

New Year, New Preparedness and Response Plan Requirements

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Though employers have been enforcing their COVID-19 Preparedness and Response Plans for many months, recent legislation and public health guidance necessitate an update and provide some unexpected room for employer discretion.

The sources of change:

- The Centers for Disease Control and Prevention (“CDC”) empowered local and state public health agencies to endorse shortened quarantine periods;
- Enrolled Senate Bill 1258 amended Enrolled House Bill 6032, adjusting Michigan law to permit employers to take advantage of the shortened quarantine and isolation periods and loosening the close contact screening inquiry; and
- The Consolidated Appropriations Act, 2021, extended the availability of the payroll tax credit to employers who continue to approve paid leaves of absence for the reasons described in the Families First Coronavirus Response Act (“FFCRA”).

When the CDC outlined the alternatives to the traditional 14-day quarantine standard in early December 2020, the Michigan Department of Health and Human Services endorsed the 10-day option, in accordance with which an employee may return to work 10 days after their last close contact with an individual diagnosed with COVID-19 so long as the employee reports no clinical evidence of COVID-19, continues to monitor for symptom development, and implements mitigation strategies (e.g., mask use and social distancing) throughout all 14 days. However, Enrolled House Bill 6032 prevented employers from permitting exposed employees to get back to work sooner because it explicitly mandated the 14-day quarantine period. Enrolled Senate Bill 1258 clarifies this inconsistency, defining the requisite quarantine period as that “prescribed” by the CDC. In short, employers may now abide by the 10-day quarantine period, if they choose.

Enrolled Senate Bill 1258 facilitates two additional modifications to employers’ Plans: (1) an employee diagnosed with COVID-19 may evidence their satisfaction of the return-to-work requirements by submitting a release from their health care provider, in lieu of specific completion of the symptom-based or test-based strategies for the discontinuation of isolation; and (2) employers must exclude from the worksite employees who have experienced close contact with a confirmed case of COVID-19, but they no longer have to ask employees about close contact with individuals

merely symptomatic of COVID-19.

Lastly, through the new stimulus package, formally dubbed the Consolidated Appropriations Act, 2021, Congress continued the availability of payroll tax credits under the FFCRA through March 31, 2021. Nonetheless, the FFCRA itself expired on December 31, 2020. This means that employers may voluntarily pay employees for leave reasons covered by the FFCRA and receive reimbursement from the federal government. It is important to note that the payroll tax credit is the only means of reimbursement continued, and any paid leave provided to employees must meet the eligibility standards under the FFCRA to warrant receipt of the tax credit. For example, if an employee exhausted their 80 hours of paid leave available under the Emergency Paid Sick Leave Act (“EPSLA”) component of the FFCRA in 2020, the employee is ineligible for paid leave for any of the EPSLA qualifying reasons in 2021, and an employer would be denied the tax credit if sought.

Before updating their Plans, employers must answer the following questions:

1. Does the Company want to continue to require the 14-day quarantine period for close contact or take advantage of the CDC’s 10-day quarantine period option?
2. During the daily screening, does the Company want to ask about close contact with symptomatic individuals or just close contact with diagnosed individuals?
3. Does the Company intend on participating in the voluntary extension of the FFCRA through March 31, 2021?

Bodman’s Workplace Law Group updated its template COVID-19 Preparedness and Response Plans. Employers should contact any member of **Bodman’s Workplace Law Group** to discuss their COVID-19 procedures and their customization of the templates. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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