

The Coronavirus in the Community and the Workplace: A Primer for North Carolina Local Governments

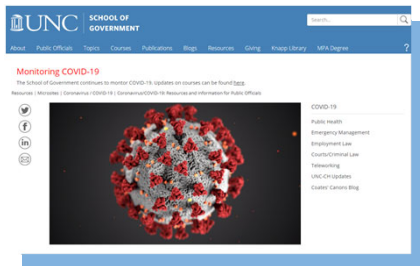
Webinar: Wednesday, March 18, 2020

Presented by SOG Faculty Members:
Jill Moore, Norma Houston & Diane Juffras



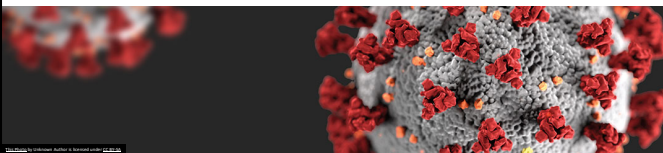
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sog.unc.edu/coronavirus



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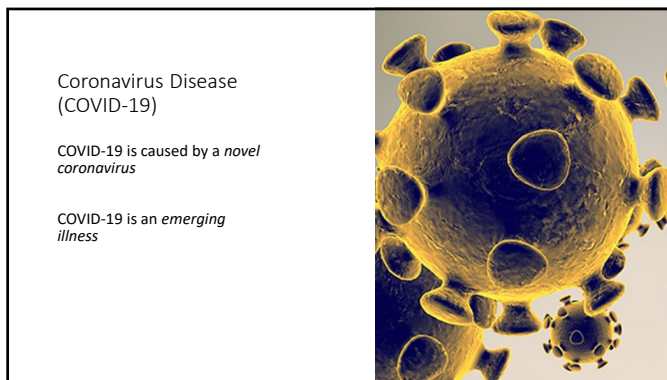
Basic Information about COVID-19



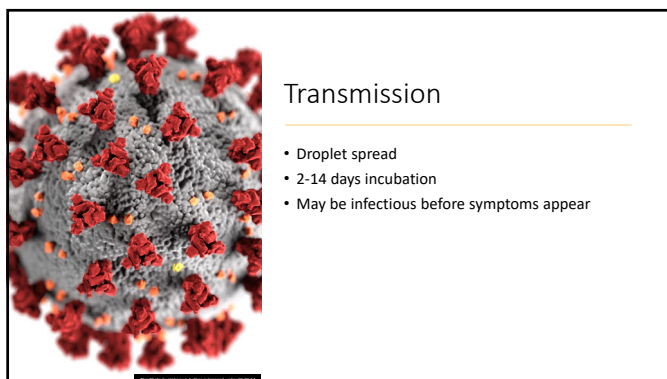
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Symptoms

- Fever
- Cough
- Shortness of breath



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Higher risk for severe illness

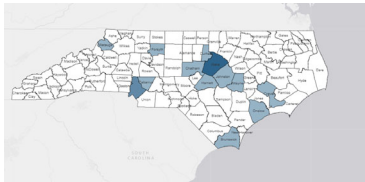
- Older adults
- People with serious underlying medical conditions, such as:
 - Heart disease
 - Diabetes
 - Lung disease
- People with weakened immune systems



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NC Case Count: Tuesday, March 17 9 a.m.

- 40 cases
- 0 deaths



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Communicable disease strategies

Containment

- Identify cases and contacts
- Isolate and quarantine individuals when appropriate

Mitigation

- Personal, environmental, or community measures to limit spread of illness
- Examples include social distancing, school closures, cancellation of mass gatherings, etc.

Both types of strategies presently in use in North Carolina

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NC public health laws provide for:

Detection of communicable disease in the population

Communicable disease control measures to prevent or contain the spread of disease

Legal remedies to enforce communicable disease laws


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Mandatory reporting

Novel coronavirus infections are reportable in North Carolina

- Feb. 3: State Health Director issued temporary order
- Feb. 5: Rulemaking process initiated to make reporting requirement permanent

G.S. 130A-134 – 130A-141.1
10A N.C.A.C. 41A .0101



ROY COOPER - Governor
RANDY COHEN, MD, MPH - Secretary
ALANETTE TOLSON, MD, MPH - State Health Director
BARRY BRYSON - Assistant Secretary for Public Health, Director of Public Health

2/3/2020

TEMPORARY ORDER OF THE NORTH CAROLINA STATE HEALTH DIRECTOR
NOVEL CORONAVIRUS INFECTION


Pursuant to G.S. 130A-141.1, the State Health Director hereby issues a TEMPORARY ORDER requiring physicians licensed to practice medicine in the State and laboratories operating in the State to report suspected or confirmed novel coronavirus infections. This order is issued upon a finding that reports of novel coronavirus infections are necessary for surveillance of a communicable disease that presents a danger to the public health. The report is required to be made immediately upon receipt of laboratory information, immediately suspected to exist. The physician shall make the report to the local health director of the county or district in which the patient resides. The local health director shall immediately report the infection to the Division of Public Health. The laboratory shall make the report directly to the Division of Public Health. This order is effective Monday, February 3rd, 2020 and expires in 90 days.

Elizabeth Curran Elton, MD, MPH
North Carolina State Health Director

2/3/2020

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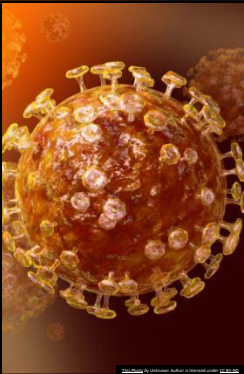
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Communicable disease control measures

All persons must comply with communicable disease control measures adopted by the Commission for Public Health.

For emerging illnesses, control measures are derived from CDC guidelines and recommended actions.

G.S. 130A-144
10A N.C.A.C. 41A .0201

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Isolation and quarantine

- Isolation is for people who are infected (or reasonably suspected of being infected)
- Quarantine is for people who have been exposed (or reasonably suspected of being exposed)

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Isolation & quarantine authority (G.S. 130A-145)

What is it?

- Authority to restrict the freedom of movement or action of individuals to control the spread of communicable disease

Who may exercise it?

- A local health director or the State Health Director

When may it be exercised?

- When and so long as the public health is endangered,
- All other reasonable means have been exhausted, and
- No less restrictive alternative exists

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May a public health official quarantine a geographic area?

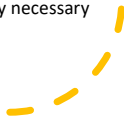
- Under NC law, quarantine authority may be used to limit access to a facility or area that may be contaminated with an infectious agent
- Other governmental officials have authority to restrict movement of persons in geographic areas



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Due process
for isolated or
quarantined
persons

- A person who is subject to an order limiting freedom of movement may institute an action in Superior Court
- Court must hold hearing within 72 hours (excluding Saturdays & Sundays)
- Person is entitled to an attorney
- Court must terminate the order if determined to be not reasonably necessary



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What if
someone
violates an
order?

**Criminal remedy:
Class 1 Misdemeanor**

**Civil remedy:
Injunction**

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Arresting & detaining a person who violates an isolation or quarantine order

Problem: Managing arrest and pre-trial detention of a person who may spread disease easily

- **Do not** want to put in general population of local jail
- **Do** want public health involved in evaluating risks and making decisions

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Arrest and detention of order violator

Arrested person may be detained in an area specified by the local health director until initial appearance.
G.S. 15A-401(b)(4)

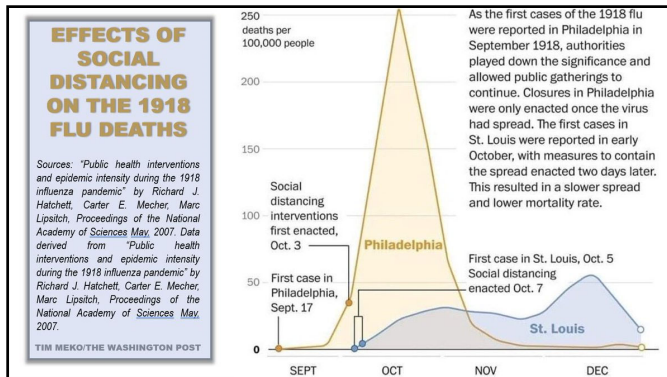
If judicial official determines person poses threat to public health, must deny pretrial release and consult with health director about appropriate place for detention.
G.S. 15A-534.5

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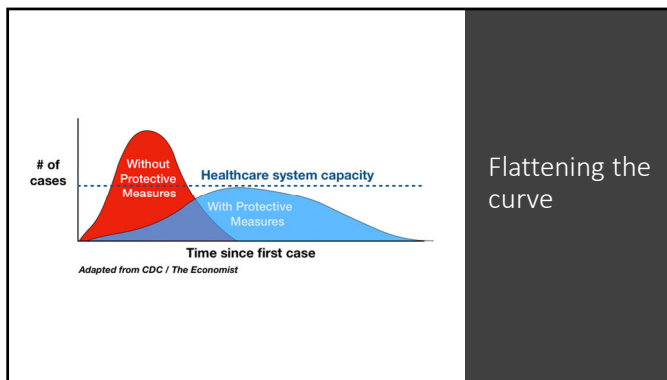
Mitigation

Personal, environmental, or community measures to limit spread of illness

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Mitigation measures

- Social distancing
- Remote working
- Cleaning and disinfection
- Cancellation of mass gatherings
- School closure
- Other personal, environmental, or community measures may be advised or required

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General prevention recommendations for COVID-19 are the same as those to prevent the spread of flu and other respiratory viral infections



- Wash hands often with soap and water for at least 20 seconds



- If soap and water are not available, use an alcohol-based hand sanitizer



- Avoid touching your eyes, nose, or mouth with unwashed hands

- Avoid contact with others who are sick

- Cover your mouth and nose with a tissue or sleeve, not your hands, when coughing or sneezing

NC Department Health and Human Services | Coronavirus Disease (COVID-19) | 3/10/2020

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COVID-19 and Emergency Management

Who has what authorities at the local level?



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What is a "Public Health" Emergency?

"[a]n occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including, but not limited to, a cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident."

G.S. 166A-19.3(6)



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Who Declares and Enforces a Local State of Emergency?

Declaration

- Only cities and counties can declare a local state of emergency
- Local health director does not have authority to declare a local state of emergency
Local health director's authorities are not dependent on local SoE being declared
- State of emergency can be declared by the official(s) designated in the jurisdiction's local emergency ordinance
Authority typically delegated to County Board Chair (or designee) or Mayor (or designee)

Enforcement

- Violation of a local SoE is punishable as a Class 2 misdemeanor
- SoE only applies within the jurisdiction that declared it
County declaration does not apply within a City unless requested or ordered by Mayor

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What Authorities Are Triggered Under A Local State of Emergency?



Restricting movement of people in public places (including curfews, evacuations, limited ingress and egress, and closing roads)



Restricting operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate



Restricting alcohol and dangerous weapons (*lawfully possessed firearms are exempt from emergency restrictions*)



Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency

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How Broad are Local Emergency Authorities?

Very broad . . . But **NOT** Unlimited

Courts have held that restrictions and prohibitions must be:

- Authorized by statute
- Based in fact
- Reasonably tailored to the threat
- Enforced uniformly and non-discriminatory
- Not arbitrary or capricious

Consult with emergency management and public health officials before imposing restrictions!

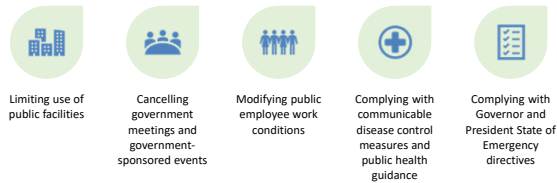
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Who's In Charge During A Public Health Emergency?



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Actions That Don't Require a Local SoE



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Employment Issues



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Employment Issues

- Monitoring employee health
- Sending employees home
- Having employees work remotely
- Employees who are confirmed cases
- FMLA issues
- FLSA issues
- ADA accommodation issues
- OSHA and protecting employees against COVID-19

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May You Monitor Employee Health?

- Watching for symptoms of COVID-19
- Asking questions about symptoms, travel or contacts
- Taking employees' temperatures



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May You Send Employees Home?

- Based on observed symptoms
- Based on answers to questions
- Based on temperature
- Exclusion from work as a form of ADA discrimination



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Having Employees Work Remotely

- Do you have a list of which jobs can be performed remotely and which cannot?
- Will you monitor work time? If so, how?
- Caregiver discrimination

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Employees Who Are Confirmed Cases

- Notification by employee or health dep't?
- Duty of confidentiality under the ADA
- Notification of exposure to co-workers
- Possible quarantine of co-workers
- Deep cleaning of premises



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Continuity of Operations

- Assume increased absenteeism.
- Survey employees now about absences due to school being out, daycare closed, care for others, immune system issues.

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ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY

Directions: Answer "yes" to the whole question *without specifying the factor that applies to you*. Simply check "yes" or "no" at the **bottom of the page**.

In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic **influenza virus**, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: YES _____, NO _____

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The FMLA and the Coronavirus

- Is infection with COVID-19 a serious health condition?
- You must designate absences for qualifying conditions as FMLA leave
- You may not designate absences that do not qualify as FMLA leave

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Under the FMLA, "serious health condition" means

- inpatient care
- or*
- incapacity requiring an absence from work for more than 3 days and requiring treatment by health care provider 2 or more times

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Inpatient care

- Overnight stay
plus
- any period of incapacity
- and subsequent treatment



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Three Days Absent Plus Doctor Visit and Treatment

- Incapacity for more than 3 consecutive full calendar days
- Doctor visit within 7 days and
- Subsequent treatment (not just OTC recommendations)
under supervision of doctor
- Or second doctor visit within 30 days

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The FMLA and the Coronavirus

- You may not designate absences that do not qualify as FMLA leave
- Having to take care of who are home because school or daycare is shut down is not FMLA-qualifying.
- Staying home because you are immuno-compromised could be FMLA-qualifying
- Staying home out of fear is not FMLA-qualifying.

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The FMLA and the Coronavirus

- Consider waiving certification deadlines or even certifications if provider offices are overwhelmed.

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The FMLA and the Coronavirus

- Employees who are working from home while out sick with COVID-19 may not be placed on FMLA leave.
- Employees who can work some, but not an entire workday due to COVID-19 infection should be placed on reduced-schedule FMLA leave.



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The FMLA and the Coronavirus

- FMLA leave is unpaid but accrued paid leave may run concurrently.

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The Law Allows You To:

- Give leave that is not job-protected to employees who have already used up their FMLA allotment.
- Pay employees who do not have accrued paid leave.
- Allow employees who are home with children to work a part-day.

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Returning to Work!

- Q 1: May a fit-for-duty certification be required?
- FMLA leave: Only if requirement is indicated on Designation Notice (US DOL Form WH 382)
- Non-FMLA absence: Yes, but must be required of everyone out due to COVID-19 infection or exposure.
- Q 2: Can fit-for-duty certification ask whether employee with confirmed case has now tested negative?



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The FLSA Still Applies During National and State Emergencies

- Different rules for
- Nonexempt employees
- Exempt employees

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Nonexempt Employees & Overtime

- Overtime may be required
- No limit on number of hours
- The rate is 1 ½ times the regular rate for every hour over 40 in a work week
 - Or applicable 207(k) standard
- No balancing out overtime over two weeks or within pay period



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- Comp Time
- 1 ½ hours paid time off for every hour over 40 in a work week
- Accrual limits remain in place:
 - 240
 - 480

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FLSA Nonexempt Employees

- Must only be paid for hours worked

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FLSA Exempt Employees

- You must pay full-salary if they have worked part of week
- Can substitute accrued paid leave for time absent from work without losing exemption
- Can deduct from salary on pro-rata basis to cover absences when there is no accrued paid leave or when time-off has been requested and not granted.



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FLSA Exempt Employees

- If you close all or part of the workplace or for less than a full workweek, you must pay exempt employees their full weekly salary, although you may require employees to apply as much accrued paid leave as an employee has available.

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FLSA Exempt Employees

- You may order exempt employees to work beyond their scheduled hours without additional compensation.
- You may reassign exempt employees to do nonexempt duties if necessary because nonexempt employees are absent.

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Exempt Employees Performing Nonexempt Work

- First responder work
- Work on equipment or vehicles needed for emergency response
- Procurement or accounts payable work related to supplies needed for emergency response
- Cross-department reassignment



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The FLSA Allows You To:

- Pay nonexempt and exempt employees who
- have no accrued paid leave and have COVID-19 infection;
- are quarantined because of exposure to an infected person or;
- are furloughed because you have shut down non-essential operations.



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Will FEMA Reimbursement for Overtime Costs Be Available?



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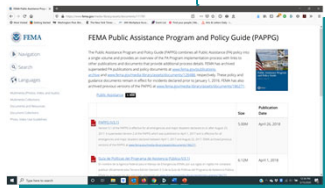
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FEMA Will Generally Reimburse Some Overtime Costs for "Emergency Work"

- Stafford Act Public Assistance Program Grant
- FEMA Public Assistance Program and Policy Guide at p. 19, 23 and 42, available at

https://www.fema.gov/media-library-data/1525468328389-4a038bbe9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf



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Two Types of Emergency Work

- Debris Removal (Category A)
- Emergency Protective Measures (Category B)

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11. Infectious Disease Event. The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to States, Territorial, or Tribal Governments in response to an infectious disease event. FEMA may provide assistance for the rescue, evacuation, and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations. Any assistance provided by FEMA in response to an infectious disease event is done in coordination with the CDC. The Office of Response and Recovery Fact Sheet FP 104-009-001, Infectious Disease Event, provides additional details. www.fema.gov/media-library/assets/documents/99710

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Not Eligible for FEMA Reimbursement

- Straight-time wages, salaries and benefits of permanent employees.

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Eligible for FEMA Reimbursement

- Overtime associated with the performance of emergency work by nonexempt permanent employees

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Eligible for FEMA Reimbursement

- Overtime for emergency work performed by exempt permanent employees under certain conditions
 - Written policy required
 - Payment cannot be contingent on FEMA reimbursement

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Eligible for FEMA Reimbursement

- Benefits costs dependent on hours worked
 - Retirement contributions
 - FICA taxes
 - Vacation and sick leave accrual

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Keep records as if you were going to be reimbursed.

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Americans with Disabilities Act Issues

- Requests to work remotely or to be excused from reporting to worksite by employees with compromised immune systems or who are over age 65.
- Need for specialized personal protective equipment (PPE)
- Need to be excused from certain duties because there is no reasonable PPE accommodation

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OSHA Obligations and PPEs

- OSHA recommendations for PPE are specific to occupations and job tasks.
- Workers within 6 ft. of infected person or performing aerosol-generating procedures should be outfitted with N95 or equivalent respirators
 - www.osha.gov/SLTC/etools/respiratory
 - www.cdc.gov/niosh/topics/respirators
 - www.cdc.gov/niosh/docs/2005-100/default.html



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OSHA Obligations and PPEs

- OSHA's bloodborne pathogens standard also useful: 29 CFR 1910.1030

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OSHA Risk Pyramid: Very High Exposure Risk

- Healthcare workers performing aerosol-generating procedures, lab and morgue workers
- OSHA Risk Pyramid:
High Exposure Risk**
- Healthcare delivery & support staff; medical transport workers

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OSHA Recommendations for Very High Exposure and High Exposure Risk Workers

- Combination of glove, gown, face shield or goggles, and either face mask or respirator, depending on job tasks
- Hand sanitizer with minimum 60% alcohol
- Appropriate air handling systems and airborne infection isolation rooms.



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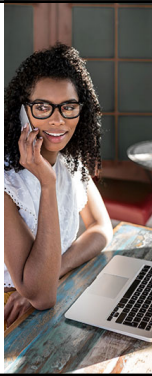
OSHA Risk Pyramid: Medium Exposure Workers

- Workers in close contact with COVID-19 confirmed cases, suspected cases or unknown cases
- Install physical barriers, such as clear plastic sneeze guards where feasible.
- Offer face masks to symptomatic employees and customers until they leave the premises.
- www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy

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OSHA Risk Pyramid: Medium Exposure Workers

- Where feasible, limit public access to worksite or restrict access to certain areas.
- Encourage/require phone-based communication if contact not necessary
- Face masks not necessary for all medium exposure workers, although some combo or gloves, gown, face mask/face shield or goggles maybe appropriate.



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OSHA Risk Pyramid: Low Exposure Risk

- Workers who have minimal occupational contact with the public or co-workers
- Keep updated
- No additional PPE recommended

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Resources Relevant to Employment Law Issues

- Document sent with Webinar Link
- More Q & A tomorrow morning at Office Hours, Thurs., March 19 at 10 a.m. with Frayda Bluestein, Jill Moore, Norma Houston, Aimee Wall, Diane Juffras and Chris McLaughlin
- <https://www.sog.unc.edu/resources/microsites/school-government-office-hours>

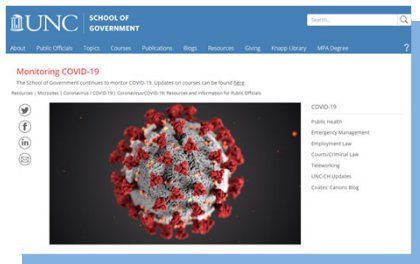
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Additional Resources

- North Carolina information and response
 - ncdhhs.gov/coronavirus
 - Call center: 866-462-3821
- CDC information and resources
 - coronavirus.gov

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Webinar evaluation link

https://unc.az1.qualtrics.com/jfe/form/SV_6tAkWecpwmTMcND



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