Is Your Food Company Taking the Necessary Steps In This Coronavirus Crisis?

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A Brave New Format

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What happens to our food supply if American farmers can't farm?

By Danielle Wiener-Bronner, CNN Business

Updated 2:10 PM ET, Tue March 31, 2020

American farmers are concerned.

The coronavirus pandemic is posing a threat to their livelihoods, as it is for many others across the globe. But unlike some shelf-stable goods producers, farmers have very little flexibility. They're on a strict planting and harvesting schedule and cannot ramp up or decrease production at will.

Stay updated about Coronavirus. The law is changing hourly. Do not rely on these materials without checking with counsel.

www.Dorsey.com/Coronavirus
Shelter/Stay in Place Orders

See Which States and Cities Have Told Residents to Stay at Home

By Sarah Mervosh, Denise Lu and Vanessa Swales  Updated March 30, 2020

Shelter/Stay in Place Orders

• Be aware of the essential business and minimum basic operations exemptions for your jurisdiction
  – Essential businesses should issue a letter to employees who will be required to travel to get to work including contact information for the employer

• Employees who are unable to work because of a shelter in place or stay at home order will likely be eligible for unemployment benefits

• Can vendors/suppliers be exempt in full or part?
Entering the facility

• Who can enter the facility?
• How about vendors?
• On what schedule?
• What special requirements? Hand washing? Sanitation? Cleaning?

Did you wash them?
Hand washing prevents disease.
Inside the facility
Cleaning upon a positive test

Cleaning and Disinfecting Your Facility
Everyday Steps, Steps When Someone is Sick, and Considerations for Employers

How to clean and disinfect

⚠️ Wear disposable gloves to clean and disinfect.

Clean

- Clean surfaces using soap and water. Practice routine cleaning of frequently touched surfaces.

Returning to work

• CDC and other guidelines are evolving rapidly
• People with COVID-19 who have stayed home (home isolated) can stop home isolation under the following conditions:
  • *If no test*, employee can leave home after these three things have happened:
    – No fever for at least 72 hours AND
    – other symptoms have improved (e.g., cough or shortness of breath) AND
    – at least 7 days have passed since your symptoms first appeared
  • *If will be tested*, employee can leave home after these three things have happened:
    – You no longer have a fever (without the use medicine that reduces fevers) AND
    – other symptoms have improved AND received two negative tests in a row, 24 hours apart.

Emergency Sick Leave (4/1/20)

• Applies to smaller employers (1-499 employees)
• Two weeks of paid sick leave (80 hours)
• 100% of regular rate of pay up to $511 per day and $5,110 in the aggregate
• Eligibility:
  – have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
  – are experiencing symptoms of COVID-19 and are seeking medical diagnosis
• This likely includes self-quarantine
Emergency Sick Leave (4/1/20)

• Two weeks of paid sick leave (80 hours)
• 100% of regular rate of pay up to $200 per day and $2,000 in the aggregate

• Eligibility:
  – Caring for an individual who is subject to a quarantine or isolation order, or who was advised by health care provider to self-quarantine due to COVID-19-related concerns;
  – Caring for son or daughter due to school or child care closures or unavailability; or
  – Experiencing a “substantially similar condition” as specified by the Secretary of Health and Human Services
  – Does not apply to employees who are not working because the employer does not have work for them (e.g. furlough)
Emergency FMLA (4/1/20)

• Applies to smaller employers (1-499 employees)
• Employee must be employed for 30 calendar days
  – Bill pending in U.S. House could eliminate this requirement
• Two weeks of unpaid family leave; ten weeks paid (12 total)
  – Can use two weeks of emergency paid sick leave in place of unpaid leave
• 2/3 of an employee’s regular rate of pay up to $200 per day or $10,000 in the aggregate
• Eligibility
  – Caring for son or daughter under 18 years old whose school / care is closed, or child care provider unavailable, due to COVID-19 related reasons
  – Again, does not apply where employee isn’t working
Layoff? Or Furlough?

1. Both furloughed and laid off employees are likely eligible for UI benefits (but, depends on the state in which they live)

2. Both furloughed and laid off employees are ineligible for paid leave under the FFCRA

3. Employers will be “made whole” for paid leave payments as quickly as possible

4. Potentially huge risks where furloughed employees aren’t given health benefits

5. Furlough makes it more difficult for employees to take 401(k) loans
Plant closings (or mass layoffs) and the Federal WARN Act

• Employers are only required to provide notice if a “plant closing” or mass layoff would last six months.

• Even then, the WARN Act provides exceptions where a plant closing or mass layoff is caused by unforeseen circumstances.

• Economic or supply conditions may make a temporary plant closing permanent.

• It is critical to provide notice of a plant closing or mass layoff as soon as possible and to ensure that notice complies with the WARN Act, and to take advantage of WARN Act exceptions where applicable.

• Remember the 90 day look back rule for aggregating layoffs.

• Also beware of state Mini-WARN Act requirements.
CARES Act

• Signed into law on March 27.
• If employee is laid off and rehired, they may become eligible for FMLA leave
• Employers receive employment tax retention credits for keeping employees on payroll; may lose loan forgiveness for layoffs or salary reductions
  – But, forgiveness can be regained if employees are rehired by June 30, 2020
• Advance refunds of payroll credits to businesses for paid leave under FFCRA (ok to withhold payments)
• Significant expansion of unemployment benefits available to workers (including independent contractors)
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Questions?

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