

Speaker 1:

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Dan Kalish:

Hi everyone. My name is Dan Kalish. I am a managing partner of HKM Employment Attorneys. You are here for the coronavirus round table, and obviously we appreciate your time. In this round we have four attorneys on from HKM. We have myself, we have Julian Wolfson, we have Shelby Woods, and we have Jesse Fishman. Do you three want to quickly introduce yourselves?

Jesse Fishman:

Hi I'm Jesse Fishman. I'm an attorney at the Denver office.

Dan Kalish:

Great.

Julian Wolfson:

Hi, this is Julian Wolfson, one of the attorneys at HKM's Denver office. Nice to meet everyone today.

Dan Kalish:

Great. And just to clarify a few things for everyone listening, first thing is this call will be recorded and the reason why is that we are going to place this on our website. So don't feel like you have to take various notes, this will be posted on our website hopefully within the next couple days. Second is I have tried, I believe this has worked, to mute any of the non-speakers, and that's just simply for feedback et cetera.

Dan Kalish:

At the end of our call we will have an opportunity to take questions and the way we'll do that is we'll have you email coronavirus@hkm.com. Again, that's coronavirus C-O-R-O-N-A-V-I-R-U-S @hkm.com. We will then see your question, and we'll try to answer it in the best way that we can. We will not state your name, we will not state basically your specific situation, and we're not going to name your employer. But we will try to answer those questions if we don't address them at the end.

Dan Kalish:

Then the third thing is just a general disclaimer. This is an opportunity for us to get as much information as we can to as many people as we can. But it is just that, it's just general information to the assist employees throughout the United States. It is not a substitute for an individual attorney-client relationship, it is not an attorney-client relationship between us, HKM, and you. If you have any specific questions, we ask that you contact an attorney. Shelby Woods is an attorney in our Denver office who's on the call. I just want to double-check that she made it. Shelby, are you on?

Shelby Woods:

I am. Thanks, David.

Dan Kalish:

Okay, great. So to give you guys a sense of what we're going to do today, we're going to discuss four broad topics which I think will cover hopefully about 90% of, if not 95% of the issues that people have. We're going to start with me, I'm going to describe a little bit about the federal law and the changes in the federal law. Then we're going to talk about safety and health in the workplace and those issues. Then we're going to talk about compulsory attendance and what constitutes an essential business and whether or not you have to attend. Then we're going to talk about wages, compensation, and unemployment benefits.

Dan Kalish:

But I think I will start off, I want to describe this a little bit. At the very beginning of this pandemic, state law was much more important because state law provided most employees their rights. That has sort of shifted in the last few weeks as result of two federal laws. By the way, there is a new law that it's my understanding that is going to pass hopefully today, if not maybe sometime this week. A new stimulus package that's going to change things as well. When that does pass, we're going to update our website almost instantaneously to try to get that information out to you.

Dan Kalish:

The first two acts that you need to know is, the first one is called the Families First Coronavirus Response Act, this is a federal law. The basic idea is it provides certain rights to employees who work for companies with less than 500 employees. So if a company has more than 500 employees, this actually won't apply to you, but if you have less than 500 employees, it allows really two things. Number one, it allows you to take up to 12 weeks paid leave if you have a child who is home because of the school closure or if you have a child who is home and your care provider your babysitter for example or your nanny would be another example could not come into work.

Dan Kalish:

In either of those situations, if you basically have someone under the age of 18 who's at home and you need assistance on childcare, the Families First Coronavirus Response Act gives you the right to get up to 12 weeks of paid leave to take care of your child. Now, a couple things, that you will not get paid 100% of what you normally get paid, you will get paid two-thirds of what you normally get paid, and there's limits to that. I think the limit is about \$200 per day, it's about \$1,000 per week. So that's sort of the first thing that bill does.

Dan Kalish:

The second thing that it does, this is again for employees who work for companies with less than 500 employees, is you get sick leave. You get up to two weeks of sick leave for a various range of factors including that you're suffering from coronavirus symptoms, you have to quarantine yourself, you're experiencing various conditions, those type of things. If those occur and the specific reasons are on our website at hkm.com/coronavirus, you're entitled two weeks of paid leave at 100% of what you're paid. That again, that one's up to \$500 a day or \$2,500 per week. So that's the first act.

Dan Kalish:

The second act that is important, and we're going to discuss these in a little bit more detail later, but I'm just giving you a general overview. But the second act is something you might have heard, it's called the CARES Act. What this does is this is the act that provides the stimulus payment to each individual, and there's going to be more discussion about those payments. What it also does from an employment

perspective is it expands unemployment substantially. It expands the reasons that you can get unemployment number one, and it goes those list of reasons on our website.

Dan Kalish:

Number two, what it does is it allows independent contractors or gig workers to apply for unemployment. That is a very new concept. Before, if you're an independent contractor or gig worker, you were not able to get unemployment. This law now allows you to do that. So those are the two pieces of federal legislation. Again, we add that you continually check our website because there are laws getting passed frequently and all the time, and we're trying to change our website as quickly as we can to address those issues. So then, that completes my presentation. Why don't we talk about now, Julian, why don't you go and talk about some of the compulsory attendance issues and furlough versus employee.

Julian Wolfson:

Sure. Thanks for that great overview. As I mentioned earlier, my name is Julian Wolfson, and I'm one of the attorneys at HKM Denver office. As Dan alluded to just a second ago, one of the issues that we received an influx of concerns about relates to the question of what constitutes an essential or in some case, called a critical business? That is what businesses are allowed to stay open notwithstanding any government order issued by your state or local government and which businesses are not allowed to?

Julian Wolfson:

As you may suspect, there are numerous different orders throughout the country defining what businesses are essential or critical. Generally speaking, some of these orders are quite vague, subject to different interpretation, and are not always enforced, at least consistently. Moreover, we have noticed these orders are being amended or modified on a regular basis, therefore recommend that you check your local or state government's website consistently. It's also important to note that in many jurisdictions these orders require that critical or essential business, those businesses that are remaining open, they still nevertheless have to comply with certain restrictions including but not limited to maintaining social distancing requirements at the workplace. That obviously and those restrictions on businesses that are open will vary depending on your local jurisdiction. So you want to check that and check your local government county and state.

Julian Wolfson:

If you feel like your employer is not an essential business and do not feel comfortable going into work, we suggest three different options. One, we really think that it's a great idea for you to talk to your employer, really start a dialogue with your employer about this issue. The other option, option number two, would possibly be to take any leave that you have earned or accrued or which is available to you. The third option that we suggest is trying to contact the attorney general's office of your respective city or state. Some states have even placed a website up with a complaint form for you to submit.

Julian Wolfson:

So those are some of the options that we suggest. Nevertheless, we still have frequently received a question about what happens if you refuse to go to work at a non-essential business? So if your business is clearly non-essential and your employer is still making you go to work. The question that we've been getting is, what happens if you are fired for refusing to attend work under these circumstances? What we've been advising individuals and employees is that you may have legal recourse, but it really depends

on specific facts in the governing law in your state. More importantly, we want you to know that justice is slow and that with this novel pandemic, it's really hard to assess how the courts will evaluate such claims. If this issue arises, we recommend generally that you consult an attorney in your local jurisdiction.

Julian Wolfson:

Another question that we have received related to this general topic is whether you have the affirmative right to work from home. Generally speaking, employees do not have a legal right to work from home, not with being in a current pandemic. However, under certain circumstances, you have the right to work from home as part of the reasonable accommodations under the Americans with Disabilities Act. For example, allowing employees to work at home may be a reasonable accommodation when a person's disability prevents them from especially performing the job on-site, and the job or parts of the job can be performed at home without causing significant difficulty or expense.

Julian Wolfson:

Moreover, while the ADA does not require an employer to offer an employee the ability to work from home, if an employer does offer this option, it must allow employees with disabilities an equal opportunity to participate in such program. Generally speaking, you do not though have the right to work from home. With that, I wanted to pass it back to Dan, who will segue into the next speaker.

Julian Wolfson:

Hold on one second, we're having some technical difficulties, just give me one second.

Shelby Woods:

While Dan's getting connected, I can go ahead and start-

Dan Kalish:

Hi, sorry. Sorry, I had muted myself. Now okay, we'll send it to Shelby. Shelby will talk a little bit about safe and health concerns that people have at the office and what are their rights in terms of making sure they're protected.

Shelby Woods:

Perfect. Okay, again, this is Shelby Woods. A lot of people are concerned about whether they do have to go to work and potentially be exposed to the coronavirus. A lot of this is going to overlap with what Julian just covered. You should absolutely check and see whether your state or your county has issued an order stating that all non-essential or non-critical workers have to stay at home from work. If that type of order has been issued and you are working for a non-essential business, then you can stay at home. Now just like Julian said, keep in mind that the definitions of what constitutes a non-essential or an essential business is, those are very new. So it may not be crystal clear in every state which category your employer falls into. But if you believe your employer is a non-essential business, you want to make sure to communicate that to your employer, hopefully in writing, and your employer can hopefully provide answers and clarification or work with your concerns on that front.

Shelby Woods:

A lot of employees are particularly concerned about having to go to work and potentially being exposed to the coronavirus because that worker is immunocompromised or maybe they have a relative or roommate who is immunocompromised because of some existing medical condition that makes them particularly vulnerable to the coronavirus. Now even if you are an essential worker and you have that type of medical condition that maybe makes you high-risk for complications associated with the coronavirus, then you can make a documented request for a reasonable accommodation related to your medical condition, which might be a disability under the law.

Shelby Woods:

Julian talked about this as well and what I want to stress is that you ensure that your request for an accommodation is documented in some way. So that can be a documented request, hopefully in writing, for leave from work hopefully for a definite duration. So you might want to consult with your healthcare provider and try to figure out how much leave from work could be reasonable under the circumstances or you could ask for a requested accommodation of being allowed to work remotely. Now it's common for employers to request a doctor's note from your healthcare provider if you do make a request for an accommodation, and that is generally something that is legal. It is okay for an employer to request for instance what the medical condition is that you have that could necessitate your request for an accommodation or that could make you particularly vulnerable to the coronavirus.

Shelby Woods:

Now there are limitations to that. Definitely employers really are very limited in the request for medical information that they could make. So if they're requesting all of your medical records from the entirety of your life, then that is something that is likely to be in violation of your right. But generally, employers can ask for medical information that is job-related or that is necessary to evaluate whether a request for accommodation is something that they're obligated to provide you.

Shelby Woods:

So you should also definitely along with requesting an accommodation check to see if you're eligible for emergency leave under the Families First Coronavirus Response Act. Dan talked about this a little bit, but generally if you work for a company with less than 500 employees, then you may be able to take emergency leave to care for a child or if you've been advised to self-quarantine by a healthcare provider. Again, you may very well reasonably have to provide that doctor's note that shows that you have been advised to self-quarantine to your employer to substantiate your request and also substantiate that you qualify for leave under the Families First Coronavirus Response Act.

Shelby Woods:

You also could be eligible under that act to take up to 80 hours of paid sick leave to either treat yourself for coronavirus or coronavirus type symptoms or to care for a family member. You can apply for that type of emergency leave through HR or you can contact management. Again, I would recommend definitely making that request in writing. Keep in mind that if you're asking for an accommodation of being allowed to work from home because of a medical condition that makes you vulnerable to coronavirus, working from home should not count against any leave that you're entitled to under the Families First Coronavirus Response Act. That type of emergency leave under the act is not supposed to be for employees working from home. You are supposed to be relieved of your work responsibilities or relieved of all work responsibilities that are anything such as incidental communications with your employer that allows your employer to take over.

Shelby Woods:

So you definitely should also not be penalized in any way from taking any type of emergency leave under the Families First Coronavirus Response Act or from requesting an accommodation related to a medical condition you might have that makes you particularly vulnerable to the coronavirus. If you are experiencing any kind of punishment like a termination or even things that are short of a termination like your written up for bogus reasons or maybe you're demoted, your responsibilities are drastically changed, then that's going to be a very context-specific thing for an attorney to evaluate so you want to make sure to follow-up with an attorney so that they can evaluate your specific circumstances. I definitely would advise you to do that if you are punished or something negative happens to you after you leave a request an accommodation or you ask for leave or take leave under the Families First Coronavirus Response Act.

Shelby Woods:

Also, keep in mind that requesting an accommodation related to a medical condition or taking leave under the Families First Coronavirus Response Act those things don't unfortunately protect you from being terminated for a reason unrelated to that request. So if you're terminated for financial reasons related to the coronavirus or because your employer just simply has no work for you, that unfortunately, makes it legal. Then, if you are concerned about going to work and potentially being exposed to the coronavirus because your relative or your roommate or someone that you frequently interact with has that type of medical condition that makes them very vulnerable to the coronavirus, unfortunately, employers generally are not required to provide accommodations because of a relative's disability or because of another individual's disability.

Shelby Woods:

You may still qualify under the Families First Coronavirus Response Act for emergency leave if it is, for instance, your child who is sick or you can potentially qualify for just traditional leave under the Family and Medical Leave Act, so FMLA leave. You generally have to have been working for the company for a year and also typically the employer has to have 50 employees within a 75-mile radius. But that type of leave has been available for employees for a long time, and it's for anyone who has either a parent, a spouse or a child who has what's called a serious health condition. A serious health condition is really technical to define but generally anything that requires that person to be incapacitated for several days or to be under continued treatment of a healthcare provider. So definitely ask your human resources or your manager for more information to see whether you qualify for that type of leave if you're concerned about a relative's medical condition that is in some kind of active state that requires your help and your care.

Shelby Woods:

A lot of individuals are also asking us questions about their employers not exercising safety precautions to try to mitigate the potential for exposure to coronavirus in the workplace. Now if you're not for instance, allowed to wear certain kinds of personal protective equipment or PPE you can certainly informally report your concerns, again hopefully in writing to human resources or to your manager and hopefully encourage them to work with you to get to some kind of solution and start to make things better. If that doesn't work, then you can also report your concerns to your state's attorney general's office. It's not really clear here whether courts would recognize that employees are protected from any kind of retaliation, and I'll talk about this a little bit more.

Shelby Woods:

But for instance, whether you're protected from termination for reporting these safety concerns related to the coronavirus, so let me give you an example. So a lot of healthcare workers for instance, ask us about their rights if they're fired for refusing to work without proper PPE or something like a face mask. That is a tough question to answer because the answer is somewhat unclear at this time. Before the coronavirus pandemic, it's been fairly clear under the law that a healthcare worker or another worker can actually be fired for refusing to work without certain kind of PPE like a face mask unless there's a specific equipment required as part of their licensing standards or joint commission standards or maybe the employee has some kind of disability that they've requested that accommodation of being allowed to wear a face mask to protect them a result of what could be a disability.

Shelby Woods:

It's not clear yet on how that outcome would change since the coronavirus pandemic. It's probably more likely than it has been in the past that you would be protected from retaliation for refusing to work without proper PPE, but it's also still possible that you may not be protected. So it's going to be very context-specific, and I would definitely recommend contacting an attorney to discuss your specific situation if you do experience any kind of retaliation for expressing safety concerns that your employer should be following. For instance, social distancing standards or other types of protections that would still allow the company to carry on its critical business function, but it would help to protect employees. A lot of the employees have also asked us if their employer is required to tell them if an employee tests positive for the coronavirus?

Shelby Woods:

So if an employer learns that one of its workers has tested positive for COVID-19, they may have an obligation to inform you of that if your employer knows that you were in contact with the individual that did test positive. However, employers cannot identify the individual that tested positive they do have to respect the confidentiality of that individual's protected health information. But according to OSHA, the law requires that employers provide a safe workplace, so that means they have a duty to protect you from recognized hazards. That being said, there are no specific requirements for what an employer has to do to protect you from an infectious disease like COVID-19. OSHA has issued guidelines on this front, but they are guidelines. So another thing to realize, is that even if OSHA were to decide that a company violated its obligation to inform its workers of a recognized risk of infection there might be fines that are issued against that company by OSHA, but that doesn't necessarily mean that the company would end up paying those fines to its employees. It may just pay those fines to OSHA.

Shelby Woods:

But if you do experience any type of retaliation again for reporting safety concerns to OSHA that could involve the coronavirus, very important to know that you actually have a very quick 30 days to report that retaliatory termination to OSHA. Who you will be time-barred from pursuing any claims related to a retaliatory termination for making a reported safety concern to OSHA if you don't file a complaint with OSHA, and you can do that online within 30 days of your termination. Now, if you have been exposed to coronavirus or you're having coronavirus symptoms or if you've tested positive for coronavirus, absolutely inform your employer, make sure that's in writing. Also, very quickly it's important to get in touch with your healthcare provider so that they can be in a position to not only provide you treatment but if they need to cooperate to your employer the fact that you've tested positive for coronavirus or

they need to give you some kind of advisement in writing that you need to self-quarantine. It can be important to start reaching out to get that type of documentation early.

Shelby Woods:

But definitely do not go to work or leave work if you are already there, and that's consistent with regulations from the CDC, it's consistent with guidance that the EEOC or Equal Employment Opportunity Commission has issued. We just believe that it would be a very bizarre scenario and practically also very unlikely for that reason if a court were to I guess allow an employer to be off the hook for basically firing an employee if they refused to go to work after they had tested positive coronavirus. I think that's probably very unlikely.

Shelby Woods:

Also, if you have been fired in that situation for having the coronavirus, two things. There's a distinction definitely between being fired for failing to follow proper safety policies established by your employer or that your employer is attempting to follow for maybe pursuant to CDC guidelines or pursuant to a state public health order. If you don't follow those safety guidelines, then you can legally be fired for that. However, if your employer is instead firing you just because you got infected with the coronavirus or because they have some sort of prejudice or maybe even somewhat paranoid belief that even if after you self-quarantine that you're still going to come back and expose other employees to the threat of being infected as well. If you're terminated for that kind of bias, then definitely contact an attorney because that very well may be illegal. I think that's everything on the safety and health part of this call. I'm going to pass it to Jesse Fishman, who's going to talk about your rights concerning unemployment benefits.

Jesse Fishman:

Hi everyone, I'm Jesse Fishman and I'm from HKM's Denver office. I'm going to talk a little bit more about talk a little bit more about the Coronavirus Aid, Relief, and Economic Security Act, that's the CARES Act that Dan introduced earlier. So I'm going to start with there's five different ways that this effected unemployment, and then I'm gong to go into the stimulus checks, and then finally some frequently asked for getting [inaudible 00:29:29]. So first, there are now 12 new reasons you can qualify for unemployment, it makes it a lot easier to get unemployment. For example, if you're diagnosed with COVID-19 or experiencing COVID-19 symptoms and received a medical diagnosis or if a member of your household was diagnosed with COVID-19. If your parents or a member of your family or household was diagnosed with COVID-19 or if a person or child for whom you have primary caregiving responsibilities unable to attend school or another facility that is closed as a direct result to COVID-19 and such school or facility is required for the individual to work, then the individual can get unemployment.

Jesse Fishman:

If the individual is unable to reach the place employment because of quarantine imposed as the result of COVID-19 or if the individual is unable to reach the place of employment because of a healthcare provider advised to self-quarantine due to COVID-19 related concerns. If the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19. If the individual became the breadwinner or major support because the head of household died from COVID-19. If the individual has to quit as a direct result of COVID-19 or if the individual states that employment is closed as a direct result of COVID-19.

Jesse Fishman:

So if for any reason you are unemployed now as a result of COVID-19, you are likely entitled to unemployment benefits. That list of 12 reasons is over on our website hkm.com/coronavirus in case you want to look that up later. Another thing the CARES Act does is it now allows independent contractors and gig workers to obtain unemployment benefits as long as the independent contractor is willing to work but unable to because of any of the reasons I just described. Prior to the CARES Act, independent contractors were not eligible for unemployment benefits. One small caveat if the individual is able to telework with pay or who are receiving sick leave or other paid benefits are not eligible for this COVID-19 pay.

Jesse Fishman:

We're getting lots of concerns from people that it's difficult to get in touch with their local unemployment office or that they're not getting responses from people or that the system is shorting. I know it's super frustrating, but just keep trying. We're hearing a lot of feedback that if you try applying for unemployment benefits in the middle of the night or at times when there's less frequent traffic, you're much more likely to get your application to go through.

Jesse Fishman:

The second main way that the CARES Act changes unemployment is that states now offer extended unemployment coverage. So most states offer 26 weeks of unemployment benefits, and now with the CARES Act you can get an additional 13 weeks of unemployment benefits. This goes all the way back to January 27, 2020, even prior to the CARES Act going into effect. The third major way that the CARES Act changes unemployment is you could be entitled to an additional \$600 per week all the way to July 31, 2020. That \$600 per week is available even if you usually make less than \$600 per week. Point four, there used to be a one-week waiting period in many states before you could start receiving unemployment benefits. The CARES Act provides that one-week, so there's no longer a one-week waiting period in any state. Point five, there are now additional protections that help government entities, non-profits, and Indian tribes, employees of those receive unemployment benefits.

Jesse Fishman:

So moving on to the CARES Act stimulus checks, the CARES Act provides for economic impact payments to American household of up to \$1,200 per adult for individuals whose income was less than \$99,000 or \$198,000 for joint filers, and \$500 per child under 17 years old or up to \$3,400 for a family of four. The first checks were sent as early as April 9th via direct deposit to taxpayers who provided their direct deposit information on their 2018 or 2019 federal tax return. Most of the direct deposits should have arrived by April 14th. If you did not provide direct deposit information a paper stimulus check will be mailed to you if you qualify. Paper check might take several months to go out. I understand that they're going to be May and September, and generally going to lower-income earners prior to higher-income earners.

Jesse Fishman:

The IRS recently launched an online tool so you can put in your direct deposit information and get your stimulus check faster. So to check on the status of your check or to try to put in your direct deposit information to get that faster go to irs.gov/coronavirus. I understand that they'll also be updating that website frequently, so you should be able to get more information there on the timing.

Jesse Fishman:

So going to some frequently asked questions. What happens when a state's unemployment benefits run out? In most states, people who lose their jobs can typically get up to 26 weeks of unemployment like I talked about a little earlier, and then it stops even if you haven't found a new job. Well, now you'll have an additional 13 weeks once that runs out. After the 39 weeks is an extended benefits program is triggered, and you can have an additional 13 to 20 weeks of compensation.

Jesse Fishman:

If your employer has no work but refuses to lay you off to prevent you from collecting unemployment, what should you do? This is a situation where you're underemployed, and so you can still sometimes qualify for benefits, so definitely still try applying for unemployment. Let's see, how and when do you get the extra \$600? This should be paid out weekly, you don't have to do anything extra as long your unemployment is COVID-19. Then one final frequently asked question, if I am furloughed or my hours are cut, should I apply for unemployment? Absolutely, yes. There's no guarantee obviously that you'll get it, but the worst thing that can happen is that they can say no. All right, Dan, I think that's it for my topic.

Dan Kalish:

Thank you so much, Jesse. I think at this point again, this concludes our formal presentation, but I think the extent if anyone has any questions we will be on the line for a little bit, and we can answer those. But if you do, email coronavirus@hkm.com. Again, that's coronavirus@hkm.com. We're going to stay on, and we're going to be able to answer those in a way that protects your confidentiality.

Dan Kalish:

(silence)

Dan Kalish:

Okay, just give us a few minutes. A few questions are coming in.

Dan Kalish:

(silence)

Jesse Fishman:

All right, we have a question about whether independent contractors should apply for unemployment when they're unemployed? The answer is absolutely, yes. Again, the worst thing that unemployment can say is no. There's no penalty for applying if you're not entitled to it. We have another question, if you're on unemployment and you get a part-time job, how will that affect your unemployment? Each state decides that it will likely reduce the amount of unemployment that you receive. You certainly have to be honest when you report to unemployment or fill out your application paperwork. Then I have another question about for the stimulus checks. When you go to the website to check the status, it now says not available. I don't know the answer on that on when they'll update their system. I think it was working yesterday when I checked it and imagine it'll be working again soon, so I'd just keep checking and putting your information in to ensure that they have your direct deposit information.

Shelby Woods:

We received also a question about an employee working at a hotel front desk and apparently, the hotel has a lot of patrons that have been exposed to COVID-19. I definitely encourage you to try to work with your employer in terms of making sure that social distancing to the extent that it is possible, is being respected as well as maybe could be an option for you to wear certain PPE that could protect you from exposure. Real question is if this individual can quit their job and still receive unemployment? It is generally again, going to be up to each state on whether you are entitled to receive unemployment benefits and the eligibility has been expanded. Generally speaking, it is usually more difficult to show that you are eligible for unemployment benefits if you resign.

Shelby Woods:

However, I understand that a lot of states do still say that you are eligible for unemployment benefits if you've been forced to resign due to unsatisfactory work conditions. It's just going to be dependent on whether you're able to make that show in through your [inaudible 00:41:52] and also again dependent on your states particular criteria for whether you are eligible for unemployment benefits. Again, this individual it may be this overlaps with Jesse's answer, but if you do get a new part-time job, then it's going to be dependent on your state on whether that either drops you from receiving unemployment or whether it reduces the rate of the unemployment payments that you do receive. But there is generally no reason to not apply for unemployment benefits. The only thing that you're going to lose if you are denied is just simply the time that it takes you to submit the application. So we do encourage you to apply.

Dan Kalish:

Okay. Hold on one second. We're reading a few questions here. Let me get this organized. One of the questions is, somebody calls and says do they have to go into the business if it's been classified as essential? Is there immunocompromised [inaudible 00:43:09] around? If the business is essential, then an employer can in fact require employees to go to work. I think if you don't want to go to work, I would first see whether or not you have some pre-existing condition or disability that would make you immunocompromised. For example, diabetes would be an example or lupus would be another example. If that's the case, I would ask for reasonable accommodation being that you're able to work from home.

Dan Kalish:

Question is can they fire you for not going into work? Quite possibly if it's deemed an essential business. One of the things I would do is again not an ideal situation, but just try to talk to your employer and see if they're willing to give you a break in these circumstances. Then I guess the final thing is, what if somebody doesn't believe the business is essential? Well, in that particular case again, I would talk to your employer. You can also often go to the attorney general's office and see whether or not they would give additional guidance on what's essential. Part of the problem that as you all probably realize, is that the way they define the word essential it's almost impossible to get a good sense of what it is and what it's not.

Dan Kalish:

Okay, hold on a sec. Okay, Jessie, are you able to answer those questions?

Jesse Fishman:

Yup. All right, we have a question about what happens when your temporary accommodation request is denied? That's really a tough one because it's really staff-specific on whether a company needs to give

you a reasonable accommodation with the Americans with Disabilities Act or whether that would cause them undo hardship. So depending on the circumstances, that's a situation where you may want to talk to an attorney. But before doing that, make sure your requests are in writing and that you're providing all of the medical documentation that your company requests. I know Shelby talked about that a little bit earlier. So again, make sure that's in writing and provide them all of the medical information that the company requests. If they deny you an accommodation and you're worried that you're wrongfully denied, that may be something that you should talk to an attorney about.

Jesse Fishman:

Another person contacted us to say that they were cut in half, and they're surprised because they were denied unemployment benefits and a co-worker who has a similar situation did get benefits. The question is, should I continue to try and apply? Absolutely, yes. I think all of the states are struggling with what to do with all of this new money and all of these new rules, and with all of the people filing for unemployment right now, I know that their systems are really overloaded. So I would definitely try reapplying.

Jesse Fishman:

We received another question about a self-employed worker, and this worker first received a denial letter when applying for unemployment and now is being told he should keep track of the denial letter and that he'll automatically receive unemployment benefits later. I would certainly keep track of that and I would re-apply just to make sure that they are seeing your information. Like I said, self employed workers and gig workers and independent contractors can now get unemployment before where they couldn't, so I would urge you to try reapplying, there's no harm in that. Then another question is where will the video be posted? The video will be posted on our website hkm.com/coronavirus probably in a few days.

Dan Kalish:

Thank you, Jesse. I've just got a couple. One person said that they were sort of... We've had this several times by the way, is that somebody has been offered a new job. They left their previous job, and then the new job said, "Well, we can't take you anymore because essentially we have no work." Unfortunately, the legal options are very limited in that circumstance. In general, unless there's a specific contractual arrangement that provides that it's not an at-will, an employer can terminate someone before they even start if it's for a non-discriminatory reason.

Dan Kalish:

Something else that somebody asked us about is in the state of Washington the governor there has a law essentially protecting high-risk workers. High-risk workers are been defined as from the CDC as people over the age of 65. So this person was wondering if it would apply to them if they were under 65, and the answer is no, unless they have some type of condition that makes them immunocompromised. So the order that the listener was talking about protects two sets of people. One is those who are immunocompromised number one, and then number two those who are over the age of 65.

Dan Kalish:

So I think that answers all the specific questions. We will wait one more minute to see if anyone writes in, and again the email address is coronavirus@hkm.com. We'll give it one more minute, and if nobody has any additional questions, I think we'll stop. I think I can state for all of the presenters, the attorneys,

we're sorry that the law is so vague and complicated. We're attorneys, we try to understand it the best we can, we often have trouble understanding it. As you can imagine, everything has been messy and complicated and vague, and we're trying to just give you guys a sense to the best of our ability.

Dan Kalish:

So somebody has asked us, here is a situation in which it's a healthcare provider. The healthcare facility is not providing PTO, is not providing FMLA, is not providing various other sort of things, and has been very vindictive in terms of the way they respond to the healthcare worker. I think in this circumstance it's such a specific question I would suggest that person contact a specific lawyer in their state. But generally speaking, the general FMLA applies to healthcare workers generally. But on the other hand, the Families First Coronavirus Response Act exempts healthcare facilities and as a result is that if those individuals or employees of healthcare facilities have a child under the age of 18 who is at home and who needs care they're not entitled to the 12 weeks of leave, and they're also not entitled to the mandatory sick leave. So I think if you do work for a healthcare facility I would talk with HR and see what you can do and see if the state provides PTO, but it's not necessarily mandated from a federal law.

Dan Kalish:

Okay, a few others have popped up.

Dan Kalish:

(silence)

Dan Kalish:

So somebody has called, this is a situation in which basically a local company was not abiding by the safety measures that were in place, in fact just the opposite. There were a lot of things that weren't going on appropriately, and this person took understandably propped open various doors to let some ventilation in, that type of thing. The company got very frustrated with them apparently and said we're going to trespass you from the office and it's going [inaudible 00:53:02] terms of business relations et cetera. This person doesn't quite know what to do.

Dan Kalish:

In this particular situation, I would contact the attorney general's office of the state you're in. Actually, I'm licensed in that state, and I think the best situation which you find that companies are acting unreasonably regarding the social distancing guidelines and creating a safe work environment, I know in that particular state which this person is writing about you can contact the attorney general's office. Again, it's like the unemployment office in the sense I think they're being sort of booked, but hopefully that will work.

Dan Kalish:

Another person has asked basically whether or not they can get unemployment benefits even though they are not currently in the USA, and can you appeal this decision? I don't exactly know right off hand. I think it depends the way I understand it is where you worked and if you worked for a company physically outside the United States. I just don't know the answer to that question, I would contact someone in the unemployment department of the state you're in to get a sense. That's a new one for us.

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Dan Kalish:

Okay, give it about 20 more seconds to see if we get any new ones. Jesse, do you know that? I've never heard of someone getting unemployment benefits who works overseas.

Jesse Fishman:

Yeah, it's my understanding that would be a state by state analysis, and if the state has a requirement that you are within the state to receive their unemployment benefits, then I don't see any way that the CARES Act would change that. So that's a tough call, I'd certainly urge you to file the appeal, but I think that's going to be a state-specific decision.

Dan Kalish:

Okay, great. Okay, well with that, thank you all again for listening. We are going to post this on our website within a couple of days, and again we encourage you to continue checking our website hkm.com/coronavirus with updates. Thank you all for your time, and we'll be signing off now. Thank you.