

# Survival Guide

HR best practices and resources for small and mid-sized businesses during the COVID-19 pandemic.



# Take action.

Everyone around the world is inevitably concerned about the severity the coronavirus disease poses as both a serious public health risk as well as the impact it will have on their jobs, businesses, communities, and economy.

With many businesses already being forced to change how they operate and even shut down temporarily around the country, we've put together this ebook to help small and mid-sized businesses – a network of tens of thousands of businesses that collectively drive our national economy – navigate these uncertain times.

#### **Please Note**

This ebook was created on **March 26, 2020**. Because the COVID-19 situation is dynamic, with new governmental and legal measures each day, employers should consult with their HR department and/or legal counsel for the latest developments and updated quidance on these topics.

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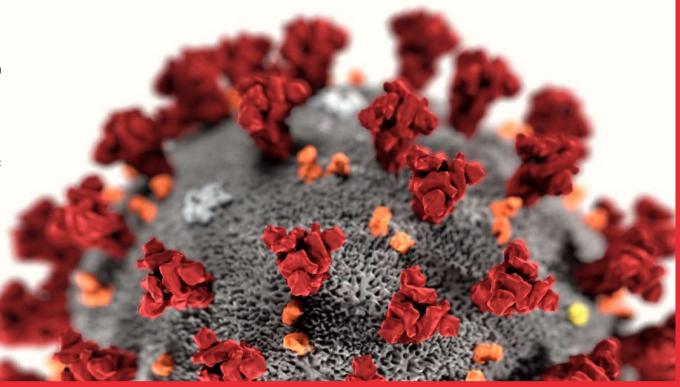
Stay informed to stay ahead.

# Disaster-Proofing Payroll and HR

#### If you currently rely on a

third-party provider to process your payroll or use any kind of HR software, odds are you have already received some information on the impact of COVID-19 to your business.

What you may not know, however, is that your payroll and HR software provider could also offer outsourcing services to support your payroll and HR department that are likely overwhelmed right now with simple yet critical functions, like making sure your employees get paid on time with no disruption in your business. This will allow you to focus on not just surviving this difficult time, but also continuing to grow your business however you can.



## **PAYROLL**

To unbanked employees, a paper check is everything. It's their lifeline to provide for their families, but social distancing and quarantining means it may now take longer for employees to get their checks in the mail and even then they'd still need to leave their homes to cash it or get a payroll card (i.e., paycard), exposing themselves and others to the virus in the process.

of Americans are unbanked, so odds are you have employees who still rely on paper checks.

Prepare for your payroll to be processed remotely by taking the following steps:

#### Switch to 100% electronic payroll

You can't anticipate the unexpected. If you employ workers who don't have bank accounts, get your business to 100% direct deposit by using payroll cards. Your employees get paid via direct deposit onto the card just like those with bank accounts.

### Set up a payroll contingency plan for emergencies

Set up your payroll system on a laptop and train a trusted backup employee on how to run payroll in the event that your organization can't.

## Plan to process payroll early if you're anticipating a disaster

Paying employees early may provide the grace period that they need to withdraw money in a timely manner before it's too late. If possible, schedule payroll in advance and encourage the use of mobile applications that allows remote employees to punch in and out from home.

# NOT FAMILIAR WITH PAYCARDS?

To help your business with payroll while maintaining social distancing, consult your payroll provider about issuing paycards instead of paper checks. Paycards are a reloadable debit card that allows employers to give them to their employees and deposit paychecks onto the cards instead of printing checks or using direct deposit.

# BENEFITS & COMPENSATION

When disaster-proofing your HR right now, review compensation, telecommuting requirements, as well as benefits eligibility – such as unemployment, sick leave, and COBRA.

As this rapidly acting pandemic unfolds, changes will continue to be made to local, state, and federal laws that will impact both your rights as an employer as well as your employees' own rights. In order to stay on top of the latest benefits and compensation laws, be sure to consult with your relevant state and any local authorities on the matter before making any decisions.

#### COMPENSATION AND REMOTE WORK

("Telecommuting")

Telecommuting, where employees work from home or remotely, might be the norm for several already, but for a lot of workers it's a brand new reality as they adapt to shelter-inplace orders and social distancing. Not only do remote workers require reasonable accommodations, they also require an adjustment period for getting used to their new work surroundings.

If telecommuting is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, you must pay them the same hourly rate or salary.

If this is not the case and you do not have a union contract or other employment contracts, under the Fair Labor Standards Act (FLSA) employers generally have to pay employees only for the hours they actually work, whether at home or at the employer's office. However, the FLSA requires employers to pay non-exempt workers at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.

#### WORKERS' COMPENSATION

One commonly asked question about COVID-19 and workers' compensation is if an employee alleges they contracted the disease while at work. The short answer to this question is, "yes, the employee would likely be eligible for unemployment." However, it'll be contingent on whether or not the infection took place under the following two circumstances:

#### 1. Infection in course of employment:

the illness or disease must be "occupational," meaning that it arose out of and was in the course of employment; and

2. Infection from normal work conditions: the illness or disease must arise out of or be caused by conditions peculiar to the work and creates a risk of contracting the disease to a greater degree and in a different manner than in the public generally.



# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

This act requires certain employers to provide employees with paid sick or family leave for specified reasons related to COVID-19. The Act provides that employees of covered employers are eligible for paid sick time based on their inability to work due to contracting COVID-19, to provide care for an immediate family member employee who is infected, or care for children under 18 whose school or child care provider is closed:

Employee is quarantined, experiencing symptoms, or awaiting medical diagnosis: two weeks (up to 80 hours) of paid sick time at the employee's regular rate of pay or minimum wage, whichever is greater. Pay should not exceed \$511 per day and \$5.110 in total.

Employee needs to care for an individual subject to quarantine or care for a child under 18 whose school or child care provider is closed: two weeks (up to 80 hours) of paid sick time at two-thirds the employee's regular rate of pay or minimum wage, whichever is greater. In this case, pay should not exceed \$200 per day and \$2,000 in total

Employees may also qualify for up to an additional 10 weeks of paid family leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

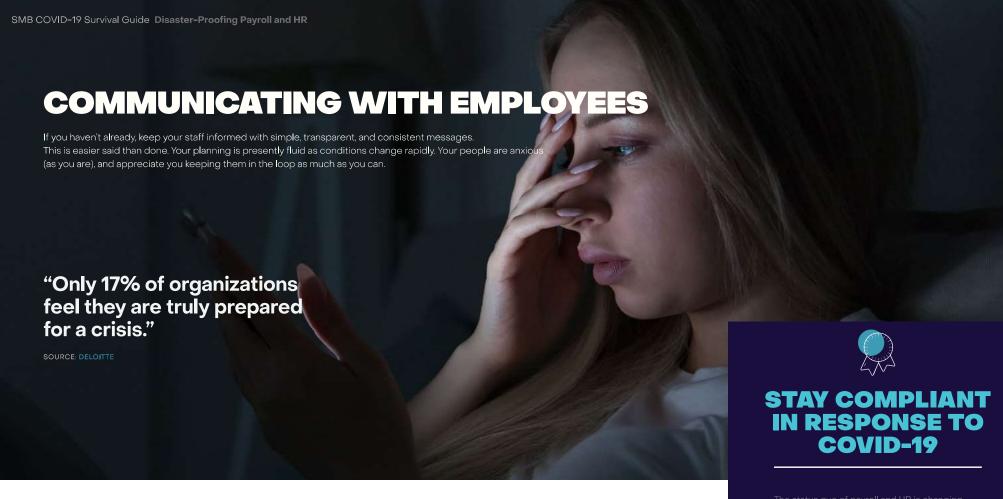
#### SICK LEAVE

This extraordinary circumstance may require you to alter your paid sick leave policy. While federal equal employment opportunity (EEO) laws do not prohibit employers from changing their paid sick leave policy, they cannot discriminate between employees because of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status.

# CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA)

In the unfortunate event that you're still required to let employees go to stay in business, don't forget that they may be eligible for COBRA benefits. You likely know by now that COBRA is a health insurance program that allows an eligible employee and any dependents the continued benefits of health insurance coverage in the case an employee loses their job or experiences a reduction of work hours.

However, during a public health emergency you may be eligible to receive a subsidy to help your laid—off and furloughed employees afford COBRA premiums, so keep your eyes open for updates from authorities on such programs and confer with your benefits provider on any options and guidance they may have to offer you for extension of benefits to employees.



#### **BE TRANSPARENT AND CONSISTENT**

#### Over communicate:

there's no such thing as over-communication in this environment. Communicate regularly with your employees and update them with actions you've taken as a business, and steps to take to keep themselves and their families safe.

# Tell your employees how important they are: let your workers

are: let your workers know you and your business care about them and their families.

#### Keeping them safe:

take all reasonable steps to keep your staff healthy, and let them know what actions your business will take when people get sick.

#### Communicate with

confidence: as you're communicating verbally and digitally, instill confidence instead of creating a sense of concern. Keep it simple and trustworthy to minimize panic. They'll be reassured and will convey that spirit to your customers.

## Offer facts, not opinions: relay any

related resources that are available, with clear instructions on how to access them. There's no shortage of opinions flying everywhere, so they need facts from you to remain calm.

#### Don't sacrifice accuracy in favor of speed when responding to

employees: it's better to be honest and research the right answer than providing inaccurate information. Your employees trust you as a leader – they're looking to you to provide them with the answers they need.

The status quo of payroll and HR is changing rapidly. If it seems nearly impossible to conduct business while also keeping up with payroll considerations and new laws, you're not alone. These new regulations are sure to impact how you can stay compliant while dealing with the concerns of your employees.

Find your state's Department of Health for relevant state-level information at the Centers for Disease Control and Prevention (CDC) website

## BALANCING DIFFICULT BUSINESS DECISIONS & GROWTH

Preparing your business to survive the outbreak is a fine balance between taking care of your own employees and ensuring the very survival of your business. It's a tale as old as time that the two are directly tied to one another: if you see your employees as dollar signs, they'll likely treat their work as just another job and seek more dollar signs themselves when they have the chance. Showing how much you value your employees, especially during a crisis like COVID-19, will foster a trustworthy culture that will lead to higher talent retention.



# HELP YOUR OWN EMPLOYEES EVEN IN LIGHT OF DIFFICULT DECISIONS

Legislation to support alternatives to lay-offs is still pending approvals, however, the Department of Labor has already committed to providing assistance to states that want to set up worksharing programs, in which employers reduce hours instead of laying employees off, and receive partial unemployment benefits to offset the wage loss. If possible, consider reskilling employees. Restaurants, for instance, are reskilling staff to delivery drivers. If you do plan on exploring this option, don't forget to contact your insurance company to get more information about liability coverage for these employees in light of their new role in your business.

The sad reality is that despite your best intentions to keep all your employees, you may need to lay off employees for your business to survive. If it comes down to this, set regular check-in dates for them to know if any rehiring is available. This will help you retain your best employees and reduce hiring costs once the market rebounds.

Laying off your workforce comes in different shapes and forms, but ultimately it'll be guided by how many people you're laying off and why.



#### **FINANCIAL SURVIVAL**

A study by the JPMorgan Chase Institute found that companies with less than 500 employees have on average less than a month of cash reserves. Main Street-type businesses often only have half a month's worth of cash to stay afloat, so this crisis is tantamount to a death sentence to a lot of SMB's.

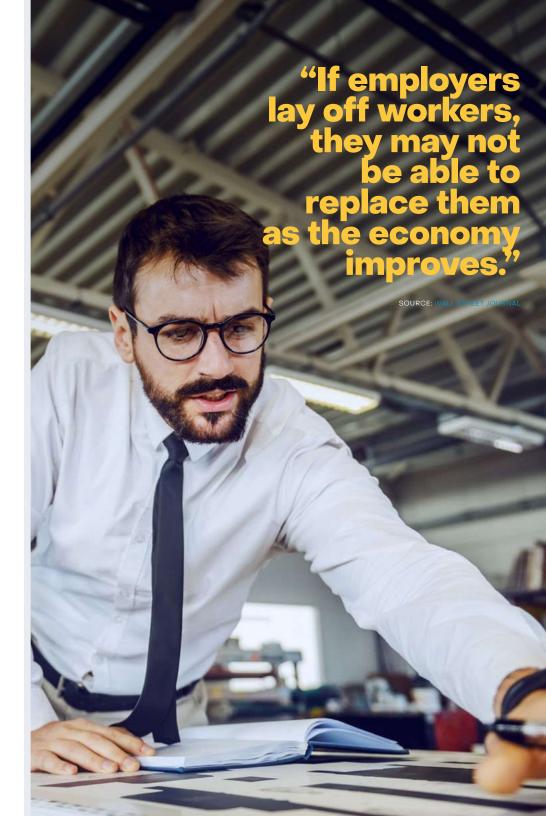
A fast-moving situation such as this one will continue evolving but there are several resources available for you to guarantee your business's financial security.

#### Reduce operating expenses

Strategies such as telecommuting not only contribute to social distancing but may also help you reduce operating expenses. Have a close look at your operating expenses and see where you can either cut back, eliminate, or simply put on hold for now.

#### Research small business loans

The Small Business Administration (SBA) offers economic injury loans to provide targeted, low-interest loans to small businesses and nonprofits that have been severely impacted by the virus. The SBA's Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.



# GROWING YOUR BUSINESS UNDER NEW ECONOMIC REALITIES

This is unlikely the first time you've faced an economic downturn. Unlike a depression or recession, the public health danger of this pandemic adds a degree of risk we've not seen before. This can slow down the economy not because spending levels would be lower and budgets slashed, but simply because people may not be able to even leave their homes in the event more shelter-in-place orders are issued. However, you can still continue growing your business while being socially responsible to your employees, customers, and those they themselves come in contact with.



# Work your community network and social channels

Some of the best acts of kindness can come from times like these. Work your community network and if any, social channels, to see how you can add value to another business. For instance, restaurants that have reduced service to takeout and delivery are partnering with other businesses to offer customers items they typically don't offer that they can purchase with their order (e.g., a restaurant eliminating their dessert menu to cut back on supplies partnering with a bakery to offer their baked goods instead).

#### Maintain or expand marketing efforts

Unless you have to slash budgets to keep up with expenses and payroll, now could be a good time to ramp up online marketing efforts. Online marketing can be less expensive than typical marketing while also offering a higher return on investment (ROI).

"27% of businesses expect the coronavirus to have a moderate to high impact on their revenue."

SOURCE: VEE



#### Number 1

# © "Can/should we require an employee not to come to work if they have mild symptoms and are not at-risk?"

A Yes. To prevent the spread of illness in your workplace and among the general population, we recommend sending the employee home for either:

2 weeks; or, 3 days after symptoms have resolved.

The Equal Employment Opportunity
Commissioner (EEOC) has stated that if
an illness pandemic poses a direct threat,
employers can require employees who display
virus symptoms not to report to work. The
Occupational Safety and Health Administration
(OSHA) requires an employer to exercise
reasonable diligence to determine any hazards
that could be associated with employees' work
environment. States that have been hit the
hardest by the novel coronavirus advise that
people who are showing COVID-19 symptoms
should stay home, and stay away from other
people in their household.

#### Number 2

#### "How do we manage time off options for an employee experiencing mild symptoms?"

If possible, we recommend offering telecommuting as an option to employees. If work from home is not available, employees can use PTO or versions of paid medical leave depending on the state. Be aware of what will qualify for paid medical leave. For example, in Washington, quarantine does not qualify; but if an employee has symptoms, paid medical leave would apply.









#### Number 3

#### Can we ask our employees to tell us if they are high risk for COVID-19 because of an underlying medical condition?"

No. Making disability-related inquiries or requiring medical examinations of employees without symptoms is prohibited by the Americans with Disabilities Act (ADA).. Instead, employers should allow all employees who experience COVID-19 symptoms to stay at home, which will benefit all employees including those who may be at increased risk of developing complications.

#### Number 4

#### "We will need to reduce hours and/or lay off employees due to the economic effects of COVID-19. How should we handle this?"

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A First off, remember there may be specific actions or programs that are state-specific; you should absolutely refer to your state laws before taking action.

Secondly, there is no one-size-fits-all answer here. Every business, circumstance and decision is unique; however, here are a few common strategies employers can keep in mind when considering which type of approved temporary leaves of absences or even permanent layoffs makes most sense for your company, in your effort to reduce immediate payroll:

FURLOUGH: Reducing employees' hours is known as "furlough."

- → Employers generally can schedule non-exempt employees for fewer days or hours without liability concerns.
- → Employers do not need to pay non-exempt employees for time not worked.
- → Employers should be aware that exempt employees under federal law and most state laws must be paid the same minimum salary for each pay period.
- → If an exempt employee performs any work during a workweek, he/she must receive their entire salary that week. Failure to compensate an exempt employee for a week where any work is performed jeopardizes that employee's exempt status.
- → If an employer furloughs an exempt employee for an entire workweek, however, then no salary is owed for that full week and the employee's status is not affected.
- → Certain types of furloughs may involve changes to pay practices. Generally, prospective changes are acceptable, but state law may require specific periods for advance notice and may limit changes to particular types of pay (e.g., PTO).
- → When employees are furloughed, employers should expect that they will not work, including checking email and voicemail.
- → An exempt employee is entitled to pay for any workweek in which they perform any work.
- → Employers should therefore inform employees that work is not authorized during the furlough period without advance written approval.
- → Employers also should notify non-exempt employees about the same issue as non-exempt employees generally are entitled to compensation for performing work when not in the office. A signed policy indicating the types of activities that require supervisor approval and the company's expectation for recording any time spent on such activities is something employers should seriously consider.
- → State specific work replacement or assistance.

**PARTIAL EMPLOYMENT** - Businesses that need to keep operating on a less-than-full-time basis can request a status known as "partial" employment for their employees; work search while on unemployment is waived if employees:

- → Have been hired to work full time
- → Return to at least one week of full time employment within a four month period
- → Work at least 16 hours per week.

#### Number 5

#### Should we ask for a doctor's note from the employee before granting the time off for mild symptoms?"

A Because we are facing a pandemic, we recommend against this requirement for employees facing mild symptoms. The Washington Department of Health advises anyone with a fever or cough should assume their illness is COVID-19 and take steps to prevent others in the community from the disease.

While an employer can request a doctor's note under paid sick leave (PSL) after an employee's third consecutive absence, requiring a doctor's note to verify for all mild cases of COVID-19 will overload available medical facilities

Health care providers likely will not be able to provide timely documentation. Furthermore, there is no medical treatment for COVID-19 (i.e., at the time this ebook was written). Unless the employee is at-risk for a serious viral infection, employers should not advise or require employees to visit their doctor, or obtain a doctor's note.

If the employee expresses concern to you about their illness and asks you for advice, you may inform them that the Department of Health (DOH) advises people with mild illnesses who are concerned about their health to call their healthcare provider to discuss COVID-19 testing and other possible reasons for their illness. Again, there are no current medications to treat COVID-19, so whether you test positive or negative the healthcare provider's advice for managing symptoms will be the same.



#### Number 6

- "My employee alleges that they contracted the coronavirus while at work. Will this result in a compensable workers' compensation claim?"
- A This depends on the nature of the work. If the circumstances for the alleged infection fits these two cases, then it is likely it will be compensable as a Worker's Comp claim:
  - the illness or disease must be "occupational," meaning that it arose out of and was in the course of employment; and
  - 2. the illness or disease must arise out of or be caused by conditions peculiar to the work and creates a risk of contracting the disease in a greater degree and in a different manner than in the public generally.

Certain states are passing more specific legislation about this regarding healthcare workers or other essential workplaces as this situation develops.

#### Number 7

- "Do employers have to pay employees their same hourly rate or salary if they work at home?"
- A If telework is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, then you must pay the same hourly rate or salary.

If this is not the case and you do not have a union contract or other employment contracts, under the FLSA employers generally have to pay employees only for the hours they actually work, whether at home or at the employer's office. However, the FLSA requires employers to pay non-exempt workers at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.





- "May employers change their paid sick leave policy if a number of employees are out and they cannot afford to pay them all?"
- A Federal equal employment opportunity laws do not prohibit employers from changing their paid sick leave policy if it is done in a manner that does not discriminate between employees because of race, sex, age (40 and over), color, religion, national origin, disability, or veteran status. Review your state and local laws.

In addition, keep in mind that if your workforce is represented by a labor union and the collective bargaining agreement covers sick leave policies, you may be limited in either the manner in which you change the policy or the manner of the changes themselves because the collective bargaining agreement would be controlling. In a workplace without a collective bargaining agreement, employees may have a contractual right to any accrued sick leave, but not future leave.





#### "If an employer temporarily closes his or her place of business because of an influenza pandemic and chooses to lay off some but not all employees, are there any federal laws that would govern this decision?"

A This will be dictated by whether or not this is a lay-off where you're ending employment temporarily or permanently for a few employees or whether or not it must be done under the Worker Adjustment and Retraining Notice (WARN) Act.

Lay off (ending employment) - Temporary versus Permanent: If an employee is laid off temporarily or if you need to reduce hours due to business slowdown or lack of demand as a result of COVID-19, the employees may be able to receive unemployment benefits. Unlike regular unemployment insurance, employees may apply for "standby" - which means they do not need to apply for jobs while receiving UI benefits.

Worker Adjustment and Retraining Notice (WARN): If you are permanently closing or laying off a majority of your employees, you should file a Worker Adjustment and Retraining Notice (WARN), providing workers a 60 days' advance notice of the mass layoff. In general, you are covered by the WARN Act if you have 100 or more employees and are laying off at least one-third of your workforce. Some states also have their own versions of WARN.

Is there an exception to WARN for epidemics? No. Although the federally mandated WARN Act and most state's similar statutes have provisions addressing terminations due to natural disasters or calamities, it is unlikely that these provisions could be used to cover an epidemic.

What level of layoffs will trigger notice under the federal WARN? Generally, 60 days' specific written notice must be provided for a plant closing or a mass layoff. A plant closing is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that results from ceasing operations in one or more operating units. A mass layoff is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that also involves 33% of the active workforce at the site. Employees with less than 6 months of service in the prior 12 months, or who work less than 20 hours per week, are not countable. Notably, temporary layoffs of less than 6 months are not counted as an employment loss under WARN.

If WARN is triggered at a Federal level, are there any exceptions that apply? Yes. Federal WARN permits shortened notice if terminations result from circumstances that were not reasonably anticipated 60 days before employees are terminated. However, shortened notice requires giving actual written notice, with as much advance notice as can be given. Some states own WARN statutes (e.g., California) do not include this defense. Shortened notice may be a good solution to Federal WARN issues created by this epidemic.

If we avoid Fed WARN, do employers still need to comply with state-level WARN statutes? Yes. Employers must comply with both the federal law and state laws, whichever is more favorable to their employees. States' own WARN statutes that perhaps offer the greatest challenges to COVID-19 temporary actions are California's and New Jersey's. A recent decision from a California appellate court has applied its WARN's 60-day notice requirement to a short-term layoff because its WARN does not include the exception for layoffs of fewer than six months. It is not clear whether that decision would require notice for a COVID-19-related furlough or short-term layoff, but the risk must be considered. The State of New Jersey recently made sweeping changes to its WARN that take effect on July 19, 2020. Among other significant changes, the amendments eliminate the focus of the event on a single place of employment (now all employees in New Jersey must be counted) and count part-time employees towards the thresholds for notice obligations. Moreover, employers that trigger notice under New Jersey's WARN must provide severance pay automatically and 90 days' (rather than 60 days) notice. Employers must take these and all other state-level WARN statutes into consideration when planning for furloughs, hours reductions, or short-term layoffs.(DOH) advises people with mild illnesses who are concerned about their health to call their healthcare provider to discuss COVID-19 testing and other possible reasons for their illness. Again, there are no current medications to treat COVID-19, so whether you test positive or negative the healthcare provider's advice for managing symptoms will be the same.

Number 10

"What else can I do right now? Are you an essential or nonessential business? What is your financial breaking point? Are your leave request processes in order? Are you getting updates from your state resources?"

Follow your local city and state legislature for updates as this situation is changing constantly. Most states and federal resources have created FAQs with further information about how specific state regulations impact this developing situation. Secure your workplace by minimizing the number of areas where employees congregate and also ensure they can still interact while maintaining social distancing guidelines and communicate these safe areas to managers and employees.

Lastly, many states are holding daily or weekly information sessions hosted by subject matter experts that you can follow online. (DOH) advises people with mild illnesses who are concerned about their health to call their healthcare provider to discuss COVID-19 testing and other possible reasons for their illness.

Again, there are no current medications to treat COVID-19, so whether you test positive or negative the healthcare provider's advice for managing symptoms will be the same.

# Accessing Trusted Resources for the Latest Information

#### Stay informed to stay ahead

During public health emergencies, business leaders need to stay informed. As COVID-19 rapidly spreads and our local communities, government and business leaders respond, finding trustworthy sources with the most up-to-date and reliable information is more important than ever.

# **CENTERS FOR DISEASE CONTROL AND PREVENTION** (CDC)

The CDC provides hundreds of resources and best practices for stopping the spread of COVID-19, including a helpful list of FAQs. Pay close attention to their latest announcements, like their guidance on cancelling or postponing any mass gatherings. Meanwhile the 'Interim Guidance for Businesses and Employers' section will be valuable to any companies planning their COVID-19 strategy.

#### **WORLD HEALTH ORGANIZATION (WHO)**

Viruses don't respect borders, which means that any successful fight against COVID-19 will take a global effort. Coordinating this response is the job of the WHO, a specialist agency of the United Nations. The World Health Organization's daily press briefings offer a reliable way to keep up with the spread of the disease, and the actions and strategies being taken to stop it across the world.

#### **NATIONAL INSTITUTES OF HEALTH (NIH)**

The NIH's website provides scientific deep-dives into how COVID-19 and similar diseases work. These resources are regularly updated in line with the latest research. Within the NIH, another good resource to follow is their sub-organization—the National Institute of Allergy and Infectious Diseases—headed by prominent immunologist Dr. Anthony Fauci.

#### **STATE AUTHORITIES**

While the fight is global, often the most relevant information for employees and employers is local. CNN has prepared a thorough list of health departments' COVID-19 websites for every state. You should also track information from your state's governor, as well as governors from any other states that may be of interest to your business (e.g., if you have a facility and employees in that state, if you have customers in other states, etc.) for any possible new regulations or curfews in your state. Many states and cities are also offering both localized health information and advice for businesses and employees affected by the novel coronavirus.

#### THE NEW YORK TIMES' CORONAVIRUS HUB

The New York Times has launched a news hub dedicated to covering the pandemic. It's free of charge and includes up-to-date news coverage, maps by regions, countries, and U.S. states, and other useful information to help you stay abreast of the latest developments.

#### **INTERNATIONAL AIR TRAVEL ASSOC. (IATA)**

Travel bans and border closures are being issued all across the globe. However, there may be reasons somebody cannot avoid traveling. In those cases, check the International Air Travel Association (IATA) website for the latest recommendations, border closures, and other restrictions.

#### **Need HR help today?**

We can help your business develop Human Capital to get to the next level, stay compliant, and allocate your time, money and technology toward growth.

# We're the best at human capital development.

