

Managing HR Through COVID-19

CLERKS, TREASURERS & FINANCE OFFICERS INSTITUTE
JUNE 9, 2021

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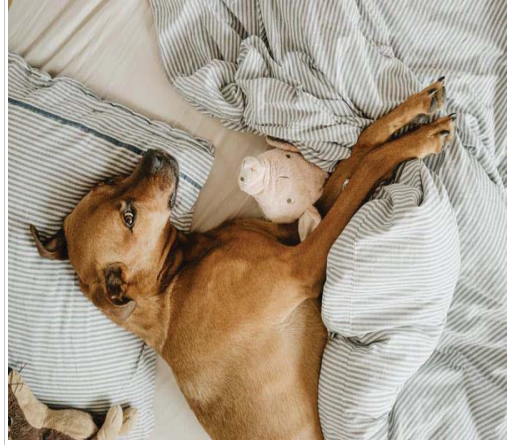


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Agenda

- ARPA COBRA Subsidy
- FFCRA Voluntary Extension
- Vaccine Considerations
- FMLA and ADA Implications
- Confidentiality of Medical Information
- COVID Safety Considerations
- COVID Related Lawsuits
- Remote Work
- Wage and Hour Issues
- Mental Health

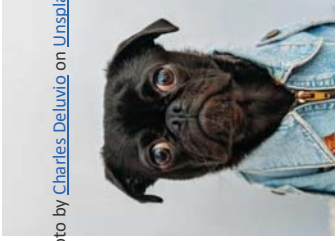
ARPA Cobra Subsidy

- Fully funded COBRA premiums for six months
 - April 1st to September 30th

- Applies to all employer-sponsored plans covered by state and/or federal health insurance continuation laws

- <https://oci.wi.gov/Pages/Consumers/PI-023.aspx>

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Who gets the benefit?

- Those who lost insurance coverage any time since 11/2019 or those who lose coverage between April 1st and September 30th 2021 due to involuntary termination or a reduction in hours
- Includes those already on COBRA and those who initially declined or later dropped coverage
- Not entitled if eligible for other health coverage

Who pays?

- Employers pay 100% of the premium *only for the months of April through September 2021*
- Premium payments are recouped as a charge against payroll taxes that would otherwise have to be paid quarterly or as a refund for the credit exceeding payroll taxes

What are the notice requirements?

- **By May 31st** COBRA notices must be provided to eligible employees
- 60 day election period from receipt of notification
- Between 15 and 45 days before a subsidy ends, a separate notice must be provided to individuals taking the subsidy to alert them of the impending expiration

What steps are required?

- Identify all eligible individuals
- **Send new COBRA notices ASAP**
- Calendar the required notices for expiration of subsidies
- Work with payroll advisors/vendors to claim the tax credits
- Consult with employee benefits attorney or insurance broker as needed
- Refund any premiums for subsidy period

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Resources

- <https://www.dol.gov/sites/dolgov/files/ebsa/files/ebsa-laws-and-regulations/laws/cobra/premium-subsidy/summary-of-provisions.pdf>
- <https://www.dol.gov/sites/dolgov/files/EBSA/about-our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>
- <https://www.irs.gov/pub/irs-drop/n-21-31.pdf>

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Tax Credits for *Voluntary* FFCRA Extension

- ARPA extended full payroll tax credits to local governments who voluntarily provide FFCRA paid leave
- Employers retain payroll taxes equal to 100% of the qualified wages and related health plan expenses; claimed as tax credits on Form 941 for the quarter in which the paid leave was provided
- <https://www.irs.gov/newsroom/employer-tax-credits-for-employee-paid-leave-due-to-covid-19>

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FFCRA Voluntary Extension under ARPA

- New non-discrimination: Tax credits are only available to employers who provide leave without treating more favorably highly compensated employees, full-time employees, or based on employee tenure
- Same coverage provisions apply:
 - EPFL – employees employed for any length of time
 - EFLMA – employees who have worked at least 30 days
- Available if an employee is unable to work in person or remotely

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New Reasons for Paid Leave

- Up to 80 hours for *eight* different reasons:
 - Subject to quarantine order
 - Advised by provider to self-quarantine
 - Experiencing symptoms and seeking diagnosis
 - *Being vaccinated or recovering from side effects*
 - *Awaiting the results of a COVID test or the employer has requested one*
 - Caring for an individual with COVID or who has to quarantine
 - Caring for a child whose school or provider is closed due to COVID
 - Experiencing any similar conditions specified by federal government

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Pay for EPSL

- For the first five reasons, full pay up to \$511 per day/\$5,110 in aggregate
- For reasons six-eight, 2/3rd's of full pay up to \$200 per day/\$2,000 in aggregate

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Expanded FMLA

- New: qualifying reasons now include all of the same reasons for EPSL
- Eliminated first two weeks as unpaid
- Entitled to up to 12 weeks @ 2/3rd's pay to \$200 per day/\$12,000 aggregate

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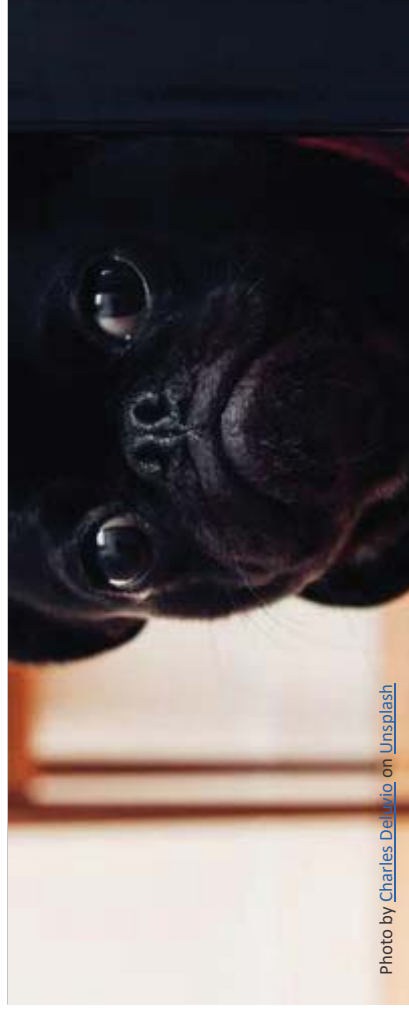


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MANDATORY VACCINATION CONSIDERATIONS

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Can employers require staff to be vaccinated?

- Yes, but.....
- Accommodations to be made for disabilities, pregnancy, and religious beliefs, if available
- “Reasonable” accommodations – such as remote work, limiting contact, PPE, flexible hours, staggered shifts, periodic testing, reassignment
- Union employees will most likely have to bargain a mandate

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Should you?

- Emergency Use Authorization
- Prepare to discipline/terminate?
- Adverse Reactions
 - Not recordable if vaccines are mandated by the employer as a condition of employment (shift in OSHA guidance as of 5/21/2021)
 - Adverse reactions are likely to constitute a reportable work comp claim if mandated as a condition of employment.

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VACCINATION INCENTIVES

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EEOC Guidance as of 5/28/2021

- Incentives permitted if they do not require staff to receive the vaccine from the employer or a provider with whom the employer contracts to provide vaccinations
- Incentives tied to vaccinations the employer or its contracted provider administer cannot be so substantial as to be coercive

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Vaccine Incentives

- At a minimum should consider allowing staff to get vaccinated during work hours and giving paid time off to recover
- Employers can ask if staff are vaccinated and can require proof
- Should proceed cautiously about asking why a staff member is not vaccinated

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COVID FMLA/ADA Implications



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FMLA/ADA Considerations

- Generally, COVID positive with symptoms will be considered FMLA eligible leave as a serious health condition. Asymptomatic COVID positive situations are less clear.
- Is COVID a disability under state or federal EEO laws?

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Maintain Confidentiality



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COVID-Related Medical Information

- COVID positive test results and vaccination status constitute medical records/information that must be protected.
- **Must** protect the confidentiality of this information - and make certain your supervisors do too!

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Take Off the Masks!!



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But should you???



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Potential Responses

- Continue to require masks
- Allow vaccinated staff to go without masks, but require or encourage unvaccinated staff to wear them
- Confirm vaccine status or use the honor system

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Ongoing COVID Safety

- What protection is offered against the ever-evolving variants?
- How long does protection last?
- To what extent does a vaccinated individual transmit the virus to others?
- How to protect unvaccinated staff, officials, citizens, and other third parties?

Ongoing COVID Safety Measures

- Continue to provide masks, sanitizer, establish social distancing where possible, and other hygiene measures (air sanitization, ventilation, plexiglass)
- Use CDC recommended cleaning, sanitizing, disinfecting, ventilation solutions: <https://www.cdc.gov/coronavirus/2019-ncov/community/clean-disinfect/index.html>
- Reference OSHA guidance as well: <https://www.osha.gov/coronavirus/safework>
- Continued screenings/temp checks remain a good idea
- Strict policy on go home/not come to work if sick

COVID-Related Lawsuits

- Whistleblower lawsuits stemming from adverse actions taken against employees who reported COVID-related infections or violations of governmental mandates/safety guidance
- Suits by unvaccinated workers against employers who mandate the vaccine
- Failing to designate FMLA or to offer reasonable accommodations where required by ADA

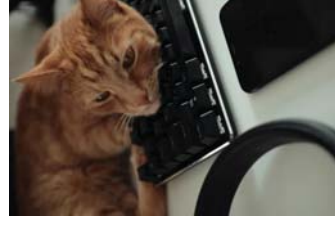


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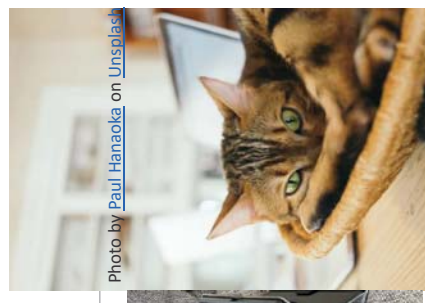


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Remote Work

Remote work considerations

- Treat remote work as a recruitment/retention issue - most employees want a hybrid model
- Other benefits:
 - Improved morale
 - Reduced absenteeism
 - Greater productivity
 - Safety/health
 - Business continuity during emergency circumstances

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Remote work considerations

- Have a remote work policy that outlines acceptable parameters for managers to use in making these decisions.
- Who/what positions are eligible
- Conduct/behavioral expectations
- What work can/cannot be performed remotely
- When is “in person” mandatory
- Process/procedure for granting or denying
- Expected work hours and timekeeping requirements
- <https://files.constantcontact.com/719b6d0b001/3639736e-894e-4c26-93e3-4c6f4e99c4db.pdf>

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Remote Work as a Reasonable Accommodation

- For COVID or other disabilities
- Job descriptions will play a key role
- Short-term or long-term?
- Explore alternative accommodations (if they are reasonable)
 - temporary modifications to the job
 - leave of absence
- Will always be analyzed on a case by case basis

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Wage & Hour Considerations

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Wage & Hour Issues

- COVID PPE (respirators, eye protection, masks, face shields)
- Time waiting for and undergoing temperature checks or other screening processes
- Mandatory COVID testing
- Remote work – employers must pay for all reported *and unreported* hours worked remotely that they know or have reason to believe have been worked – even if not authorized
- Hazard pay or other incentives for work/vaccination must be included in the regular rate that is used to compute overtime pay

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Mental Health

- Be aware
- Create a safe and supportive environment
- Offer/highlight resources – EAP/ERG/health plan
- Host workshops – online/in person
- Say “yes” to time off requests whenever possible
- Understand when the “ask” is a request for a reasonable accommodation for mental health impairment
- Do something fun and caring for them, like “bring your pet to work day”

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Thank you!



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WORK SOMEPLACE
AWESOME!**

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