



The Families First Coronavirus Response Act: Emergency Paid Sick Leave and Expanded FMLA

Presented by
Kara Govro, JD, SPHR

Webinar 101

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- We would love to hear from you in the polls!
- HRCI & SHRM codes will be posted at the end of the event

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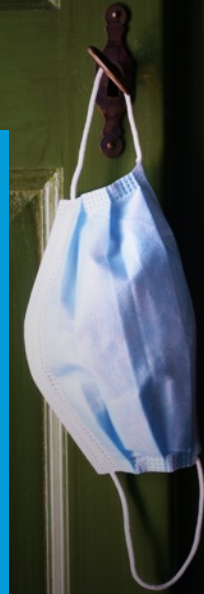
Agenda

- Emergency Paid Sick Leave
- Expanded FMLA
- Exceptions and Exemptions
- Money, Documentation, and Policies

Emergency Paid Sick Leave (EPSL)

Who does EPSL apply to?

- All private employers with fewer than 500 employees (including non-profits and religious organizations)
- Most public employers
- All employees of covered employers; there is no minimum hours or length of employment requirement
- Not independent contractors





When can EPSL be used?

1. If subject to a federal, state, or local quarantine or isolation order affecting the employee (cannot be used during a furlough or business closure)
2. When advised by health care provider to self-quarantine because the provider knows or believes the employee has COVID-19 (not just because they are high risk)
3. To seek a diagnosis for symptoms of COVID-19

When can EPSL be used?

4. To care for someone who is subject to a government isolation or quarantine order or who is advised to quarantine by their healthcare provider and *requires the employee's care*

The relationship must be one that would create an expectation of care. That said, don't be the relationship police.



When can EPSL be used?

5. When an employee is unable to work because they need to care for their child whose school or place of care has been closed, or whose care provider is unavailable because of COVID-19, but only if no other suitable person is available to care for the child during the leave

This doesn't mean that if both parents are working from home that neither get leave, just that both parents don't get to take leave to care for the same child at the same time.



Does it have to be used all at once?

No. It can be used in chunks (e.g., a week now, a week three months from now) so long as the reason it was taken for no longer exists.

It can also be used intermittently if:

- The employer agrees *and*
- The person is teleworking *or*
- The person is taking leave for childcare, not illness





Who counts as a child?

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age.

The definition includes children 18 years of age or older who are incapable of self-care because of a mental or physical disability.

If employees take leave to care for a child who is 15 or older, they should provide a statement or otherwise affirm that there are special circumstances.



How much do we pay employees?

- 100% of their regular pay, up to \$511 per day, when they are taking care of themselves (total max of \$5,110)
- 2/3 of their regular pay, up to \$200 per day, when they are taking care of someone else who is sick or quarantining or taking care of a child (total max of \$2,000)



How do we calculate regular rate of pay?

Total compensation over the last six months
(*including* commissions, non-discretionary bonuses, piece rate payments, and tip credits, but *not including* overtime premiums, tips in excess of the employee's base wage, or paid leave)

divided by

Total hours actually worked over the last six months
(not including any leave time)



Is this program forever?

EPSL (and EFMLA) are only available through December 31, 2020 – at least for now.

Leave does not roll over into the new year and employers don't have to pay it out if it's unused.

Emergency Family and Medical Leave Expansion Act (EFMLA)

Who does EFMLA apply to?

- All private employers with fewer than 500 employees (including non-profits and religious organizations)
- Most public employers
- All employees who have worked 30 or more calendar days for an employer
- Not independent contractors





When can EFMLA be used?

Leave can be taken when an employee is unable to work because they *need* to care for their child whose school or place of care has been closed, or whose care provider is unavailable because of COVID-19. (Same as reason #5 for EPSL)

You are welcome to discuss an employee's level of need with them, but ultimately we recommend deferring to their judgment rather than risk a lawsuit.

A close-up photograph of a child's hands typing on a silver laptop keyboard. The child is wearing a white long-sleeved shirt with a cartoon bear pattern. The laptop is on a wooden desk.

If the child's school has gone online, is it “closed”?

Yes. If the *physical location* where the child receives instruction or care is now closed, then it's “closed” for purposes of EPSL and EFMLA, even if some or all instruction is being provided online or through some other kind of “distance learning.”



Examples of EFMLA requests

- Teenager is home for the summer and won't have a summer job as expected
- Middle-schoolers have their YMCA camp cancelled
- Two parents are working from home with a 3-year old
- Two parents are working from home with four kids under 12 during the school year, and school is now online
- A mother is scheduled to come back from maternity leave but cannot find a newborn daycare or babysitter

JUL

Appreciate the little moments that's life happening!

M	T	W	T
01	02	03	04
08	09	10	11
16	17	18	
	24	25	
30	31		

How much EFMLA do employees get?

- 12 weeks at their usual number of hours per week; use a six-month lookback if their schedule is irregular
- If leave is used intermittently, count hours taken (a 40-hour per week employee has 480 hours to use)
- EMFLA is **not** in addition to traditional FMLA; if the employee has already used some FMLA leave in their 12-month tracking period, EFMLA will be reduced by that much, and weeks used for EFMLA will count against future use of FMLA in their 12-month tracking period



How much do we pay for EFMLA?

- First 10 days are unpaid, but the employee can *choose* to use EPSL or other paid leave available during that time
- After 10 days, 2/3 of their regular pay, up to \$200 per day
- Maximum of \$10,000 total
- After the 10 unpaid days, employers can require employees to use up any available paid time off that would normally be available for childcare (e.g., vacation or personal time but not sick leave)
- If forcing PTO use, employees must receive full pay



How does intermittent leave work?

- Track it like other paid time off that you'd count by the minute or hour
- Employees are not entitled to it – you must agree
- The DOL encourages negotiation
- Many parents will be able to do some work – consider whether some is better than none
- If you don't work with employees, you may lose them

Do employees get health benefits while on leave?

Yes. Health benefits must continue as usual while employees are on leave.

Employees can be required to make their usual premium payments, even if they are not getting paid enough to cover it through payroll.

<https://www.dol.gov/agencies/whd/factsheets/28a-fmla-employee-protections>



POLL

**Which best reflects your outlook
for your business over the next
three months?**

POLL

**How often have you needed help
with COVID-19 legislative
questions and issues?**

Exceptions and Exemptions



Leaves don't apply if you don't have work available, such as during a furlough or business closure



Employers *may* exempt health care workers from either type of FFCRA leave, but are not required to. The DOL encourages flexibility.

Exempt Health Care Workers – Definition

Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

This includes any individual employed by an entity that contracts with any of the above to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. Child welfare workers and service providers also been added to the list.

Exempt Emergency Responders - Definition

Anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.

This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

Small Business Childcare Exemption Number One

Employers with fewer than 50 employees may be exempt if:

Providing leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause it to cease operating at a minimal capacity.



Small Business Childcare Exemption Number Two

The absence of the employee or employees requesting leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities.

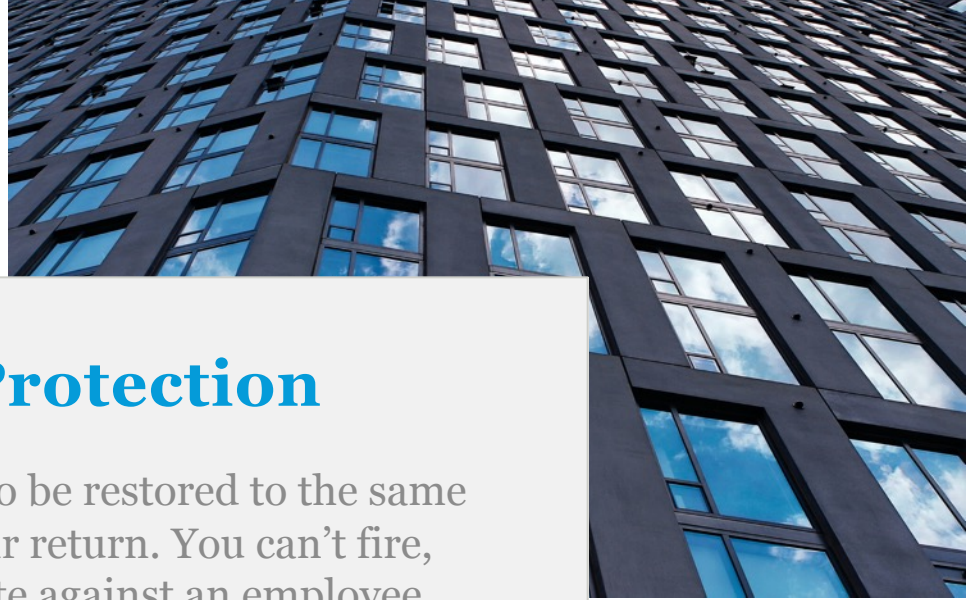


A photograph of several rows of red chairs with black frames, likely in a classroom or meeting room. The chairs are arranged in a perspective that recedes into the background.

Small Business Childcare Exemption Number Three

There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business to operate at a minimal capacity.

Don't send paperwork to the DOL about exempting yourself, but do create and keep solid documentation.



Exceptions to Job Protection

Generally, employees are entitled to be restored to the same or an equivalent position upon their return. You can't fire, discipline, or otherwise discriminate against an employee for taking leave, filing a complaint, or participating in a proceeding.

But an employee is not protected from an employment action – like a layoff – that would have happened even if they were not on leave.

The “key employee” exemption from traditional FMLA also applies.

Money, Documentation, and Policies (oh my!)

How to Pay for Leave

Employers will receive 100% reimbursement for paid leave pursuant to the Act that was provided on or after April 1, 2020.

- Take the amount spent on leave off the top of your payroll tax bill
- Employers can apply for an advance if necessary
- Health insurance costs are also included in the credit
- Employers face no payroll tax liability

Google “IRS FFCRA FAQ” for instructions on how to apply the tax credit

Documentation for EPSL and EFMLA

You **cannot require** more information than this (like a doctor's note). You need this documentation to support your claim for a tax credit. Your request form should ask for:

- The employee's name
- The date or dates for which leave is requested
- A statement of the reason the employee is requesting leave; and
- A statement that the employee is *unable to work, including by means of telework*, for such reason.

For quarantine orders or advice, also get the name of the governmental entity or the name of the health care professional advising isolation or quarantine. If the employee is caring for someone else, that person's name and relation to the employee.

For school closing or child care provider unavailability, get the names and ages of the children, name of the school or place of care that is closed, and a representation that no other person will be providing care for the child during the leave. If the child is 15 or older, employees should verify that there are special circumstances.

DOL and IRS Resources

DOL Questions and Answers

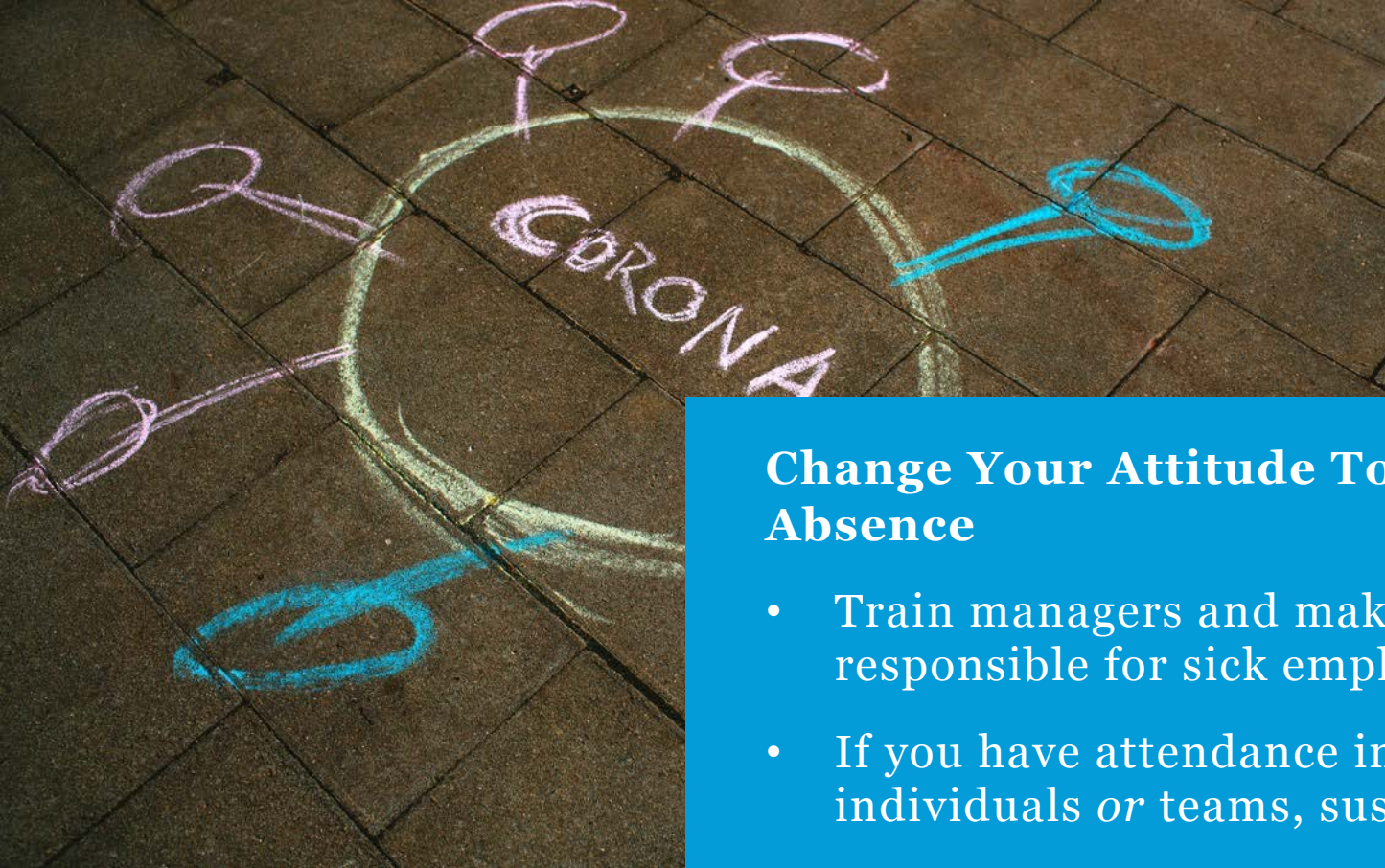
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Google “FFCRA questions and answers”

Also watch [irs.gov/coronavirus](https://www.irs.gov/coronavirus) (mix of resources)

Google “IRS FFCRA FAQ”

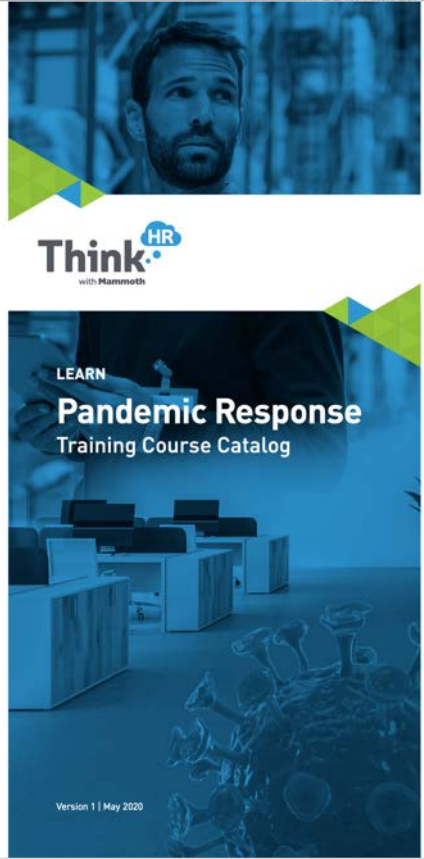
Google “IRS Form 7200” for the form to request an advance and instructions



Change Your Attitude Toward Absence

- Train managers and make them responsible for sick employees
- If you have attendance incentives for individuals *or* teams, suspend them
- Make your call-out policies reasonable so employees don't show up sick just to avoid violating them

Pandemic Response Training Course Catalog



The Pandemic Response Training Course Catalog includes nine courses designed

uncertainty and crisis can set you, on up for success.

Managing in a Crisis

Duration: 20 minutes | **Target Audience:** HR, Managers
Effective leadership is needed during the difficult times of a company crisis. Discover ways of managing in a crisis, including how to manage difficult conversations and crisis communications.

Becoming a Successful Collaborator

Duration: 30 minutes | **Target Audience:** All Employees
Collaboration is a necessary skill in today's labor market. Learn about the meaning of collaboration, teamwork, and best practices for being a successful collaborator. You will also examine conflict management styles that work for you and your team.

Forging Ahead with Perseverance and Resilience

Duration: 30 minutes | **Target Audience:** All Employees
Distractions, information overload, demanding pace, and accompanying stresses can often pull us off task. Developing personal resilience, adaptability, and perseverance can help. Discover how to build a work-life balance, sharpen your focus, and face and overcome setbacks.

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Contributing as a Virtual Team Member

Duration: 20 minutes | **Target Audience:** All Employees
Learn how to develop the skills you need to show leadership and be an effective member of a virtual team. Explore useful personal traits, strategies to stay connected, ways to manage your time, and how to overcome common challenges.



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Return to Work Checklist

Return to Work Checklist



Posting and Policies

- Post the Families First Coronavirus Response Act (FFCRA) poster in a visible place. Where employees will remain working from home, send by email or post to Company intranet or employee website.
- Review and revise hiring practices and policies:
 - Have staffing needs changed?
 - Do you need to change benefits or pay to become more competitive?
 - Use remote interviewing techniques as much as possible.
 - Update onboarding practices.
 - If you are recalling only some workers that were laid-off or furloughed, ensure your practices for determining who to recall do not discriminate against any group of employees.
- Review and revise leave policies:
 - Know how the FFCRA affects your previous policies and practices.
 - Consider implementing PTO/vacation rollovers, grace periods, and revise guidelines for usage if vacation is forfeited if not used by year end.
 - Consider implementing or revising bereavement leave policies.
 - Ensure that all employees have access to and an understanding of all leave policies that may apply to them.
- Review and revise work from home and child care policies.
- Update work travel policies in light of any new orders in your state and any new practices being implemented in the workplace to keep employees/customers safe.
- Review rehire/reinstate provisions for your benefit policies (eligibility/waiting periods).
- Distribute all new or revised policies to all employees.

Health and Safety

- Explain company policies and procedures related to illness, cleaning and disinfecting, and work meetings and travel.
- Educate employees on how to reduce the spread of COVID-19 at home and at work (follow Centers for Disease Control and Prevention recommendations).
- For employees returning to a worksite, make sure they understand what's expected of them in the workplace. For example, must they wear masks? Will masks, gloves, hand sanitizer and other items be provided? Are workplace hours different? Will you be taking employees' temperatures each day when they arrive? Is teleworking or staggered shift work allowed/encouraged?

- Ensure that all employees who are currently ill or have contact with an ill family member stay home (follow CDC recommendations for length of time):
 - Do not return to work with symptoms.
 - Quarantine for 14 days.
- If an employee becomes sick at work, send them home.
- Promote safe social distancing in the workplace by encouraging employees to:
 - Remain at least 6 feet away from each other.
 - Email, message, call, or video call rather than meeting face to face.
 - Clean computer equipment, desktops, phones, and workstations often.
- Provide hand sanitizer, cleaning supplies, and masks (where appropriate/necessary) and no-touch disposal receptacles.
- Discourage handshaking.
- Place posters throughout the business to encourage social distancing and hand hygiene.

Best Practices

- Ensure your workplace cleaning company is up to date on current methods of safely removing COVID-19 hazards.
- Communicate frequently and as transparently as possible with employees:
 - Provide expected timelines for recalling/rehiring employees.
 - Provide returning employees with recall or offer letters.
- Train managers on dealing with employees that may face increased personal challenges during this time, such as bereavement and loss, childcare and school-cancellation challenges, financial stress, and other dependent care and support needs.
- Offer flexibility wherever possible and adjust workloads to be reasonable.
- Be prepared to quickly investigate and stop discriminatory speech or acts in the workplace.
- Consider contracting with an employee assistance program (EAP) if you do not currently have one.
- Designate a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace.
- Develop a plan to operate if absenteeism spikes or if another lockdown occurs in the future:
 - Implement a plan to continue essential business functions.
 - Implement flexible work schedules and leave policies.
 - Cross-train employees on performing essential business functions.
- Develop emergency communications plans, including a way to answer workers' concerns.
- Communicate your appreciation and welcome employees back to work.

Quick Start Guide: Deciding Who to Recall from Furlough or Layoff

Quick Start Guide

DECIDING WHO TO RECALL FROM FURLOUGH OR LAYOFF

Deciding which employees to return to the workplace following a furlough or temporary layoff, and in what order you'll call them back, will require an individualized analysis for each organization. For those who aren't sure where to start, we provide this as a starting point.

Company Needs

First, think about overall operations in the future. How busy do you expect to be? It's best to slightly underestimate need; if employees stop their unemployment insurance (UI) claims only to be sent home again after a few days, their continuity of income may suffer. It's also easier administratively if you only need to furlough and then recall an employee once. And, you can always recall more employees once you're certain the need exists.

Think about whether there are parts of the products and services you offer that will be more or less important in the future. For instance, a bakery might have very little event catering in the next few months, but may need more delivery drivers. If your company went through the Great Recession, how were you impacted by the economic downturn at that time? Which departments and types of jobs were most essential as business resumed? Which were least essential?

Forecasting future staffing needs will likely require a lengthy discussion amongst the organization's leaders as well as a willingness to change course as business – and the economy itself – fluctuates.

Individual Employee Selection

Once you've settled on a general staffing plan, you'll need to decide which employees you want to return first. Establish one or more criteria for return. You don't have to adhere perfectly to the criteria you choose, but the more closely you follow your system the easier it will be to explain decisions to employees (or government agencies or lawyers) who may be unhappy with your approach. If you deviate from your system, be sure to take good notes on why you did so. Some potential criteria for employee selection include:

- **Unique or difficult-to-replace skill sets.** Business needs will likely dictate when you bring back individuals with special skills, but you may also want to make a point to reach out to these people sooner than later to ensure that they will be available when you need them.
- **Overall performance.** Preferably, performance-based decisions will be based on written documentation you already have, such as performance reviews, production metrics, disciplinary actions, or a history of attendance/tardiness issues. If performance – whether good or bad – has not been previously documented but will still be the basis of your decision, you should take the time to create that documentation now.



layoff decision is a simple, objective reason that can be documented. If not, this is not always in the employer's best interest and may not correlate with the skills you need most in the

outside of their usual assignments. These are uncertain tasks such as their sleeves and clean the bathroom or make a delivery. Quality based on past actions or by asking employees if they may be significantly outside their job description.

mix of strengths but are not standouts in any area. Document your reasoning. All criteria used should be

ing federally protected classes is illegal: race, color, religion, sex, age, national origin, citizenship status, marital status, and disability. Be sure to check state law.

Discrimination in particular that employees may fall into.

protects employees who are 40 or older. Older employees may be disproportionately impacted. Do not decide to eliminate the highest earners from your workforce as they disproportionately impact those over 40. If you are considering finalizing your decisions.

om the virus by not inviting them back. This should be done if an employee of any age tells you that they need an accommodation. Consider that request. Failing to bring an employee back with the best intentions – will be a clear case of age

ore employees, a similar state law may apply and cover

employers trying to protect their employees. But it is not based on their known or perceived disabilities and the communication you use to offer employees a return to work. They want to discuss safety issues or accommodations. Do not do based on their health – that decision is between

you should engage in the Americans with Disabilities Act. This decision also must not affect your decision about whether to

ore employees, a similar state law may apply and cover

ected leave, whether recently or in the distant past, does not constitute a reliability problem (for instance), you would have otherwise, will constitute retaliation. This applies to state-mandated sick leaves, leaves under the Family and Medical Leave Act (FMLA) and Emergency FMLA under the number of leaves that are protected by state law, such

gh it may feel like a mass furlough is the perfect solution, don't assume that their motives won't be questioned. Document why you chose them, as well as why each employee was chosen before

ou time to communicate that plan to everyone as the plan evolves. Don't communicate with the other half, they'll hear about it. Send a message from the outset and put people's mind at

all, you should communicate that decision to each of your employees. Stringing someone along before bringing them back will result in ill-will. In the era of COVID-19, when many businesses will be fighting to rebuild their workforce, especially toward those who will no longer be



Comply

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Dozens of COVID-19 resources like FAQs, policy templates, commentaries, quick guides, and more.



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Experts standing by to answer your questions. Submit from within the platform or simply call.



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Learning management system to deliver training on a variety of topics.

Hundreds of employee training courses, including our Pandemic Response Course Catalog.



Insight

Communications providing compliance news, analysis, and legislative updates.

Review law alerts library and access webinar replays and presentation slides.



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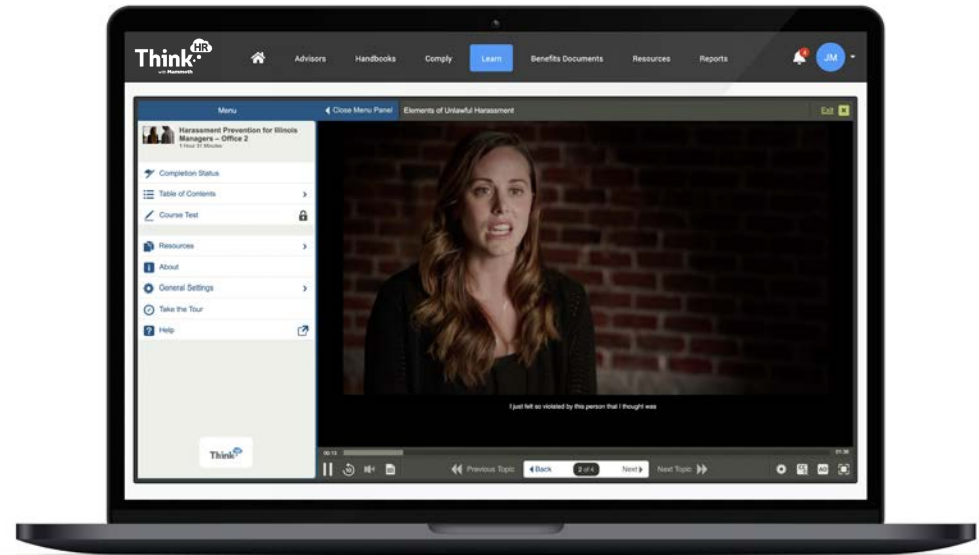
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Workplace Harassment Prevention (WHP)

Compliant Courses

- New York State (+Spanish)
- New York City (+Spanish)
- California (+Spanish)
- Delaware (+Spanish)
- Illinois (+Spanish)
- Connecticut (+Spanish)

Will include compliant courses for all future state anti-harassment training mandates.



POLL

I would like to learn more about...

Please take the quick post webinar survey as you leave today's webinar.

Thank You



If you attended the *full* 60-minute webinar, you may use the following recertification codes:

This program is valid for 1 PDC toward SHRM-CP and SHRM-SCP recertification.

This activity has been approved for 1 HR (General) recertification credit hours toward aPHR™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®).



Recertification credits are only available to those who attend the live event in its entirety.

1 HR (General) Credit

1 PDC Activity Credit