

What Employers Need to Know About Maryland's Approach to COVID-19

By Emmett F. McGee & Kathleen A. McGinley

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Meet the Authors



Emmett F. McGee

Principal
410-415-2003
Emmett.McGee@jacksonlewis.com



Kathleen A. McGinley

(She/Her)
Principal and Office Litigation
Manager
410-415-2085
Kathleen.McGinley@jacksonlewis.com

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Maryland has taken far-reaching and proactive steps to minimize the impact of the 2019 novel coronavirus (COVID-19), including expanding unemployment insurance, prohibiting the termination of employees who have been isolated or quarantined, limiting gatherings of 10 people or more, and closing non-essential businesses.

COVID-19 Public Health Emergency Protection Act of 2020

Unemployment Benefits

On March 19, 2020, Maryland Governor Larry Hogan signed the COVID-19 Public Health Emergency Protection Act of 2020 ([HB1663/SB1080](#)) into law. The Act will remain effective through April 30, 2021.

The Act expands unemployment insurance coverage by adding three situations in which employees can apply for unemployment benefits, even if not separated from their employer. These situations are when: (1) “the individual’s employer temporarily ceases operations due to COVID-19, preventing employees from coming to work”; (2) “the individual is quarantined due to COVID-19 with the expectation of returning to work after the quarantine is over”; and (3) “the individual leaves employment due to the risk of exposure or infection of COVID-19 or to care for a family member due to COVID-19.”

The Department of Labor, Licensing and Regulation has published a set of [Frequently Asked Questions](#) about COVID-19 and unemployment insurance in Maryland.

Under existing Maryland law, employers implementing mass layoffs still must provide a bulk separation notice to their local office of Unemployment Insurance if laying-off, at the same time, at least 25 employees at a single establishment permanently, indefinitely, or for more than seven days. This notice must be provided 48 hours in advance of the layoff or at the time of the layoff, if the employer has no advance knowledge.

Job Protection

Significantly, the Act authorizes the Governor to prohibit the termination of employees because they have been isolated or quarantined due to COVID-19.

Economic Protections

The Act further seeks to protect Marylanders from certain economic hardships that may result from COVID-19 by authorizing the Governor to ensure that individuals will not be charged fees or co-pays for COVID-19 tests, and authorizing the Governor to prohibit price-gouging for food, fuel, medicine, cleaning products, and other essential supplies.

Executive Orders

Office Closings

Governor Hogan has also enacted a series of executive orders meant to try to slow the spread of COVID-19. The most current [Executive Order](#), which became effective at 5:00 p.m. on March 23, 2020, restricts gatherings of more than 10 people and mandates the closure of all non-essential businesses.

Essential businesses are those [identified](#) by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA), in the fields of healthcare/public health, law enforcement, public safety, first responders, food and agriculture, energy, water and wastewater, transportation and logistics, public works, other community-based government operations and essential functions, critical manufacturing, hazardous materials, financial services, chemicals and defense industrial base.

Governor Hogan has emphasized that the Executive Order is not a “shelter in place” order. Still, even for essential businesses, employers are encouraged to promote work-from-home arrangements to the greatest extent possible. Non-essential businesses that must close can still continue to operate if employees can work remotely.

Essential Businesses

The Office of Legal Counsel, drawing on the [CISA Guidance](#) regarding the essential critical workforce, published lists of specific essential businesses that may remain open.

The lists include expected critical infrastructure businesses such as grocery stores; banks and insurance companies; building and property management companies (plumbers, electricians, HVAC service); cable, phone, and internet providers; veterinarians and pet supply stores; automotive repair shops; warehouse and distribution companies; and businesses in healthcare, emergency services, critical manufacturing, energy, IT, and transportation sectors.

The lists also include some unexpected businesses such as bicycle shops, printer and sign shops, and law firms, among others. For the full lists of essential businesses, see Interpretive Guidances [COVID-04](#) and [COVID-05](#).

Enforcement

While Maryland is hoping for voluntary compliance with business closures, if voluntary compliance does not occur, the Maryland State Police, in partnership with local law enforcement, will take prompt action that could result in the issuance of a criminal summons or warrant, or even immediate arrest, depending on the circumstances.

A person who “knowingly” and “willfully” violates the Governor’s Executive Order is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$5,000, one-year in jail, or both.

Sick and Safe Leave Laws

Maryland Sick and Safe Leave Laws

Maryland has not enacted any new paid sick leave laws. However, employers should be mindful of how COVID-19 and the state's response may affect their employees' use of available sick time under sick and safe leave laws in place in Maryland and Montgomery County.

The [Montgomery County Earned Sick and Safe Leave Law](#) (MCESSL) specifically allows employees to use their available paid (or unpaid, depending on the size of the employer) MCESSL leave due to office or school closures during public health emergencies, which have occurred across the state.

The [Maryland Healthy Working Families Act](#) (MHWFA) does not include this public health emergency closure as a permissible reason for leave, but, like the MCESSL, allows employees to use their paid (or unpaid) MHWFA leave for the employee's own or their family member's physical illness or condition, which would include COVID-19.

Similarly, the [Maryland Flexible Leave Act](#) allows employees who work for an employer with at least 15 employees the ability to use any available paid time off for an illness of the employee's immediate family member.

Federal Families First Coronavirus Response Act

Additionally, employers with fewer than 500 employees must comply with the Families First Coronavirus Response Act (FFCRA) by offering paid sick leave, and expanding Family and Medical Leave Act paid benefits to certain employees affected by the COVID-19 crisis. See our article, [The New Employer Obligations under the Slightly Revised Families First Coronavirus Act \(H.R. 6201\)](#).

Please contact a Jackson Lewis attorney if you have any questions.

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