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RLG NEWSLETTER: Face Coverings & More!
(current as of July 24, 2020)

Minnesota's Face Covering Order

This week, Minnesota Governor Tim Walz announced that almost everyone must wear a face covering in indoor businesses and indoor public settings. This requirement, enacted as [Executive Order 20-81](#) (“Order”), will take effect beginning Saturday, July 25.

Businesses must require all employees, customers, and visitors to wear face coverings when required by the Order. There are some exceptions for when individuals need not follow the requirement or when they may temporarily remove their face covering:

- when wearing a face covering would create a job hazard for the individual or others, as determined by local, state or federal regulators or workplace safety and health standards and guidelines.
- if they have a condition or disability that makes it unreasonable for them to maintain a face covering. Children five younger are also exempt from the Order.
- face coverings may be temporarily removed:
 - when speaking, provided that social distancing is maintained;
 - when eating or drinking, provided that social distancing is maintained;
 - while communicating with an individual who has a disability or condition that makes communication with that individual while wearing a face covering difficult, provided that social distancing is maintained;
 - while receiving a service (such as a dental examination) that cannot be performed or would be difficult to perform when the individual receiving the service is wearing a face covering. Employees performing services for such an individual must comply with face covering requirements in the [applicable industry guidance](#); and
 - when an individual is alone, including in an office or cubicle with walls that are higher than face level when social distancing is maintained, a vehicle, the cab of heavy equipment or machinery, or an enclosed work area.

When possible, businesses must provide accommodations to customers and employees with a condition or disability that makes it unreasonable for the person to use a face covering, such as providing service options that do not require a customer to enter the business. Business can require employees to provide documentation with the request in accordance with applicable law.

To comply with the Order, businesses should:

- Ensure employees wear face coverings when required by the Order;
- Update your COVID-19 Preparedness Plans to include the Order's face covering requirements, inform employees of the changes made, and make the revised plan available to employees;
- Post one or more signs that are visible to all employees, customers, and visitors instructing them to wear face coverings as required by the Order (sample notices will be [available here](#)); and
- Make reasonable efforts to enforce the Order with respect to customers and visitors.

Businesses (including managers and supervisors) can be fined up to \$1,000 for failure to comply with the Order as noted above, although we do not yet know how this will work once the Order becomes effective. The Attorney General and city/county attorneys may also seek any civil relief, including civil penalties up to \$25,000 *per occurrence* from businesses. State and local licensing and regulatory can assess businesses' compliance with the Order and use their existing enforcement tools to bring businesses into compliance.

RLG Takeaway: Unless a specific exception or exemption applies, businesses must ensure that all employees, customers, and visitors coming inside their business wear a face covering. Businesses should also update their COVID-19 Preparedness Plan to include face covering requirements (if they have not done so already) and share these updates with their employees.

CDC Shifts on Return to Work Guidance

Twice in July, the CDC updated its [guidance](#) regarding when workers with COVID-19 can return to work following home-isolation. Specifically, symptomatic individuals who have been directed to care for themselves at home can discontinue isolation under the following conditions:

- At least 10 days have passed since symptom onset; and
- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and
- Other symptoms have improved.

This guidance represents two changes from the CDC's prior recommendations, which formerly required that 14 days have passed since symptom onset and 72 hours have passed since fever resolution. Non-symptomatic individuals can discontinue home isolation and return to work 10 days after the date of their first positive test result. Again, this was previously 14 days.

Both non-symptomatic and symptomatic individuals with mild to moderate COVID-19 need not be retested before coming back to work, so long as the above conditions have been met. We are hearing that individuals can remain positive long after they are no longer infectious. If your employee is testing positive a number of weeks after the onset of symptoms, they may still be able to return to work with a practitioner's note.

Additionally, it is common for individuals to continue to have symptoms for longer than the above time periods (10-14 days). Full recovery may take several weeks. Individuals who are still symptomatic at the end of their isolation period can be de-isolated provided that their fever has

resolved (without the use of medication) and their symptoms have improved. If symptoms persist, the individual should seek medical assessment from their practitioner.

RLG Takeaway: We expect that guidance may continue to shift as we learn more about this virus, and we will keep you updated. Though the CDC has shortened the home-isolation window, it cautions that “a limited number of persons with severe illness may produce replication-competent virus beyond 10 days, that may warrant extending duration of isolation for up to 20 days after symptom onset.” Thus, employers should stay in contact with local health officials and monitor state guidance as well.

FFCRA Leave and State Quarantine Rules

Several states (including New York, New Jersey, and Rhode Island) have imposed quarantine requirements, directing visitors (or returning residents) from states with high rates of confirmed COVID-19 infections to self-isolate for 14 days. Other states (including Ohio, Pennsylvania, and South Carolina) recommend such a quarantine.

Employees are entitled to two weeks of Emergency Paid Sick Leave (“EPSL”) under the FFCRA if they are unable to work (or telework) because of a quarantine or isolation order issued by a federal, state or local government authority. Thus, employees subject to a state quarantine *requirement* are entitled to EPSL. But what about employees returning to states that *recommend* such a quarantine?

The Department of Labor’s FFCRA regulations view a quarantine order broadly, including when a federal, state, or local government authority “has *advised* categories of citizens . . . to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.” Thus, employees subject to state *recommendations* to quarantine will also be entitled to EPSL if such a quarantine makes them unable to work.

RLG Takeaway: Wrongful FFCRA leave denials can be risky, so please reach out to counsel if you have any questions.

Why We Think You Should Look at the Form I-9 Differently

When completing Form I-9, Employment Eligibility Verification, you, as the employer, must make the complete instructions for the form and the Lists of Acceptable Documents available to newly-hired employees. Your employees must then complete and sign Section 1 of Form I-9 *no later than* their first day of employment. According to the regulations, you may have your employees complete Form I-9: (1) on their first day of employment (the actual commencement of employment of an employee for wages or other remuneration, referred to as date of hire in the Department of Homeland Security regulations); or (2) before their first day of employment, if they accepted your job offer.

Because employees must fill out and sign Section 1 of Form I-9 no later than their first day of employment, and given the logistical challenges many businesses currently face as a result of COVID-19 (including those associated with teleworking), it may be helpful to send a copy of the Form I-9 materials with the employee's offer letter.

RLG Takeaway: By including the form 1-9 with an offer letter and other related documents, employers provide the employee time to gather necessary documents and complete and sign Section 1 in a timely manner.

Is the Next Stimulus Package On the Horizon?

Senate Republicans are working to release details of a \$1 trillion coronavirus relief package. Though not yet finalized, the proposal includes provisions covering:

1. **Unemployment.** Senator McConnell has signaled some form of an extension to the federal enhanced unemployment benefit at a reduced rate. This may involve a flat rate, less than the current \$600, for two months. This would give states time to implement a system of calculating the state benefit to factor in the federal enhancement, but have it capped at 100% of income. The Treasury Secretary said the proposal would target “approximately 70% wage replacement.” The enhanced federal benefit would be extended through December 31, 2020. As the current round of enhanced benefits expires soon, Congress may use a stop-gap measure while they finalize terms for unemployment benefits after July.
2. **PPP Loans.** The second round of Paycheck Protection Program loans would be targeted toward small businesses based on lost revenue, including hard-hit industries like restaurants and hospitality. PPP loans would also include more flexibility to forgive money used for operational and supplier costs—not just payroll expenses.
3. **Liability Protection.** The proposal includes five years of liability protection for businesses, schools, health care providers and non-profits, retroactive to 2019. This would make it harder for employees to sue their employers if they become sick at work. Democrats have indicated that this provision is a non-starter, so it is unclear if this will remain in the final bill.
4. **Employer Tax Credits.** The proposal expands the employee retention tax credit that was included in March's stimulus bill, which gives companies a tax break for keeping employees on the payroll. It also provided tax credits for personal protective equipment, workplace cleaning, and COVID-19 testing supplies.

RLG Takeaway: Stay tuned as stimulus package negotiations continue. Given two impending deadlines—the July 31 expiration of enhanced unemployment benefits and August 7 Senate recess—we expect Congress try to get a final bill on the President's desk in the upcoming weeks.

Please note that these are fast-moving times, and the information provided is only accurate as of the day posted (July 24, 2020). The information provided does not, and is not intended to, constitute legal advice; instead, all information is prepared and provided for general informational purposes only.

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