

# HUMAN RESOURCES AND COVID-19

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# Outline

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- Introduction- COVID-19
- Employee Wellness
- COVID-19 and the ADA, Rehabilitation Act, and the EEO
- Furloughs and Layoffs
- FLSA
- Vaccinations
- Conclusion

# COVID-19

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- Pandemic- aerosol driven illness with symptoms ranging from mild (or no symptoms) to severe illness with long-term impacts, and death.
- 2.5 million cases in the U.S.
- 212,000 U.S. deaths and growing

# CITY ATTORNEY & COVID

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- Temperature checks
- Masks?
- Leave? Sick, vacation
- Telecommuting?
- Furloughs?
- The one word we use too often?

# CITY ATTORNEY & COVID

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# ATTORNEY/COUNSELOR AND TEACHER?

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# Who is affected by COVID-19?

- Everyone, but the CDC says the following are more at risk for COVID-19:
  - Adults over 65
  - People with pre-existing medical conditions
    - Diabetes
    - Obesity
    - Lung and Heart Disease (asthma)
  - Racial and Ethnic minorities
  - Pregnancy and Breastfeeding

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# ADA and EEO Challenges

- Can and should the At-Risk groups be treated differently?
- NO!
- COVID-19 does not waive the ADA and EEO laws that protect employees from discrimination and harassment.

# Employee Wellness

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- Screening
- Taking Temperatures (Wello)
- Washing hand
- Masks and Protective Clothing
- What do we do if protective measures fail?
  - Close Contact?
  - Exposure, Quarantine, and Isolation
  - Notice (HIPAA)

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# COVID-19: Quarantine vs. Isolation

**QUARANTINE** keeps someone who was in close contact with someone who has COVID-19 away from others.



**If you had close contact with a person who has COVID-19**



- Stay home until 14 days after your last contact.



- Check your temperature twice a day and watch for symptoms of COVID-19.



- If possible, stay away from people who are at higher-risk for getting very sick from COVID-19.



**ISOLATION** keeps someone who is sick or tested positive for COVID-19 without symptoms away from others, even in their own home.



**If you are sick and think or know you have COVID-19**



- Stay home until after
  - At least 10 days since symptoms first appeared **and**
  - At least 24 hours with no fever without fever-reducing medication **and**
  - Symptoms have improved



**If you tested positive for COVID-19 but do not have symptoms**



- Stay home until after
  - 10 days have passed since your positive test



If you live with others, stay in a specific “sick room” or area and away from other people or animals, including pets. Use a separate bathroom, if available.

[cdc.gov/coronavirus](https://cdc.gov/coronavirus)

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# COVID-19 and the ADA, the Rehabilitation Act and other EEO laws

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- ADA (Americans with Disabilities Act), 42 U.S.C. § 12101 *et seq.*; enforcing regulations at 29 C.F.R. Part 1630.
- ADA Amendments Act of 2008.
- Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, procedural regulations at 29 C.F.R. Part 1614.
- Section 504 of the Rehabilitation Act of 1973, Fair Labor Standards Act- Department of Labor
- Family Medical Leave Act
- Age Discrimination Employment Act
- Whistleblower Act
- Equal Pay Act of 1963
- FFCRA: Families First Coronavirus Response Act –Employee paid leave rights

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# FFCRA

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- Families First Coronavirus Response Act: Employee Paid Leave Rights:
  - Covered Employers
  - Qualifying Reasons for Leave
  - Duration of Leave
  - Calculation of Pay

# ADA

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- Disability-Related Inquiries and Medical Exams
- Confidentiality of Medical Information
- Hiring and Onboarding
- Reasonable Accommodations
- Pandemic-Related Harassment
- Return to Work
- Age
- Caregivers/Family Responsibilities
- Pregnancy

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# WHAT IS A DISABILITY?

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- Physical or mental impairment that substantially limits one or more Major Life Activity
- Record of having such impairment
- Being regarded as having such an impairment

# DEFINITIONS

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- Physical or mental impairment- any physiological, mental, or psychological medical condition or disorder
- Major Life Activity- self care, seeing, hearing, walking, eating, sleeping, working, reading, concentrating, thinking, communicating, and interacting with others (and all bodily systems and functions)

# WHO IS A QUALIFIED INDIVIDUAL?

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- With or without accommodation can perform all Essential Job Functions
- EJJ= fundamental job duties of the employment position, excluding any “marginal functions”
- Attendance, stress, professionalism, temper control, rules adherence?

# WHAT DO YOU HAVE TO DO?

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- Reasonable accommodation to perform EJP's
- Reasonable?
- Undue burden?
- Interactive Process
- Cannot discriminate
- Or retaliate

# REASONABLE ACCOMMODATION?

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- Modification of the work environment
  - Manner in which job duties are performed
  - Characteristics of the work
- Adjustments that enable employee to enjoy equal benefits and privileges as non-disabled employees
- E.g. move office, accessibility, schedule, reassignment, telecommuting, “stress-free” work

# ADA

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- The pandemic is not an excuse to discriminate.
- Employers cannot discriminate against High-Risk employees
- Harassment is prohibited, even if done out of fear of COVID-19
- Protected classes include age, disability, family, GINA, race, or other prohibited bases.

# ADA and EEO

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- Best way to avoid any problems with the EEOC or ADA?
- TREAT EVERY EMPLOYEE THE SAME!!!!

# Furloughs and Layoffs

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- Policy?- Select Employees for Layoff
- Avoid Adverse Action/Disparate Impact
- Older Workers Benefit Protection Act (OWBPA)
- Determine Severance Packages and Additional Services
- Alternative to Layoffs
- Law providing for Reinstatement: FMLA and USERRA

# FLSA

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- Fair Labor Standards Act:
  - Opportunities
  - Challenges
  - Schedule Flexibility
  - Telecommuting
  - FLSA Wage and Hour Compliance
  - EEO

# Vaccinations

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- Can they be mandatory?
- Should they be mandatory?
- COVID-19 test vs. Antibody test
- Authority of Employer to require vaccine
- Economic Pressures
- Texas atmosphere towards vaccines

# Lucy the Librarian

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# Steve the Scaredy Cat

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# Harry the HR Specialist

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# CONCLUSION

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- Be reasonable
- Balance positive and negative
- Be consistent
- Thank you!





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