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
Basic Information about COVID-19

ncdhhs.gov/coronavirus  coronavirus.gov

Coronavirus Disease 2019 (COVID-19) Response in North Carolina

Governor Cooper issued an executive order that bans indoor gatherings of more than 100 people and closes K-12 public school statewide through March 30.

More Resources:
- CDC: Coronavirus COVID-19 Information
- NCDHHS: Coronavirus COVID-19 Information in English & Spanish

You Need to Know
- Instructions for Quarantine
- COVID-19 FAQs
- Coronavirus FAQs
- More Resources

If you think you are sick, please contact your healthcare provider.
Coronavirus Disease (COVID-19)

COVID-19 is caused by a novel coronavirus

COVID-19 is an emerging illness

Transmission

- Droplet spread
- 2-14 days incubation
- May be infectious before symptoms appear
Symptoms

• Fever
• Cough
• Shortness of breath

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
NC Case Count:
Tuesday, March 17
9 a.m.
• 40 cases
• 0 deaths

NC Communicable Disease Law
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*

---

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
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

Mandatory reporting

What
- Known or suspected cases (use public health guidelines)

Who
- Physicians and laboratories
- School principals and child care operators

When
- Immediately

To whom
- Physicians/others: Local health department
- Laboratories: State health departments
Health departments work with PUIs and PUMs to identify contacts and control spread of disease

**Person Under Investigation (PUI)**
- Interviewed to assess risk and symptoms and identify contacts
- May be tested

**Person Under Monitoring (PUM)**
- Risk category determined
- Instructed to monitor and report symptoms
- Given movement guidance or orders based on risk category

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
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)

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
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

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
What if someone violates an order?

Criminal remedy: Class 1 Misdemeanor

Civil remedy: Injunction

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
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

Mitigation

Personal, environmental, or community measures to limit spread of illness
As the first cases of the 1918 flu were reported in Philadelphia in September 1918, authorities played down the significance and allowed public gatherings to continue. Closures in Philadelphia were only enacted once the virus had spread. The first cases in St. Louis were reported in early October, with measures to contain the spread enacted two days later. This resulted in a slower spread and lower mortality rate.

**EFFECTS OF SOCIAL DISTANCING ON THE 1918 FLU DEATHS**


TIM MEKO / THE WASHINGTON POST
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

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
COVID-19 and Emergency Management
Who has what authorities at the local level?

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)
Who Declares and Enforces a Local State of Emergency?

**Declaration**
- Only cities and 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.*

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.
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!

Who’s In Charge During A Public Health Emergency?

Mayor/Board Chair
- Declare SoE
- Impose SoE restrictions and prohibitions
- Overall command and control
- Enter into mutual aid agreements

Manager
- Overall administrative management of departments and personnel
- Enter into mutual aid agreements

EM Coordinator
- Direct responsibility for organization, administration, and operation of EM program
- Direct command and control during emergency event

Local Health Director
- Quarantine and isolation
- Enforce control measures
- Advise on public health matters
- Provide health resources for community
Actions That Don’t Require a Local SoE

- Limiting use of public facilities
- Cancelling government meetings and government-sponsored events
- Modifying public employee work conditions
- Complying with communicable disease control measures and public health guidance
- Complying with Governor and President State of Emergency directives

Employment Issues
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

May You Monitor Employee Health?

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

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
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

Continuity of Operations

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

Inpatient care

- Overnight stay
  
  plus

- any period of incapacity

- and subsequent treatment
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

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.
The FMLA and the Coronavirus

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

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.
The FMLA and the Coronavirus

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

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.
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?

The FLSA Still Applies During National and State Emergencies

- Different rules for
  - Nonexempt employees
  - Exempt employees
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

• Comp Time

• 1 ½ hours paid time off for every hour over 40 in a work week

• Accrual limits remain in place:
  • 240
  • 480
FLSA Nonexempt Employees

• Must only be paid for hours worked

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.
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.

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.
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

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.
Will FEMA Reimbursement for Overtime Costs Be Available?

Unclear
FEMA Will Generally Reimburse Some Overtime Costs for “Emergency Work”

- Stafford Act Public Assistance Program Grant

https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf

Two Types of Emergency Work

- Debris Removal (Category A)
- Emergency Protective Measures (Category B)
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](http://www.fema.gov/media-library/assets/documents/99710)

---

**Not Eligible for FEMA Reimbursement**

- Straight-time wages, salaries and benefits of permanent employees.
Eligible for FEMA Reimbursement

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

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
Eligible for FEMA Reimbursement

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

Keep records as if you were going to be reimbursed.
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

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
OSHA Obligations and PPEs

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

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
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.

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.
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.

OSHA Risk Pyramid: Low Exposure Risk

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

Additional Resources

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

Webinar evaluation link

https://unc.az1.qualtrics.com/jfe/form/SV_6tAkwEcpwmTMcND