COVID-19: RESOURCES FOR YOU AS A BUSINESS OWNER AND EMPLOYER

Employers and business owners throughout the country are having to make difficult decisions during these chaotic times. Below are some resources that might help guide you through some of the questions you are facing at this time:

**Staffing Issues.**

I have read a lot about the Families First Coronavirus Response Act and the emergency paid family medical leave and sick leave it provides. What does this Act do?

The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The two types of paid leave provided for are paid sick leave (up to 80 hours) and paid expanded family and medical leave (up to 10 weeks at limited amounts). Significant for NASS members, “health care providers” are excluded from both types of leave. Recently, the Department of Labor issued some guidance broadly defining “health care providers” as not only those who are treating patients diagnosed with COVID-19, but also “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…” Despite this, the DOL is encouraging employers – including health care providers – to be judicious regarding employee leave to help fight the spread of COVID-19.

For more information, please see the following resources:

- Department of Labor’s Frequently Asked Questions on the FFCRA

With non-urgent office visits and elective surgeries postponed for the time being, most of my office staff has no work to perform. To help with cash flow issues, I’m considering a furlough. What does that mean for my staff?

The term “furlough” generally refers to terminations that are temporary in nature – the employer intends to bring the employee back to work after a temporary period of time. Another way to think of a furlough is forced unpaid time off. When thinking about a furlough you and your staff might have important questions on health insurance and unemployment benefits.

- **Health insurance:** During a furlough, the employee can generally remain eligible for workplace benefits, such as health insurance coverage. Whether this is, in fact, the case at your practice will depend on the terms of your benefit plan. Because of this, it is
important to reach out to your plan to learn more about its provisions (and any flexibility the plan has made on its terms as a result of the COVID-19 pandemic).

- **Unemployment Insurance.** Employees who have been furloughed are also generally eligible for unemployment insurance; the ultimate decision will depend on your state’s unemployment insurance program. To find out more information on your staff’s ability to obtain unemployment benefits, you should contact (or direct your staff to contact) your home state’s unemployment benefits office. Each state’s unemployment benefits office can be found [here](https://www.dol.gov/coronavirus).

Depending on the size of your practice and the state in which it is located, there might be an obligation - under a law called the Federal Worker Adjustment and Retraining Notification Act (“WARN Act”) or similar state-level laws (called mini-WARN Acts) - to provide employees with notice of any layoffs, even temporary ones. Before making any of these decisions you should be aware of these notice requirements and consult with an attorney if you are uncertain if they might apply.

Finally, reducing the hours or workload of any individuals who have employment visa status can be complicated. If you are considering doing this with any such employees, proceed with caution and contact an immigration attorney if unsure.

For additional information on staffing decisions, we have compiled this list of helpful resources:

- [https://www.dol.gov/coronavirus](https://www.dol.gov/coronavirus)
- [https://www.uschamber.com/co/run/human-resources/handling-coronavirus-layoffs](https://www.uschamber.com/co/run/human-resources/handling-coronavirus-layoffs)
- [https://www.dol.gov/agencies/whd/flsa/pandemic](https://www.dol.gov/agencies/whd/flsa/pandemic)

If I don’t want to furlough my staff, are there any other options I have to reduce hours or payroll of my staffing expenses?

If you are considering reducing your staff’s hours, you will want to be familiar with a federal law called the Fair Labor Standards Act (or “FLSA”). The FLSA categorizes employees into one of two groups: exempt employees and non-exempt. Why this distinction matters here is that your ability to limit staff salaries by reducing hours worked depends on whether the staff member is classified as exempt or non-exempt.

Non-exempt employees (or the employees that are paid for overtime worked) are paid only for the hours actually worked. If hours are reduced, absent a contractual obligation, the employee generally does not need to be paid for hours not worked. (Some states do require show-up pay or predictive scheduling laws that may need to be considered).

Exempt employees, however, must be paid on a salary basis and be paid their full salary for each week in which they perform any work. Exempt employees do not have to be paid for any workweek in which they perform no work; thus, their hours can be reduced as long as it on a full work week basis. If you are considering this option, it is also a good idea to tell exempt employees that they are not authorized to perform any work on the weeks in which they are at home and unpaid. If you intend on reducing an exempt employee’s hours on a longer-term
basis (i.e. for months, not days or a couple weeks), there might also be flexibility to reduce salary on a proportional basis. As this may also have down-stream consequences for health insurance and retirement benefits, you should contact your benefit plans and an employment attorney in your state before doing so.

While no one likes salary cuts, that is also generally an option during trying times. Employers are generally free to make salary cuts to employee salaries. This should be done on a prospective basis and you should also be mindful that some states will require you to provide advance notice to your employees before doing so. For more information on reducing employees' hours and possibly pay, we have compiled this list of helpful resources:

- https://www.dol.gov/agencies/whd/flsa/pandemic

Some guides available online that cover a wide-variety of employment law issues are also listed below as further resources:

- Department of Labor’s Coronavirus Webpage: https://www.dol.gov/coronavirus

Insurance Issues.

UPDATED (4/13/20): If my practice is shut down, will my business-related insurance policies provide any relief?

If your practice has commercial property insurance, that policy likely includes coverage for business interruption or business income loss. Business interruption insurance is designed to provide coverage for income lost to the business as a result of a slowdown or closure of the premises under certain circumstances, and may provide some coverage as a result of shut downs due to the COVID-19 pandemic. To be clear, this will likely not be an easy fight. Many of these policies are limited to only “physical” damage to the premises.

Whether or not COVID-19 causes the losses typically covered by these policies remains to be seen. However, there may be some help on this front from federal and state governments. On March 18, 2020, members of the United States House of Representatives wrote to main insurance trade industry organizations to advocate that business interruption claims arising from
COVID-19 be covered. At the state level, some states (Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania) are also contemplating legislation that will ease the argument for insureds that COVID-19 is a covered loss under business interruption insurance. While the landscape is far from clear, it is a good idea to review your policy and contact your insurance agent to determine what your policy provides and what steps you might need to take to maximize any coverage opportunities. For more information contact your insurance agent.

**UPDATED (4/13/20):** My business is practically at a stand-still, yet I still need to pay my expenses, like malpractice insurance. What can I do?

Many insurers, including malpractice insurers, understand the difficult times their customers are facing at the moment, and are willing to offer some relief in terms of reduced premiums or extended due dates. For the following malpractice insurers, below are the links to where each describes the relief that may be offered on premiums:

- Berkshire Hathaway/MLMIC: [https://www.mlmic.com/covid-19](https://www.mlmic.com/covid-19)
- Mag Mutual: [https://www.magmutual.com/premium-deferral-option](https://www.magmutual.com/premium-deferral-option)
- Aegis Malpractice: [https://www.aegismalpractice.com/malpractice-insights](https://www.aegismalpractice.com/malpractice-insights)

Also, to aid in these efforts, in some states, the state's Department of Insurance has stepped in to formally ask insurers to provide flexibility on premium payments as a result of the pandemic. To find out if your State's Department of Insurance has enacted any orders encouraging, or even requiring, your insurer to provide you with relief, you can review your State's COVID-related Department of Insurance orders at the National Association of Insurance Commissioners' Coronavirus Resource Center, located [here](https://www.naic.org/coronavirus.cfm).

**Tax Issues.**

I'm not able to pay my taxes on time; what relief is there available?

The Internal Revenue Service has also announced some guidance that might be a relief to businesses struggling as a result of the COVID-19 pandemic. The deadline to file federal income taxes and has been extended from April 15, 2020 to July 15, 2020 for all taxpayers; no extension paperwork is necessary. Taxpayers can also defer payment of any federal income tax payments owed until this July 15, 2020 deadline, regardless of amount owed; penalties and interest will not be assessed.
If, however, you are entitled to a refund, the IRS is encouraging taxpayers to file as soon as possible, as most refunds are issued within a 21 day time frame. Many states are offering similar relief; check with your state’s revenue department to find out what opportunities might exist in your home state. For further information, please find some helpful resources below:

- Listing of State Revenue Offices: https://www.irs.gov/tax-professionals/government-sites

**Contractual Issues.**

I need to cut operating costs and I’m looking to cancel some of my contracts. How do I go about doing so?

Depending on your practice, there might be some contractual obligations that you do not need during the time period, or others that you simply cannot afford. To determine if there is any relief, you will first want to review your agreements.

Your starting point in doing so should be to see if the contract has a provision called a “force majeure” clause. A force majeure clause excuses a party’s performance in the event certain unforeseen events occur. Force majeure clauses generally have two components. First, the clause will identify the types of incidents that, if they occur, may excuse performance (e.g. Acts of God, events beyond the parties’ reasonable control, etc.). Second, the clause will usually set a bar of how difficult performance must be made because of those unforeseen acts before contractual performance is excused. For example, is performance excused if it would be “impossible” (a rather high standard), illegal (possible given some governmental orders), or commercially impracticable or inadvisable (generally more lenient standards) to proceed? Whether or not the force majeure clause will excuse performance simply depends on how the terms of the contract are worded; there is no “blanket answer” that applies.

If, however, it appears that the force majeure clause does not apply, look for the contract’s cancellation clause. Many times, even though a contract is in writing, it is capable of cancellation “without cause.” This may require you simply to provide some advanced written notice to the other party to terminate the agreement. Even if easy cancellation is not available, many contracts outline the penalties that will result from cancellations. Here, simply do the math. Are you better off paying a cancellation penalty or proceeding as planned on the agreement?

Finally, if there are agreements that your practice cannot afford, it always helps to start a dialogue with the other party now. Many times, regardless of what the contract says, a “win-win” situation can be found. Maybe a service contract is suspended for 3 months, but the term is extended for 3 months longer so no business is lost. Be creative and establish a dialogue.

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This information is intended to provide an overview of resources that might be of use to you regarding the developing situation of the COVID-19 pandemic. It is not intended to be, and should not be
construed as, professional or legal advice for any particular situation. These resources are not a substitute for actual professional advice based on your unique facts and circumstances, and you should consult with your own professional advisors (lawyers, accountants, insurance carriers) before making any decisions. The third-party links referenced are provided for your convenience; NASS has no affiliation with these third parties and makes no warranties, representations, or endorsements regarding these third-party websites.