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SAFELY AND SUCCESSFULLY REOPENING YOUR BUSINESS DURING THE COVID-19 PANDEMIC



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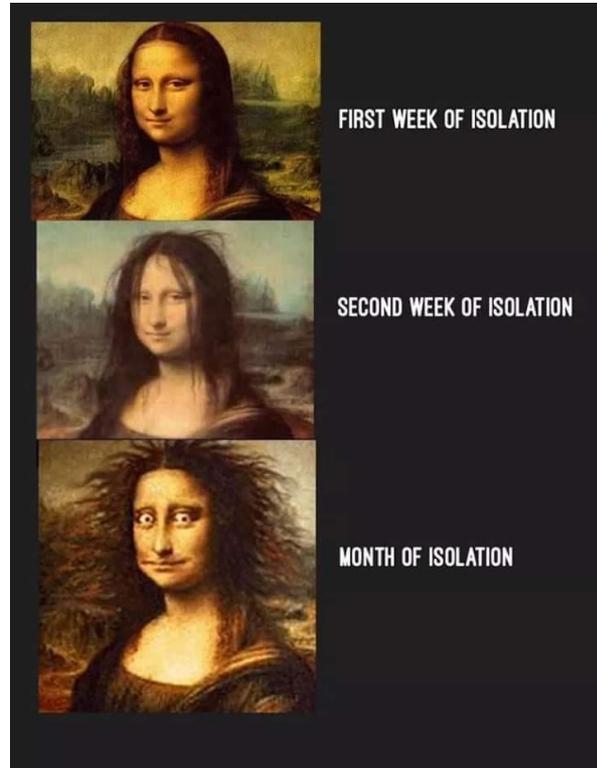


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EXECUTIVE ORDER 20-48

- On April 30, Governor Walz extended Minnesota's Stay at Home Executive Order until May 18
- The Order allows more non-Critical Sector businesses to resume operations, including some retail shops
- However, retail shops may only operate in curbside pickup formats, subject to implementing a Preparedness Plan (discussed later)
- The order also strongly encourages people to wear masks (whether manufactured or homemade)
- You may want to ask your employees to wear masks when coming to work, leaving work, or if they will be in a work setting where they will be no more than four feet away from another person
- You may want to ask customers and clients to also wear masks when visiting (have some spare masks to provide)
- If the customer or client refuses, consider not serving them out of an abundance of caution



MINNESOTA'S STAY AT HOME ORDERS

- On April 23, Governor Walz issued Executive Order 20-40
- The Order is in response to Executive Order 20-33, which extended Minnesota's Stay at Home order and instructed Minnesota officials to begin looking at avenues to reopen some businesses
- Order 20-40 allows Non-Critical Exempt Businesses (e.g., industrial or manufacturing businesses or office-based businesses) to begin re-opening
- The reopen is subject to many requirements and other considerations which we will discuss today, including:
 - **Implementing a Preparedness Plan**
 - **Training staff and management**
 - **Assessing your employees comfort in returning**
 - **Making your workplace as safe as possible**
 - **Problems with employees returning**
 - **Staying ahead of rapidly changing requirements**





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IMPLEMENTING A PREPAREDNESS PLAN



PREPAREDNESS PLAN

- Executive Order 20-44 provides that all “non-Critical Exempt Businesses” must establish and implement a COVID-19 Preparedness Plan when returning employees
- This plan must cover, at a minimum:
 - Teleworking whenever possible
 - Rules requiring that sick workers remain home
 - Implementing social distancing policies and procedures
 - Establishing hygiene and source control policies
 - Creating cleaning and disinfection protocols



PREPAREDNESS PLAN

- Plan must also be signed by senior management who affirm their commitment to its implementation
- Plan must be distributed, in writing, to all workers
- Plan must also be posted at all of the business's workplaces in locations that will allow for the plan to be readily reviewed
 - Although, if impracticable, the plan can be posted electronically, provided that it is received by all workers and remains available for their review.
- Businesses must also train all workers on the plan and supervise workers to ensure everyone understands and adheres to the precautions to prevent COVID-19 transmission
- Document compliance so you can provide documentation if any regulatory authorities request it
- Example templates can be found on Minnesota Department of Employment and Economic Development's (DEED) website (link at the end of the presentation)



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TRAINING STAFF AND MANAGEMENT



TRAINING

- As with the Preparedness Plan, it is essential to train your staff and supervisors on your plans and procedures for various situations after reopening
- This will ensure that your business will be able to operate smoothly in any situation
- For example, employees and supervisors should be trained on the following:
 - Protocols for workplace exposure
 - Sanitizing and disinfecting workspaces
 - Wearing proper PPE
 - Any new guidance, policies, or rules you implement
 - Social distancing
 - What to/not to do at the workplace
 - How, and whether, you plan on doing health assessments



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ASSESSING EMPLOYEE COMFORT IN RETURNING TO WORK



ASSESSING EMPLOYEE COMFORT

- Returning to work during this pandemic is concerning to many employees
- To help with that, you may want to send out a survey to your employees to determine:
 - Your employees' concerns with returning to work
 - Your employees' level of comfort with returning (on a measurable scale)
 - Whether an employee is able to work from home
 - What precautions employees would like to see to make them more comfortable with returning
 - Any challenges that your employees are facing
 - Any comments or ideas on how to return to work or telework better
- Not only will this allow you to gauge your employees' willingness to return, but will also hear about additional ideas on how best to reopen directly from your workforce
- After you are further along in your return to work plan, you might want to also consider providing the draft plan to your employees for their comments/insight



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MAKING YOUR *WORKPLACE* AS SAFE AS POSSIBLE



SAFETY

- Safety should be a paramount consideration in reopening
- Unsafe work environments may lead to OSHA violations and workers' compensation issues, which could expose employers to significant liability
- OSHA's General Duty Clause Section 5(a)(1) requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm
- Remember, under OSHA, an employee may refuse to come into work if "they reasonably believe they are in imminent danger"
- However, a generalized fear is insufficient—the employee must show that the workplace is dangerous
- For example, if a workplace has numerous confirmed COVID-19 cases and there appears to be community transmission, it may meet this standard
- One example may be the current outbreaks at local meat processing plants





SAFETY

- So, how do you make your workplace safer during the COVID-19 pandemic?
- Here are some considerations that we will discuss:
 - Health screenings
 - Social distancing procedures
 - Changing office dynamics to increase safety
 - Other procedures for returning your workforce safely



HEALTH SCREENINGS

BREAKING NEWS ...

John Travolta was hospitalized for suspected COVID-19, but doctors now confirm that it was only Saturday Night Fever, and they assure everyone that he is Staying Alive.

Apparently, he had chills that were multiplying.





HEALTH SCREENINGS

- After the COVID-19 epidemic was declared a pandemic by the World Health Organization (“WHO”), the EEOC quickly amended previous guidance to allow employers to perform medical examinations or inquiries
- Such examinations/inquiries are usually prohibited, but if an employee poses a “direct threat”—*i.e.*, a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation”—such examinations/inquiries are allowed
- As a result of employees having COVID-19 being a direct threat to the health or safety of the individual or others, the EEOC said that employers may conduct health screenings and check employees’ temperatures
- All health information gathered must be kept confidential and stored in a separate, locked location pursuant to the ADA





HEALTH SCREENINGS

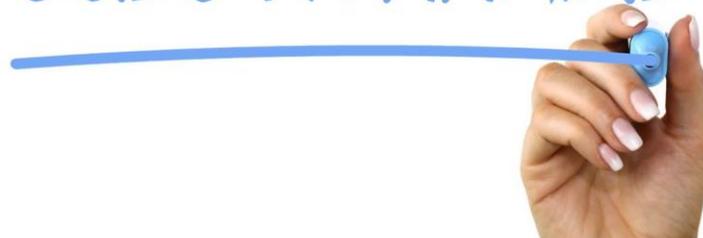
- Medical examinations/inquiries include: questions that may lead to information regarding an employee's disabilities, health questions, temperature checks, tests to determine fitness for duty, etc.
- There are several relevant medical examinations/inquiries that merit further discussion:
 - Employee health questionnaires
 - Employee temperature checks
 - COVID-19 tests



HEALTH QUESTIONNAIRE

- The health questionnaire should ask questions regarding:
 - Whether the worker is currently ill (and if so, what are their symptoms)
 - Whether the worker has any symptoms related to COVID-19 (e.g., fever, shortness of breath, cough, or other symptoms listed by the CDC).
 - Whether the worker is caring for someone who is ill or has COVID-19
- Remember, all non-exempt employees waiting for a health screen should be paid
- Also, you may want to implement staggered employee start times (discussed shortly) so you do not have many employees congregating waiting to be screened

QUESTIONNAIRE





NEW DEVELOPMENTS

- If an employee has a medical condition or disability that may make them more vulnerable to COVID-19, recent EEOC guidance suggests that you are allowed to bar that employee from entering the workplace if COVID-19 “places [him or her] at higher risk for severe illness”*
- Before doing so, however, employers may provide reasonable accommodations to these employees to see if that may alleviate the risk
- However, if the accommodation does not sufficiently reduce an employee’s risk, then employers should consider offering leave, telework, or job reassignment.

- **After our presentation of the webinar, the EEOC retracted this information. Until additional clarification is issued by the EEOC, please refrain from the above approach.*



TEMPERATURE CHECKS

- Consider checking your employees' temperatures as another layer of protection
- You should use a probe that does not contact the skin—*i.e.*, an infrared thermometer.
 - Minnesota businesses can purchase a no-touch infrared forehead thermometer for your business (link at end of the presentation)
- Sanitize the probe after every use and change gloves between every reading
- Log the temperatures and file them away confidentially in accordance with your obligations under the ADA
- You may even want to provide PPE to the employees conducting the health screens
- Also consider using a pulse oximeter
 - Device clips to an employee's finger and reads their temperature, blood oxygen levels, and heart rate.
 - Low blood oxygen levels (anything under 94%) are found in many COVID-19 positive patients and may be an early warning symptom



COVID-19 TESTS

- You may consider asking employees to receive a COVID-19 test before returning to work
- However, due to the scarcity of the tests, some employees may not be able to get such tests (including some who are exhibiting symptoms)
- Employees who are unable to get a test, but are showing symptoms, may be classified as “presumptive positive”
- If confirmed, or presumptive positive, follow one of the return-to-work procedures on the next slide
- As antibody/serology tests become more widely available, you may want to utilize such tests to see if your workforce is immune. However, while such tests may be authorized under the “direct threat” exception, the EEOC and FDA are concerned with their reliability and they may not be permissible to use until they become more accurate and reliable



CDC RETURN TO WORK PROCEDURES

- **Option 1** – If, in consultation with a health care provider and local public health authorities knowledgeable on locally available testing resources, it is determined ***an employee will not have a test*** to determine if they are still contagious, the employee may return to work after:
 - The employee has no fever (100.4 degrees Fahrenheit) for at least 72 hours (3 full days of no fever without the use of medicine that reduces fevers); AND
 - Respiratory symptoms have improved (cough, shortness of breath, etc.); AND
 - At least seven days have passed since their symptoms first appeared
- **Option 2** – If the employee is tested to determine if they are still contagious, then the employee can return to work after:
 - The employee no longer has a fever (same as Option 1); AND
 - Respiratory symptoms have improved; AND
 - The employee has received ***two*** negative tests in a row, at least 24 hours apart.
- **Option 3** - An employee may return to work earlier if a doctor confirms the cause of an employee's fever or other symptoms is not COVID-19 and releases the employee to return to work in writing.



RETURN TO WORK PROCEDURES

- If an employee is an **essential or critical infrastructure worker**, the CDC has implemented relaxed guidelines for return to work after exposure. The employee should:
 - 1) Measure temperature and assess symptoms prior to starting work
 - 2) Regularly monitor the employee to ensure they do not have a temperature or symptoms
 - 3) Employee should also self-monitor under their employer's supervision
 - 4) The employee should wear a mask for 14 days after last exposure
 - 5) Employee should maintain six (6) feet and practice social distancing as work duties permit and
 - 6) Employer should clean and disinfect all areas, such as offices, bathrooms, common areas, and shared electronic equipment on a regular basis



OTHER SAFETY MEASURES

- Encourage sick employees to stay home
- Limit access to the facility
- Provide sanitizing stations with alcohol-based hand sanitizer, disinfecting/sanitizing wipes, and other cleaners for office spaces
- Implement social distancing to the extent possible (this may include having some employees move locations, offices, or cubicles)
- Implement one-way traffic in certain hallways, so employees never have to pass each other and can stay 6 feet away from others
- Stagger your employees' return by slowly increasing the number of employees in your office week-by-week or month-by-month
- Stagger your employees' re-entry by times
- Increase ventilation rates and install high-efficiency filters in your office space
- Do not allow sharing of headsets, keyboards, microwaves, tools, computers, etc.





OTHER SAFETY MEASURES

- Consider flexing work shifts to spread out employees throughout the day
- Encourage the donning of PPE while traveling to, and from, the facility
- If employees are able, encourage teleworking
- Limit meetings and other large gatherings—continue to utilize technology to hold meetings
- Implement touch free doors, sinks, soap dispensers, bubblers, etc.
- Maintain increased sanitization and disinfection procedures
- Know who is in the office in the event someone is COVID-19 positive so you know who was there, what workspaces to clean, etc.
- Place posters around the office regarding hand washing, social distancing, and effective coughing and sneezing etiquette



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COMMON PROBLEMS WITH RETURNING EMPLOYEES



RETURNING TO WORK CONSIDERATIONS

- There are several common issues with workers returning to work
- We will discuss the most common:
 - Immunocompromised employees
 - Hesitant employees
 - Employees receiving unemployment
 - Employees who refuse to return
 - Employees who are unable to return due to leave under the FFCRA
 - Employees who have logistical challenges with returning



FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW

- As you may recall, the Families First Coronavirus Response Act (“FFCRA”) provided, among other things, Emergency Paid Sick Leave (“EPSL”) and Emergency Family and Medical Leave (“EFMLA”) for a variety of reasons
- Eligible employer → ***fewer than 500 employees*** (unless the employer qualifies for the small business exception)
- Eligible employee → employed for at least 30 days
- EFMLA → Available if employee cannot work or telework because child’s school or daycare is unavailable due to COVID-19 related reasons
- EPSL → Available if employee is unable to work or telework because employee:
 - Is subject to a federal, state, or local quarantine or isolation order related to COVID-19
 - Has been advised by a health care provider to self-quarantine because of COVID-19
 - Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 - Is caring for an individual subject or advised to quarantine or isolate
 - Is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 or
 - Is experiencing substantially similar conditions



IMMUNOCOMPROMISED EMPLOYEES

- In some situations, an employee who is “particularly vulnerable to COVID-19” may qualify for EPSL
- Employee is only entitled to leave if employee’s health care provider advises the employee to quarantine because the employee is “particularly vulnerable to COVID-19” and by following the advice of the employee’s health care provider to self-quarantine, the employee is prevented from being able to work or telework
- If employee is able to telework, however, then the employee may not be entitled to EPSL
- FMLA leave may also be an option and the EEOC has said it may be prophylactic
- You may treat this as a request for an accommodation as well (teleworking or other work arrangements are reasonable accommodations)



HESITANT EMPLOYEES

- Understanding the reasoning behind the employee's hesitation is vital
- Open, clear, and consistent communication is key to helping employees appreciate the safety measures implemented
- Confirm that you are following all available CDC, OSHA, and public health guidance related to COVID-19 to help reassure the employee
- If an employee refuses to return, and is not entitled to any accommodation or leave (whether under the ADA, FFCRA, FMLA, or any state law), and work is available, they may use existing leave benefits or take leave unpaid
- It is up to the employer whether to consider the employee's conduct as a refusal to work and if the employee is subject to discipline



EMPLOYEE RECEIVING UNEMPLOYMENT

- In some situations, an employee who is on unemployment may be receiving more than their regular rate of pay
- Consider sending the employee an official written recall notice
- It is likely that once you offer work (and notify the unemployment office that you have offered to recall an employee) any employee on unemployment does not qualify for unemployment benefits any longer
- But this varies from state-to-state
- Consider educating the employee on the consequences of not returning to work and whether they need any leave or accommodations
- It is up to the employer whether to consider the employee's conduct as a refusal to work and if the employee is subject to discipline



EMPLOYEE REFUSES TO RETURN

- Understand the reasoning behind the employee's hesitation is vital
- Open, clear, and consistent communication is key to helping employees appreciate the safety measures implemented
- Confirm that you are following all available CDC, OSHA, and public health guidance related to COVID-19 to help reassure the employee
- If an employee refuses to return, and is not entitled to any accommodation or leave (whether under the ADA, FFCRA, FMLA, or any state law leave), and work is available, they may use existing leave benefits or take leave unpaid
- If, after reassuring the employee and they still do not return, it is up to the employer to consider whether the employee's conduct is a refusal to work and if the employee is subject to discipline



EMPLOYEES UNABLE TO RETURN

- Some employees may be unable to return due to being a confirmed (or presumptive) positive COVID-19 case
- In other instances, these employees may be caring for a family member who is a confirmed (or presumptive) positive COVID-19 case
- If employee is eligible, provide EPSL or EFMLA under the FFCRA
- In some cases, the employee may be eligible for FMLA, ADA, or other accommodations

EMPLOYEES WITH LOGISTICAL ISSUES

When parents start to
crack during lockdown





EMPLOYEES WITH LOGISTICAL ISSUES

- Some employees may have other logistical challenges to handle, such as child care obligations
- But logistical issues can also include other specific situations
- Consider offering any EPSL or EFMLA under the FFCRA to any employee who qualifies for it
- Otherwise, employee may be able to utilize existing employer-provided benefits (e.g., paid time off, vacation, unpaid time off, earned sick leave, etc.)



DISCRIMINATION ISSUES

- **It is important to treat each of these situations equally in order to avoid any discrimination claims**



DOCUMENTATION

- If an employee takes leave under the FFCRA, you may request that the employee provide documentation
- Pursuant to the FFCRA, an employee must provide:
 - 1) The employee's name
 - 2) The date(s) which leave is required
 - 3) The COVID-19 qualifying reason for leave
 - 4) A statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason



DOCUMENTATION

- Depending on the reason for leave, the employee may have to provide further documentation:

Reason for Leave	Additional Documentation
“The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.”	The name of the government entity that issued the quarantine or isolation order.
“The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.”	The name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
“The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.”	(1) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or (2) the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
“The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.”	(1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes EPSL or EFMLA. If the employee’s child is older than 14, the IRS guidance further requires a statement providing for the special circumstances that exist that require the employee to provide care.



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STAYING AHEAD IN A RAPIDLY CHANGING WORLD



STAYING AHEAD

- It is important to have people staying updated on all new developments related to COVID-19
- Events are changing daily, so it is important to stay ahead of things
- Follow the CDC, OSHA, WHO, and Felhaber Larson for continuous updates on COVID-19
- Have plans in place for various events—*i.e.*, employee exposure, increased local shelter-in-place orders, confirmed COVID-19 employee, sanitization protocol
- Some basic plans and considerations are included in the following slides
- Be nimble with your business
 - Evaluate your current and future business needs and make plans on how to adapt
 - Talk with your insurance agent regarding your business plans and coverages you need
 - Be communicative with your employees and check in often with communication and updates



10-STEP ACTION PLAN FOR COVID-19 POSITIVE EMPLOYEE

- **Step 1** – If an employee is suspected of having COVID-19, it is permissible to request that the employee be tested. Make sure to comply with state law as well—Minnesota requires you to also get the employee's consent
 - If employee does not consent, assume they are presumptive positive and remove them from the workplace
 - If employee is confirmed positive, remove from the workplace (if they are present)
- **Step 2** – Attempt to determine the source of the infection
 - **If infection occurred within workplace:** contact workers' compensation carrier and update them; place employee on workers' compensation leave; record injury on OSHA logs
 - **If infection occurred outside the workplace:** determine if employee is eligible for FFCRA benefits, FMLA, other employer-provided leave (vacation, sick leave, earned sick time, short-term disability, etc.), or if they require any accommodations
- **Step 3** – Trace any and all contacts that may have interacted with the employee in the previous 14 days. Ask the infected employee to provide names of potential contacts
- **Step 4** – Employers may ask whether an employee is willing to disclose symptoms or a positive diagnosis, however, no pressure must be exerted against the employee and any disclosure must be voluntary



10- STEP ACTION PLAN FOR COVID-19 POSITIVE EMPLOYEE

- **Step 5** – Notify the employee’s co-workers who may have been exposed to the employee within the preceding 14 days. ***Do not identify the infected employee.*** But, you can ask the employee for permission to use their name to help identify contacts. Get written confirmation if the employee says yes
 - For any employees who worked in close proximity to the employee or had close contact, ask them to consult with their health care provider and self-monitor for symptoms. The CDC recommends that all potentially exposed employees stay home until 14 days after the last exposure and self-monitor for symptoms (symptom list can be found here)
 - If any exposed employees who are self-quarantining are unable to telework, they may be eligible for EPSL under the FFCRA
- **Step 6** – Employees who are not considered exposed should self-monitor for symptoms, such as fever, cough, or shortness of breath. If any symptoms develop, they should notify the employer and health care provider right away and stay home
- **Step 7** – Notify the employee’s manager(s) and/or supervisor(s) that the employee is on a leave of absence



10- STEP ACTION PLAN FOR COVID-19 POSITIVE EMPLOYEE

- **Step 8** – Contact your local public health authority to disclose a confirmed, or suspected, case and follow their advice. It is permissible to disclose identity to a local public health authority
- **Step 9** – Notify any customers, clients, vendors, or other third parties that were in close contact with the employee, and that they should contact their health care provider
- **Step 10** – Disinfect and Sanitize
 - 1) Close off areas visited by the employee and open up any outside doors, windows, and use ventilating fans to increase air circulation in the area
 - 2) Wait 24 hours (or as long as practical) before beginning disinfection
 - 3) Consider contacting a professional cleaning company to sanitize and disinfect.
 - 4) If employer is sanitizing and disinfecting in-house, cleaning staff should wear disposable gloves, gowns, and other appropriate PPE for all cleaning tasks
 - 5) Sanitize and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment (tablets, touch screens key boards, remote controls, keys, cars, etc.) used by the employee.
 - 6) Cleaning staff should clean hands often and exercise normal preventative actions
- Review the CDC's cleaning and disinfection recommendations and contact professional cleaning companies



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POSTING REQUIREMENTS



POSTING REQUIREMENTS

- An employer must post, and keep posted, a notice of the FFCRA's requirements, similar to other posting requirements
- The employer must keep the notice in a conspicuous place where employees or job applicants may view it
- But, in recognition of the fact that many people are telecommuting currently, you can meet this posting requirement by either e-mailing or direct mailing the notice to employees or posting the notice electronically on an employee information website
- Also remember the posting requirements for the Preparedness Plan discussed earlier
- OSHA also has a poster available about steps to reduce the risk of COVID-19



OTHER RESOURCES

- Symptom Screener on DEEDs website:
<https://mnsymptomscreener.minnesotasafetycouncil.org/>
- No touch infrared forehead thermometers for MN businesses:
<https://corporate.target.com/about/purpose-history/our-commitments/target-coronavirus-hub/b2b-thermometers>
- Symptoms for COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
- Returning workers after confirmed COVID-19 positive:
<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
- Felhaber Larson Employment blog: <https://www.felhaber.com/home/mn-employment-law-report/>
- CDC cleaning guidelines: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>