



COVID-19 RESPONSE GUIDANCE TO NJiIF MEMBERS

Guidance Objectives : The objective of the NJiIF's COVID-19 Response Guidance Policy is to (a) provide Members with notice of the NJiIF's recommendations to reduce exposure of Member employees and residents who use Member resources to COVID-19, and (b) recommend actions to avoid liability as a result of the Member's response to the COVID-19 pandemic. This guidance document is not intended to supersede or override mandates or directives from any Federal, State or County agency with regard to Member response to COVID-19.

1. Recommendations for Member Efforts to Reduce Employee Exposure to COVID-19 and Those Who Use Member Resources

- Members are recommended to follow Federal and State Executive orders and guidance issued by all Federal, State and County agencies, including the CDC and WHO.
- Members are urged to comply with the CDC recommendations for social distancing and limiting meetings to 10 people or fewer. Efforts should also be made to arrange for regular disinfection of Member vehicles and facilities.
- Members are to encourage its officials, employees, volunteers and contractors to immediately report to the designated Member representative knowledge of their contact with any person who is symptomatic or presumptively or confirmed to be COVID-19 positive (hereinafter referred to as 'Impacted Person').
- Direct all officials, employees, volunteers and contractors who have been exposed to any Impacted Person to self-quarantine for 14 days, or, at a minimum, not return to the premises of the Member for at least 14 days.



- All officials, employees, volunteers, and contractors who are COVID-19 positive or were exposed or potentially exposed to an Impacted Person should be required to produce a note from their physician or the Member's physician clearing them to return to the workplace.

2. Liability Reduction in Undertaking Response to the COVID-19 Pandemic

- To the extent allowed under HIPPA, upon learning that that any of its employees, volunteers or contractors is an Impacted Person or may have been in contact with an Impacted Person, the Member shall (1) undertake reasonable due diligence to ascertain which of said Member's employees, volunteers or contractors may have been or were in personal contact with said Impacted Person and, (2) provide immediate notice to all of its employees, volunteers and contractors who are known to have or may have come into contact with the Impacted Person that they may had such exposure and shall thereafter require those notified individuals to self-quarantine for 14 days , or, at a minimum, not return to the premises of the Member for at least 14 days and take such self -protective measure as said employees, volunteers or contractors may deem necessary.
- Member shall require all vendors or contractors performing services for the Member whose scope of services requires that they come on to the premises of the Member or engage in any direct (not telephonic) contact with Member employees, officials or volunteers to notify the Member in advance of such access to the Member's premises or interacting with Member employees or officials to disclose if they have come into contact with any Impacted Person or themselves have symptoms of COVID-19.



3. NJIIF Anticipated Coverage with Regard to Claims Associated with the COVID-19 Pandemic

- The NJIIF will address claims for Workers Compensation benefits arising under COVID-19 exposure on a case -by-case basis, however Members are recommended to immediately report to the NJIIF's TPA (PMA Management Corp.) information that any of its employees, officials or volunteers is an Impacted Person or has been exposed to an Impacted Person.
- In order to support Member response to employee claims for exposure to COVID-19 arising out of their employment, the NJIIF has expanded coverage available under its Workers Compensation policy (see attached endorsement to the forthcoming 2020 excess policy as Exhibit A).
- Members are encouraged to immediately notify the NJIIF if they incur costs or suffer damages associated with response to any COVID-19 matter that may be the result of negligent or intentional acts of third parties.

4. Labor and Employment Considerations Associated with the COVID-19 Pandemic

- FMLA considerations. Emergency changes to the Federal FMLA signed into law on March 18, 2020 require employers to provide partially paid family and medical leave to employees required to be out of work due to Employee caretaking a child whose school/daycare closed (10 weeks at 2/3 rate of pay for a maximum of \$200 per day/\$10,000 aggregated.)
- Other New Legislation. The Federal Emergency Paid Sick Leave Act provides 80 hours of paid sick time (also for part time employees, average hours worked for two weeks) that supplements sick time already provided to Member employees (employees are permitted but not required to use their already provided sick time). In addition, employees providing care for



someone with COVID-19 or for someone with a COVID-19 related serious health condition or employees providing care for a child whose schools/daycare are closed is entitled to 80 hours of paid sick time at 2/3 rate of pay for a maximum of \$200 per day/\$10,000 aggregated. This childcare provision supplements and is addition to the 10 weeks of child care paid leave provided under the FMLA. The Act takes effect immediately but terminates at the end of the year.

- OSHA compliance/guidance. Under OSHA, employers have an obligation to provide employees with a safe workplace. Due to the speed with which circumstances are changing, however, there are no clear rules as to what this means with respect to COVID-19. For example, a decision to remain open or continue to provide certain services may be completely reasonable one day when no confirmed or suspected COVID-19 cases have been reported in or affecting the workplace, but the same decision may be unreasonable a day later when one or more employees are suspected to have come in contact with the virus. The only guidance that can be given is to use common sense and to react promptly when news of possible workplace or regional exposure changes.
- Suspension of certain employee handbook and collective negotiations agreement requirements. Since quick action will be the best response in the event of a confirmed or suspected COVID-19 exposure, some standard employee or CBA conditions, such as requiring certain medical certifications or advanced notice before leave is granted, will need to be temporarily suspended. Given the current state of emergency, this can be done informally on a temporary basis without actually changing handbook or contract language.
- Avoidance of retaliatory conduct. As with most employee protection laws, insuring that employees who utilize the leave benefits or other protections provided by the law are not retaliated against should be a primary concern.



Employees (and supervisors) who are already on edge due to health concerns may inadvertently take out those emotions on an employee or volunteer who is suspected of bringing the virus into the workplace or may take action against employees who raise concerns about COVID-19 compliance efforts (protected by whistleblowing laws). It is incumbent upon the employer to promptly address actual or perceived retaliation and to document remedial actions taken.

- ADA / Disability Law Considerations. Due to the practical need for employees to share specific health information with their employers (and supervisors) Members will be subject to a heightened risk of disability discrimination suits by Impacted Persons who are disciplined in any way or who may be discharged . As a result, protocols regarding the discipline and discharge of employees should be strictly observed and labor counsel should be consulted before any significant disciplinary action is taken against an employee who may fall into a protected classification, including an Impacted Person.

5. Additional Regulatory Compliance Requirements:

- AG Directive No. 2020-1: At the direction of the Office of the Attorney General, as of March 18, 2020, all local health officers are to contact their local police department by 5 p.m. each day and provide a list of private residence locations by address where there is a positive COVID-19 laboratory test or where a previously reported positive now has a negative laboratory test. Law enforcement officers may only be informed that there has been case of a positive COVID-19 laboratory test at a particular address through the CAD system, and only when they are responding to a call for service at that address, and they may not disseminate that information further. Notably, this information is confidential and not subject to disclosure under OPRA. However, Members should be cautioned that this directive may raise HIPAA compliance issues.