason, they may still be eligible for unemployment and if you don't file on the GA Department of Labor website in advance, you may have to pay that unemployment payment yourself rather than through the state insurance for that.