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2020 Safety Webinar

SPEAKERS

- Lauri Cochran - Comprehensive Risk Management, LLC
- Meredith Ullman - Ross, Brittain & Schonberg Co., LPA
- Lynn Schonberg - Ross, Brittain & Schonberg Co., LPA

TOPICS

Safety and Employment Issues Related to COVID-19

May 20, 2020

COVID-19 and BWC Impacts

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COVID-19 and BWC Impacts

- Dividends
 - Impact on Future Retro Refunds
- True Up
 - Manual 8871
 - Teleworking
- Program Reporting Requirements
- Audits
- Installment Plans for 2020 Rate Year

BWC Dividends

- Dividends mailed in April
 - Installment deferral until June 1
 - Dividend applied to existing balances
- Dividend equal to 100% of premium paid for 2018 policy year
 - No future assessments or refunds for this period

True Ups

- Payroll true-ups due by August 15, 2020
 - For 7/1/19 – 6/30/20 policy year
- New code available – 8871 Clerical Telecommuter
 - Available for use as of March 15, 2020 until the Stay at Home Order is lifted

Program Requirements

- All safety training has been waived for the 7/1/19 – 6/30/20 policy year
- DFSP annual report deadline extended to 6/1/2020
- Application for entrance into any programs for the 7/1/20 policy year, extended to 6/30/2020

Audits

- BWC audit requests previously received
- No in person audits
- You may receive a request for an electronic audit

2020 Installment Plans

- Installment plans for the 7/1/2020 policy year mailed in early May
- BWC reduced all payroll for all policies by 20%
- This can and should be adjusted if necessary

COVID-19 – Implications on OSHA and Workers' Compensation

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Presented By:

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COVID-19 AND OSHA

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- OSHA 300 LOG – To Record or not to Record?
- OSHA Training Requirements during Covid-19

COVID-19/ OSHA/ Logs

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- Covid-19 is a recordable illness if:
- The case is a confirmed case of Covid-19 per CDC guidelines.
- The case is work-related per 29 CFR Section 1904.5.
- The case involves one or more of the general recording criteria under Section 1904.7

COVID-19/ OSHA/ Logs

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- Recording cases of COVID-19
- Industry type:
 - Healthcare Industry, Emergency Response Organizations and Correctional Institutions
 - Other Industry

COVID-19/ OSHA/ Logs

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- Health Care, Emergency Services and Corrections Institutions:
- Must continue to make work-relatedness determinations!

COVID-19/ OSHA/ LOGS

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<https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

Questions regarding OSHA 300 log?

COVID-19/ OSHA/ LOGS

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As of May 26, 2020, the standard just discussed will be rescinded pursuant to a directive issued on May 19, 2020.

COVID-19/ OSHA/ LOGS

As of May 26th and until further notice OSHA will enforce recordkeeping requirements of 29 CFR Part 1904 for ALL EMPLOYERS according to specific guidelines.

COVID-19/ OSHA/ LOGS

In order to determine if an Employer has complied with making a reasonable work determination CSHOs will look at the following considerations:

1. The reasonableness of the employer's investigation into work-relatedness.
2. The evidence available to the employer.
3. The evidence that a Covid-19 illness was contracted at work.

After a *reasonable and good faith* inquiry of the above three steps, the Employer cannot determine work relatedness as *more likely than not*, the Employer does not need to record the illness on the 300 log.

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COVID-19/ OSHA/ LOGS

<https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

May 26, 2020

COVID-19/ OSHA/ TRAINING

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Inspectors will be looking at the Employer's Good Faith Efforts at compliance.

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COVID-19/ OSHA/ TRAINING

<https://www.osha.gov/memos/2020-04-16/discretion-enforcement-when-considering-employers-good-faith-efforts-during>

Questions regarding compliance enforcement?

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COVID-19 and OSHA

OSHA Homepage for Covid-19 Issues:

<https://www.osha.gov/SLTC/covid-19/index.html>

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COVID and Workers' Comp

Compensability of a Covid-19 claim

Compensability of accidents while working
from home

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COVID-19 CLAIMS

Current Standard for Illnesses alleged as
a workplace injury

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COVID-19 CLAIMS

The Proposed Standard switches the
Presumption

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Accidents While Working From Home

Accidents occurring while working from home are compensable so long as the accident occurred within the course of and arising out of employment.

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COVID-19 and Workers' Comp

Questions?

COVID-19 Impact on Employee Relations

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Families First Coronavirus Response Act

- FFCRA enacted March 18, 2020
 - In effect 4/1/2020 to 12/31/2020
- Applies to all private and private employers with less than 500 employees
 - Health Care Providers and Emergency Responders are exempted

Families First Coronavirus Response Act

- Emergency Paid FMLA Leave
 - Employees employed at least 30 days
 - 12 weeks of leave
 - Must be unable to work (or telework) due to a *need to care for the employee's child if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a "public health emergency."*

Families First Coronavirus Response Act

- Emergency Paid FMLA Leave
 - Leave paid at 2/3 of regular rate
 - Limit of \$200 per day or \$10,000 total
 - Employers paying E-FMLA wages are eligible for a tax credit equal to 100% of the E-FMLA wages paid out for each calendar quarter
 - Exemption for businesses with less than 50 employees if leave would jeopardize the business

Families First Coronavirus Response Act

- Emergency Paid FMLA Leave Issues
 - Previously Laid Off/Termed Employees May be Eligible for E-FMLA
 - If laid-off or termed on or after 3/1/20 *and*
 - Worked for the employer at least 30 or more days prior to lay-off *and*
 - Is recalled or reemployed on or before 12/31/20
 - Note is eligible even if after recall has not worked 30 days prior to requesting E-FMLA

Families First Coronavirus Response Act

- Emergency Paid FMLA Leave Issues
 - Temporary Employees Through PEOs or staffing agencies
 - If a temp has worked for an employer and is subsequently hired, the days the temp worked as a temp are counted toward the 30-day eligibility period

Families First Coronavirus Response Act

- Emergency Paid FMLA Leave Issues
 - E-FMLA 12 week benefit, if provided to employee of business < 50 employees, must be given entire 12 weeks of leave even if already had previous leave
 - Cannot count other leaves provided in past 12 months
 - But for employers >50 employees, only total of 12 weeks

Families First Coronavirus Response Act

- Emergency Paid Sick Leave
 - 80 hours paid sick leave for full-time employees
 - Part-Time employees permitted average number of hours over 2 week period
 - Applicable to all employees
 - Even those working less than 30 days
 - No exemption for employers employing less than 50 as in the E-FMLA

Families First Coronavirus Response Act

- Emergency Paid Sick Leave

- 6 Reasons for Paid Sick Leave

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

Families First Coronavirus Response Act

- Emergency Paid Sick Leave

- 6 Reasons for Paid Sick Leave

4. Employee is caring for individual who is subject to quarantine or isolation order or who has been advised by a health care provider to self-quarantine;

5. Employee is caring for a son or daughter if school or place of care is closed, or child care provider is unavailable due to COVID-19; or

Families First Coronavirus Response Act

- Emergency Paid Sick Leave

- 6 Reasons for Paid Sick Leave

6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

* Note that no such conditions have been specified as of this date

Families First Coronavirus Response Act

- Emergency Paid Sick Leave
 - Rate of Compensation
 - Categories 1-3: Regular rate of pay, capped at \$511/day and \$5,110/total
 - Categories 4-6: 2/3 rate of pay, capped at \$200/day and \$2,000/total
 - Tipped Employees should be paid full minimum wage
 - All employees must be paid at least minimum wage (Currently \$8.70 in Ohio)

Families First Coronavirus Response Act

- Other Important Provisions
 - Must post Notice:
https://www.dol.gov/sites/dolgov/files/WH/D/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
 - Anti-discrimination and anti-retaliation provision
 - Covers employees who take leave under the Act or complain about a violation of the Act

Families First Coronavirus Response Act

- Increased Litigation Outlook
 - FFCRA suits can now be filed without warning
 - The 30 day waiting period expired
 - Claims can be costly
 - Attorneys' fees and liquidated damages
 - Managers may be sued
 - In the first suit filed under the FFCRA, the HR Director and the CFO were both individually named

Families First Coronavirus Response Act

- Best Practices to Avoid Suits
 - Designate FFCRA "expert" in the office
 - Train management to identify potential claims
 - Manage communications – designate one person
 - Consider written termination notice to demonstrate reasonableness and good faith efforts to comply with FFCRA

Ohio's COVID-19 Orders

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- Director's Stay Safe Order
 - Published 4/30/20 and effective 5/4/20
 - Re-opened more businesses in Ohio
 - Others still awaiting permission and/or have been included since 4/30/20
 - Allows reopening of businesses "so long as all workplace safety standards are met."

Ohio's COVID-19 Orders

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- Ohioans Protecting Ohioans Order
 - Published 5/19/20
 - Pertains to non-work related situations
 - Changes from "orders" to "strong recommendations" 6 feet of social distancing, limiting mass gatherings to 10 people and frequent hand washing
 - Lifts all travel advisories/recommendations
 - Emphasizes citizens taking "personal responsibility"

Return to Work Issues

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- Ensure Appropriate Policies in Place
 - Social distancing – applies to all businesses
 - Appropriate PPEs
 - Temperature checks
 - Testing, isolating and contact tracing
 - Sanitation
 - Frequently disinfect high traffic areas
 - Minimize non-essential business travel as best you can

Return to Work Issues

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- Face Coverings Per Ohio Order
 - Businesses must *allow* customers/visitors
 - Businesses must *require* employees except
 - If prohibited by law or industry standards
 - If inadvisable for health/safety
 - A functional and practical reason exists
 - Employee works alone in assigned work area
 - Draft written justification for any exceptions and provide upon request

Return to Work Issues

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- Other Safety Rules to Implement
 - Employees who telework should continue to do so
 - Employer must provide hand sanitizers, facial coverings, etc.
 - Separate vulnerable employees
 - Ohio Order mandates this but most probably violates disability and age discrimination statutes

Return to Work Issues

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- General Business Checklist for All
 - Telework where possible
 - Encourage sick employees stay home
 - 72 hours fever free and 7 days asymptomatic
 - Cannot require HCP note
 - Update leave/no-fault policies
 - Encourage daily self-assessment
 - Separate and send home ill employees
 - Restrict access to business until recovered

Return to Work Issues

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- General Business Checklist for All
 - Reinforce key messages
 - Stay home when sick; use cough and sneeze etiquette, practice hand hygiene
 - Provide soap, hand sanitizer, etc.
 - Frequent cleaning of common surfaces
 - Be prepared to change business practices
 - Mandate social distancing

Return to Work Issues

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- Recall Decisions
 - The discrimination laws apply to recall decisions
 - “You didn’t recall me due to my age” etc.
 - Failure to Accommodate Claims
 - “I suffer from a medical condition that requires me to work from home”
 - The interactive process must be initiated in determining whether or not an accommodation is reasonable or necessary

Return to Work Issues

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- Recall Decisions
 - Refusal of recall due to safety concerns
 - OSHA permits employees to refuse to work if they believe they are in imminent danger
 - Condition or practice that can cause death or serious physical harm
 - Adoption of the Return to Work steps good evidence of safe work environment
 - If still refuse, consider it as a refusal of recall and notify the ODJFS
 - Note ODJFS form withdrawn and under revision

Return to Work Issues



- Recall Decisions
 - Refusal of recall due to safety concerns
 - OSHA permits employees to refuse to work if they believe they are in imminent danger
 - Condition or practice that can cause death or serious physical harm
 - Adoption of the Return to Work steps good evidence of safe work environment
 - If still refuse, consider it as a refusal of recall and notify the ODJFS by filling out form
 - Note ODJFS form withdrawn and under revision

Return to Work Issues

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- Recall Decisions
 - Refusal of Recall due to comorbidities
 - CDC has identified certain age groups and medical conditions as high risk
 - An employee fitting into one of these risk groups who refuses recall should be accommodated as best as possible
 - *Do not* avoid recalling them due to your presumption they would not want a recall

Return to Work Issues

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- Recall Decisions
 - Refusal of recall due to preference to continue working from home
 - Must obtain information as to exactly *why* the employee prefers to work from home
 - If it is based on a disability, engage in the interactive process
 - If it is based on other reasons, such as child care, carefully proceed
 - If only based on employee preference, can be required to return to the workplace

Positive COVID-19 Diagnosis

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- Immediately send home infected worker
- Discover potential other infected workers and inform them
 - HIPAA rules govern and apply
- Thoroughly clean and disinfect entire workplace, focusing on specific areas
- Notify all employees
 - HIPAA rules govern and apply

Positive COVID-19 Diagnosis

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- In Notice to employees:
 - Identify area(s) and dates when worked
 - Reiterate if symptoms occur, stay home
 - Note that other potentially exposed employees have been identified and instructed accordingly
 - Identify date(s) of office closure for cleaning

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Best Practices

- Review and adopt the Sector-Specific Requirements in Stay Safe Ohio Order
 - Section 20: General COVID-19 Info and Checklist for Businesses/Employers
 - Reviewed in earlier slides
 - Section 21: Sector Specific Checklist”
 - Businesses/Employers – applies to everyone
 - Consumer, retail and services
 - General office environments

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Best Practices

- Obtain and Post Posters in Workspace
 - CDC and Ohio Department of Health websites have various posters to download and print
- Create specific policy guidance based on Ohio Order, CDC and ODH posters
 - Email and post the locations, types and frequencies of cleaning, etc.

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Best Practices

- Post your company's approach to facial coverings
 - If an exemption is applicable, prepare and post written statement as to why
- Be prepared to update policies and posters as changes occur

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2020 Safety Webinar

Thank you for attending

RESOURCES

A copy of the PowerPoint presentation will be available on our website at the bottom of the webinar registration page under Events

- Lauri Cochran (lauric@crmoh.com) -216-643-4532
- Meredith Ullman (mullman@rbslaw.com) – 216-643-4529
- Lynn Schonberg (lynns@rbslaw.com) – 216-643-4505