

# Benefits BULLETIN

2nd Quarter 2020

Benefits Tips Brought to You by AP of California, LLC

*In This  
Issue*

PAGE 1

Preparing Your Workplace  
for a COVID-19 Outbreak

PAGE 2

No Statute of Limitations Applies  
for ACA Pay or Play Penalties

PAGE 3

Deadline for Using New  
Form I-9 Quickly Approaching

## Preparing Your Workplace for a COVID- 19 Outbreak

As the number of reported cases of the coronavirus disease 2019 (COVID-19) continues to rise, employers are increasingly confronted with the possibility of an outbreak in the workplace.

Employers are obligated to maintain a safe and healthy work environment for their employees, but are also subject to a number of legal requirements protecting workers. For example, employers must comply with the Occupational Safety and Health Act (OSH Act), Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA) in their approach to dealing with COVID-19.

### What Is COVID-19?

COVID-19 is caused by a member of the coronavirus family that's a close cousin to the SARS and MERS viruses that have caused outbreaks in the past.

Symptoms of COVID-19 include fever, runny nose, cough and trouble breathing. Most people develop only mild symptoms. But some—usually people with other medical complications—develop more severe symptoms, including pneumonia, which can be fatal. The incubation period for COVID-19 is from two to 14 days.

---

*Initially detected in Wuhan, China in late 2019, the first case of COVID-19 in the United States was reported on Jan. 21, 2020. Since then, the number of U.S. cases continues to grow daily.*

---

### How Does COVID-19 Spread?

The available information about how the virus that causes COVID-19 spreads is largely based on what is known about similar coronaviruses. COVID-19 is a new disease and there is more to learn about its transmission, the severity of symptoms it causes, and to what extent it may spread in the United States.

According to the Centers for Disease Control and Prevention (CDC), the virus is thought to spread from person

to person, between people who are in close contact with one another (within about six feet) or through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby, or possibly be inhaled into the lungs.

It may also be possible for a person to contract COVID-19 by touching a surface or object that has been contaminated with the virus and then touching their own mouth, nose or eyes, but this is not thought to be the main way the virus spreads.

People are thought to be most contagious when they are most symptomatic. Some spread might be possible before people show symptoms. There have been reports of this occurring, but this is not thought to be the main way the virus spreads.

### Preventing a Workplace Outbreak

Whenever a communicable disease outbreak is possible, employers may

This article is intended for informational purposes only and is not intended to be exhaustive, nor should any discussion or opinions be construed as professional advice. Readers should contact a health professional for appropriate advice. © 2020 Zywave, Inc. All rights reserved.



# Benefits BULLETIN

need to take precautions to keep the disease from spreading through the workplace. It is recommended that employers establish a written policy and response plan that covers communicable diseases and is readily available to distribute throughout the workplace.

Employers can require employees to stay home from work if they have signs or symptoms of a communicable disease that poses a credible threat of transmission in the workplace, or if they have traveled to high-risk geographic areas, such as those with widespread or sustained community transmission of the disease. When possible, employers can consider allowing employees to work remotely. Employers may require employees to provide medical documentation that they can return to work.

Employers can consider canceling business travel to affected geographic areas and may request that employees notify them if they are traveling to these areas for personal reasons.

## Compliance Considerations

There are several legal considerations that employers should keep in mind when implementing and administering a communicable illness policy, including:

- OSH Act—Employers should continue to monitor the development of COVID-19 and

could be at risk of exposure. Additionally, establishments that are required to complete an OSHA 300 log should be sure to include all COVID-19 infections that are work related.

---

*Employers must maintain a safe work environment for employees. They may require employees to stay home from work if they are at risk of spreading the disease.*

---

- ADA—The ADA protects employees from disability discrimination. Employers are expected to make their best efforts to obtain public health advice that is appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.
- FMLA—A disease like COVID-19 may qualify as a serious health condition under the FMLA if it involves inpatient care or continuing treatment by a health care provider.

## Communicating With Employees

As part of their efforts to prevent the spread of COVID-19 in the workplace, employers should consider communicating information about the disease to employees. Contact AP of California, LLC for additional information on preparing your workplace for a COVID-19 outbreak.

## No Statute of Limitations Applies for ACA Pay or Play Penalties

The IRS Office of Chief Counsel recently released a [memorandum](#) clarifying that there is no applicable statute of limitations on pay or play penalty assessments under the Affordable Care Act (ACA). This means that there is no time limit for the IRS to issue a penalty assessment for employers that do not comply with the pay or play rules for a given year.

## What Are the Pay or Play Penalties?

The ACA's employer shared responsibility rules require applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. These rules, also known as the "employer mandate" or "pay or play" rules, impose penalties on ALEs if one or more of their full-time employees obtain an Exchange subsidy (either because the ALE does not offer health coverage, or offers coverage that is unaffordable or does not provide minimum value).

The IRS uses Forms 1094-C and 1095-C filed by ALEs, in conjunction with Forms 1040 filed by individuals, to determine an ALE's pay or play penalty liability, if any, for each year. If the IRS determines that a pay or play penalty is owed, it will send Letter 226-J, followed by Notice CP



# Benefits BULLETIN

220J, to the ALE to propose and assess the penalty. These penalties are subject to IRS lien and levy enforcement actions. Interest will accrue from the date of the notice and demand, and continue until the ALE pays the total penalty balance due.

## What Does This Mean for Employers?

In its memorandum, the IRS Office of Chief Counsel clarified that there is no statute of limitations on pay or play penalty assessments. A statute of limitations generally sets a maximum time limit for parties to take legal action based on an alleged violation or offense.

---

*There is no time limit for the IRS to assess penalties for employers that do not comply with the pay or play rules for a given year.*

---

Because no statute of limitations applies, the IRS can assess pay or play penalties for an ALE's noncompliance many years after the violation occurred. As a result, ALEs will want to be sure that they are complying with these rules for each applicable year.

## Deadline for Using New Form I-9 Quickly Approaching

The U.S. Citizenship and Immigration Services (USCIS) recently [published](#) a new version of [Form I-9: Employment Eligibility Verification](#). The previous version of this form expired Aug. 31, 2019, but USCIS advised employers to continue using the expired form until a new form was made available.

### Transition Period

With the new form, USCIS has also clarified that employers have the option of initially using either the expired or the new Form I-9. However, employers must begin using the new form exclusively by **May 1, 2020**.

### What's Included on the New Form?

The paper version of the new form has not changed, but the electronic form shows a few minor changes. Specifically, the new form:

- Lists additional countries in the "country of issuance" field
- Clarifies who can act as an authorized employer representative
- Updates the USCIS website address
- Clarifies the list of acceptable documents
- Updates the process for

- requesting paper versions of the form
- Updates the privacy notice from the Department of Homeland Security

### Employer Compliance Steps

All U.S. employers must properly complete Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. Additional compliance steps include the following:

- Both employees and employers (or authorized representatives of the employer) must complete the form.
- The list of acceptable documents can be found on the last page of the form.
- Employers must retain Form I-9 for a designated period and make it available for inspection by authorized government officers.
- Only employers and employees in Puerto Rico can complete the Spanish version of Form I-9.

Employers may continue using the prior version of the form (Rev. 07/17/2017 N) until April 30, 2020. For more information, contact AP of California, LLC today.