

Employer Considerations for 2021: COVID-19, Vaccines, & What's to Come

Presented by RISQ Consulting, with Featured Guests
Birch Horton Bittner & Cherot Attorneys
February 24, 2021



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This webinar will be recorded and posted
online here:

risqconsulting.com/covid-19-resources

Panelist Introductions



RISQ Consulting Panelists



Joshua Weinstein, DIA
Senior Employee Benefits Consultant
RISQ Consulting



Dena Lythgoe
Senior Account Executive
RISQ Consulting

Jennifer Alexander

Partner

Birch Horton Bittner & Cherot

- Practice emphasizes union and non-union employers in all areas of labor and employment law.
- Experience representing employers before the Alaska Superior Court, U.S. District Court for the District of Alaska, National Labor Relations Board, EEO Commission, Equal Rights Commission, Department of Labor, and in labor and employment arbitrations.
- Ms. Alexander was selected for inclusion in Chambers USA, America's Leading Business Lawyers in 2009 and is on the Board of Directors for the Alaska Center for the Performing Arts.

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David Gross

Partner

Birch Horton Bittner & Cherot

- BHBC's lead attorney in the personal injury section, representing both defendants and plaintiffs
- Experienced in pre-suit dispute resolution, litigation, and trial and appellate procedure.
- His clients include individuals, local corporations, insurance companies, and international corporations.
- Mr. Gross is honored to be a National Trial Lawyer's Top 100, and in his personal time enjoys spending time with his children and playing poker

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Overview: 2020 & 2021

Presented by Joshua Weinstein



Coronavirus in the U.S.: Latest Map and Case Count

Updated February 23, 2021, 2:26 P.M. E.T.

[Leer en español](#)



	TOTAL REPORTED	ON FEB. 22	14-DAY CHANGE
Cases	28.2 million+	59,462	-40% ↘
Deaths	501,044	1,454	-28% ↘
Hospitalized		55,403	-31% ↘

■ Day with reporting anomaly. Hospitalization data from the Covid Tracking Project; 14-day change trends use 7-day averages.

Alaska Coronavirus Map and Case Count

Updated February 23, 2021, 2:26 P.M. E.T.



	TOTAL REPORTED	ON FEB. 22	14-DAY CHANGE
Cases	57,316	337	+2% ↗
Deaths	279	1	-50% ↘
Hospitalized		39	-17% ↘

■ Day with reporting anomaly. Hospitalization data from the Covid Tracking Project; 14-day change trends use 7-day averages.

Politics & Health Insurance

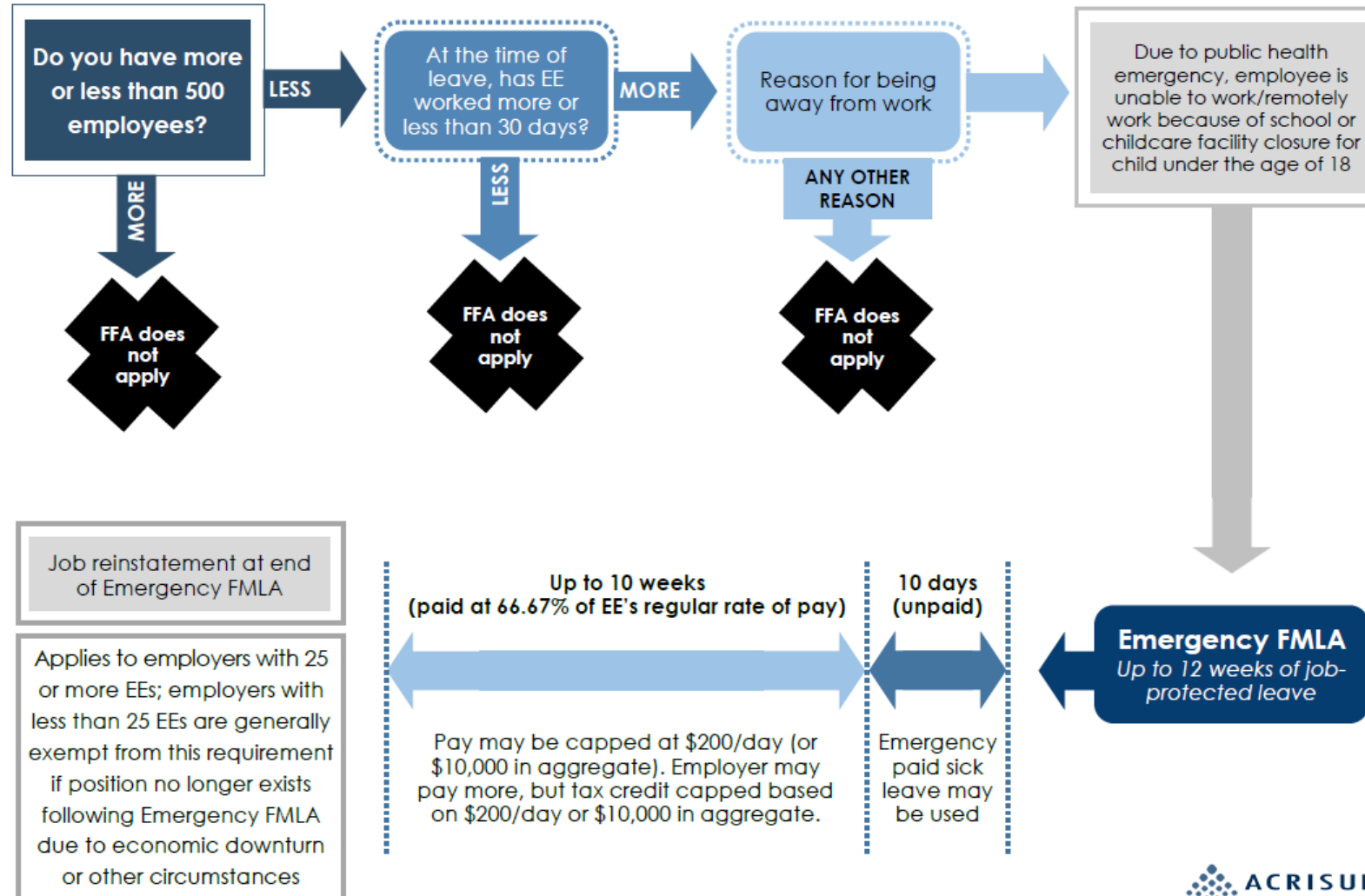
- Biden Administration & Democratic Congress Possibilities
 - Marketplace Special Enrollment Period: February 15 – May 15
 - Intends to strengthen the ACA
 - Expansion of subsidy requirements for individuals on the Marketplace
 - Potential prescription reforms
 - What won't happen: Medicare for All
- ACA Law Suit - Texas v. California
- CARES Act
 - Changes to FSA, HSA guidelines



Families First Coronavirus Response Act (FFA)

Effective April 1, 2020 - December 31, 2020

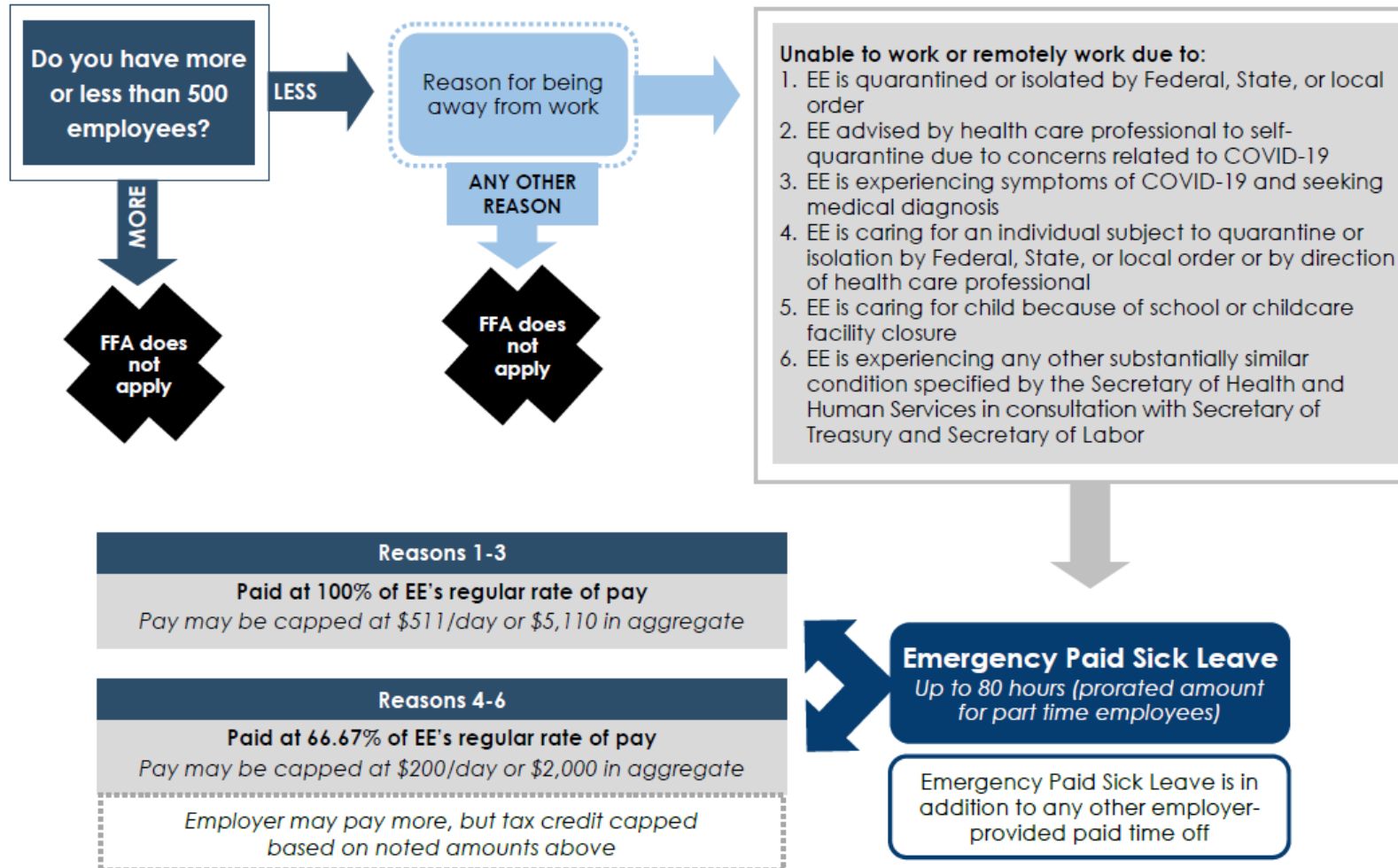
Emergency FMLA



Families First Coronavirus Response Act (FFA)

Effective April 1, 2020 - December 31, 2020

Emergency Paid Sick Leave



Families First Coronavirus Response Act (FFCRA)

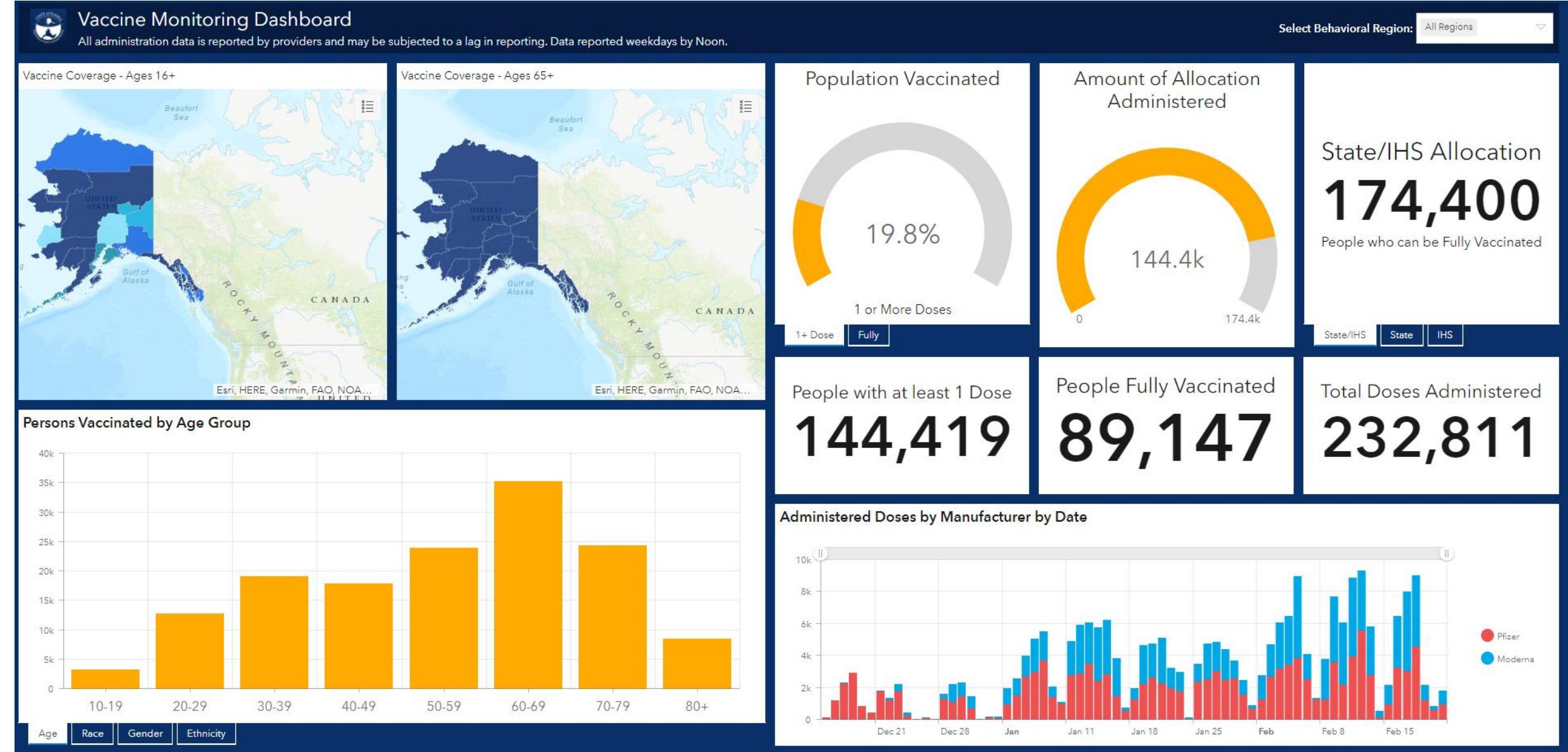
- 2020
 - Emergency FMLA
 - Emergency Paid Sick Leave
 - Originally effective April 1, 2020 – December 31, 2020
- 2021
 - Employers are not required to offer FFCRA in 2021
 - Employers may choose to Voluntarily allow employees to take unused FFCRA leave
 - The Consolidated Appropriations Act, 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021.
 - However, this Act did not extend an eligible employee's entitlement to FFCRA leave beyond December 31, 2020.

Insurance & Vaccines for Employers

Presented by Joshua Weinstein



Alaska Vaccination Efforts Dashboard



Stay up-to-date on Alaska's Vaccination efforts: <https://www.arcgis.com/apps/opsdashboard/index.html#/84691dc5b0184827af0fd8e4c20034d9>

Insurance & Vaccines for Employers

- Who is eligible?
 - Monitor eligibility by visiting the State of Alaska Department of Health and Human Services website:
 - <http://dhss.alaska.gov/dph/Epi/id/Pages/COVID-19/VaccineAvailability.aspx#now>

Alaska's COVID-19 vaccine phases

Phase 1 (Tiers A and B) estimated timeline, subject to change:

Currently open	Open Feb. 11	To be determined
1A-TIERS 1,2 & 3 <ul style="list-style-type: none">■ Long term care facility staff and residents■ Hospital-based frontline health care workers and hospital personnel■ Frontline EMS and Fire Service personnel providing medical services■ Community Health Aides/Practitioners■ Health care workers providing COVID vaccinations■ Health care workers providing COVID vaccinations■ Workers in health care settings who meet all of the following criteria:<ul style="list-style-type: none">● Have direct human patient contact, or have direct contact with infectious materials from patients, AND● Provide essential services in a hospital, clinic, home, or community-based setting that cannot be offered remotely or performed via telework; AND● Provide essential health care service in a health care setting that cannot be postponed without serious negative impact to the patient's health 1B-TIER 1 <ul style="list-style-type: none">■ All people 65 and older	1B-TIER 2 <ul style="list-style-type: none">■ People 50 years and above who have any of the following high-risk medical conditions:<ul style="list-style-type: none">● Cancer● Chronic kidney disease● Chronic obstructive pulmonary disease (copd)● Down syndrome● Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies● Immunocompromised state (weakened immune system) from solid organ transplant● Obesity or severe obesity (body mass index [bmi] greater than 30 kg/m2) (see calculator)● Sickle cell disease● Smoking● Type 1 or type 2 diabetes mellitus● Pregnancy■ Frontline essential workers 50 years and above who must work within 6 feet of others■ Education staff, limited to:<ul style="list-style-type: none">● Childcare workers and support staff (e.g. custodial, food service, transportation)● Pre K-12 grade educators and support staff (e.g. custodial, food service, transportation)● Indigenous language and culture bearers■ People living or working in congregate settings not covered in Phase 1a, limited to:<ul style="list-style-type: none">● Acute psychiatric facilities● Correctional settings;● Group homes for individuals with disabilities or mental and behavioral health conditions● Homeless and domestic violence shelters● Substance misuse and treatment residential facilities● Transitional living homes■ Pandemic response staff who may come into contact with the SARS-CoV-2 virus during outbreak response activities.	1B-TIER 3 <ul style="list-style-type: none">■ People 55 years and above■ People 40 years and above who have a high-risk medical condition■ People 16-49 who are frontline essential workers with a high-risk medical condition■ People 16 years and above who live in a multigenerational household with 3 or more generations, or "skipped" generations (e.g., a grandchild living with an elder).■ People 16 and above who live in communities where at least 45% homes have not been served either via pipe, septic tank and well, or covered haul system. 1C <ul style="list-style-type: none">■ People 16 years and above who have a high-risk medical condition■ Frontline essential workers not included in previous phases, who are working in Alaska, as defined by CISA.

Source: Alaska Department of Health and Social Services

KEVIN POWELL / Anchorage Daily News

Insurance & Vaccines for Employers

- Vaccines

- Effective January 1, 2021, insurers (& self-funded employers) must cover vaccine at no cost
- Providers may be a charge to administer the vaccine (Ex: Office Visit)
- Important Dates:

Ended December 31, 2020

Cost share waivers for telehealth/virtual care visits.

Ends March 31, 2021

- Prescription "refill too soon" override.
- Cost share waivers for treatment related to COVID-19 diagnosis.
- Allowance for certain procedures to be handled through teledentistry.

Ends April 21, 2021

Cost share waivers end for FDA-approved COVID-19 diagnostic testing and other virus/respiratory testing tied to a COVID-19 diagnosis.

Property + Casualty Liabilities for Employers

Presented by Dena Lythgoe



Property + Casualty Liabilities for Employers

- Commercial General Liability aka CGL:

- Covers Bodily injury and property damage to third parties
- Considerations for claim
 - Insured must be legally liable before the CGL responds, what actions or inactions could possibly lead to legal liability arising out of the coronavirus? A few ideas come to mind, but these are not all the possible scenarios:
 - Allowing an employee who is **known** to be infected with the virus to continue working;
 - Failure to adhere to required health and prevention guidelines;
 - Remaining open following an order by a civil authority to close;
 - Maybe (but not likely) selling a product from China on which the virus may live (although reports limit the time to about 72 hours maximum);
 - Not screening and refusing service to customers with the virus; or
 - Other weird actions or events.
 - A second requirement contained within the insuring agreement plays a role in the CGL's response to any injury supposedly arising from the coronavirus – the injury must qualify as an “occurrence” before the policy responds.
 - Within the CGL an occurrence is defined as *an accident, including continuous or repeated exposure to substantially the same general harmful conditions. Is passing the virus considered an occurrence?*
 - *Depends: as part of the occurrence the injured party must prove the virus was contracted by the insureds premises or arising out of the operations.*
 - *This insurance applies to “bodily injury” and “property damage” only if: (1) The “bodily injury” or “property damage” is caused by an “**occurrence**” that takes place in the “coverage territory”*

Property + Casualty Liabilities for Employers

- Commercial General Liability Exclusions to look for in your policy:
 - Expected or Intended Injury Exclusion
 - Example: *Employer knows infected employee continues working and spreading the virus*
 - Communicable Disease Exclusion
 - “Bodily injury” or “property damage” arising out of the actual or alleged transmission of a communicable disease.
 - This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:
 - *Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;*
 - *Testing for a communicable disease;*
 - *Failure to prevent the spread of the disease; or*
 - *Failure to report the disease to authorities.*
 - Pathogens Exclusion
 - *Excludes damages arising out of any actual, alleged or threatened infections, pathogenic, toxic or other harmful properties of any organic pathogen. Organic Pathogen has been defined as...*
 - *Original intention is to exclude food borne illnesses*

Property + Casualty Liabilities for Employers

- 2021 HB 4 – Introduced by DeLena Johnson

 - Providing immunity for liability and disciplinary action for occupational licensees for exposure of clients to COVID-19; providing immunity from liability for persons engaging in business and their employees for exposure of customers to COVID-19; and providing for an effective date.
 - What can you do as a business owner???
 - Contact your elected officials in your districts where you live and where you do business.
 - If you have specific questions contact your local or state chamber.
 - Email: Representative.DeLena.Johnson@akleg.gov
District: 11
Party: Republican
Toll-Free: 866-465-4958

Coronavirus and the CGL, www.insurancejournal.com/blogs/big-i-insights/2020/03/25/562354.htm

The Coronavirus and the CGL Policy, www.irmi.com/articles/expert-commentary/coronavirus-and-the-cgl-policy

Legal Considerations for Employers

Presented by Jennifer Alexander & David Gross



Resources for Rules and Recommendations

Managing the Workplace in 2021

- [Center of Disease Control \(CDC\) Guidance](#)
- [Equal Employment Opportunity Commission \(EEOC\) Guidance](#)
- [OSHA Standards and related information for Worker Exposure to Covid-19](#)
- [Alaska Workers Compensation Issues](#)
- [Vaccination Policies](#)
- [Refusal to Return to Work Issues](#)



Resources for Rules and Recommendations

Update on Governing COVID-Related Order

- [Travel Mandates and Testing](#)
- [Gathering Restrictions and Mask Mandates \(State\)](#)
 - Check municipal websites for local mandates
- [Federal Paid Leave Obligations](#)



Resources for Rules and Recommendations

Additional Links

- [State of Alaska Health Mandates](#)
- [Municipality of Anchorage Emergency Orders](#)
- [U.S. Equal Employment Opportunity Commission, Americans with Disabilities Act and Rehabilitation Act Guidance](#)
- [Centers for Disease Control Guidance for Businesses](#)
- [Response Act FAQs](#)
- [U.S. Department of Treasury Paycheck Protection Program FAQs](#)



Civil Liability for Non-Employee Illness

Three Elements Needed to Prove Negligence:

1. There must be some type of unreasonable conduct.
2. The conduct must cause the illness.
3. There must be damages.

Must prove all three elements to demonstrate liability.



Be Reasonable

Take the necessary precautions to protect your customers and clients.

- Strictly follow guidelines of Federal, State, and Local Authorities.
- Create and follow preparedness plan.
- Structure store or office to promote social distancing.
- Do not take unnecessary risks.

If you are reasonable, you cannot be negligent.



Pre-Existing Duty of Care

If you already owe a duty to protect the health and well-being of your clients, be very cautious.

- Nursing homes or extended care facilities.
- Childcare providers.
- Serving those who are vulnerable.
- Lodges and Hotels.

In these industries, you will be required to take all reasonable precautions.



What Can I Do to Protect Myself from a Claim?

- Evaluate your insurance coverage.
- Do a risk assessment.
- Take preventative measures.
- Limit the possibility of exposure.

If you cannot adequately protect yourself, think about whether it makes sense to open back up.





Thank you for attending today! Please reach out to info@risqconsulting.com with any additional questions.

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Property & Casualty Division

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Additional Resources

- <http://dhss.alaska.gov/dph/epi/id/pages/COVID-19/vaccine.aspx>
- <https://anchoragecovidvaccine.org/>
- <https://www.cdc.gov/vaccines/covid-19/index.html>
- <http://dhss.alaska.gov/dph/Epi/id/Pages/COVID-19/VaccineAvailability.aspx#now>

