Greater Houston Partnership's Economic Update

Latest Analysis: Unemployment Claims Across Houston Jump to 180,000
Global GDP Expected to Decline Up to 30%

New data is beginning to show the dramatic impact the coronavirus is having on Houston's economy. Greater Houston Partnership's SVP of Research Patrick Jankowski used the latest reports to provide a status update on the region's economic landscape on April 14, 2020. Here are a few highlights of his status update:

- There are now nearly 600,000 confirmed cases of COVID-19 in the U.S. and more than 21,000 deaths. Here in Houston there are now roughly 6,000 confirmed cases across the region. In just two weeks, the number of cases in the Houston area has quadrupled.
- It's important to understand the global impact of the virus on a globally connected city like Houston. The latest forecast issued by the International Monetary Fund (its first since the pandemic began) shows global GDP shrinking 3%, which would dwarf the 0.9% decline experienced during the Great Recession of 2009.
- IMF has also mapped where they believe the worst of the economic fallout will happen, with Italy and the Baltic States showing the largest contraction.
- With roughly 450,000 jobs and 30% of GDP in the region tied to global trade, any drop on that front will have a significant impact on Houston. The World Trade Organization estimates global trade will fall between 10-30%.
- According to a survey from McKinsey & Co., 52% of respondents say they are cutting back on their spending. That will have a significant chilling effect on U.S. growth and the overall economy. Over 50% of respondents also believe it will take more than 4 months before we are able to return to normal behavior.
- A Wall Street Journal survey of economists shows that on average respondents believe the economy will shrink by about 25% in the second quarter.
- Initial claims for unemployment insurance now total 180,000 over the last three weeks, that's compared to about 10,000 claims on average for a three-week period. Jankowski said he wouldn't be surprised if jobless claims climb to 250,000 or more in total for March and April.
- On the aviation front, the Transportation Safety Administration might handle 2.5 million passengers during a normal day, but that has fallen to about 100,000 per day in recent weeks.

Greater Houston Partnership's Member Survey

Houston Business Barometer Week 1: Most Working from Home, Nearly Half Say Outlook has Worsened

The pressure facing local small businesses continues to mount as social distancing measures and stay home orders necessary to stop the spread of COVID-19 approach mid-April. A total of 90 small business member companies of the Greater Houston Partnership responded to the first Houston Business Barometer survey conducted by the organization between April 3-6, 2020. An overwhelming majority of respondents (84.3%) said they have instituted work-from-home practices in their company while 22.5% have shut down whole or partial operations. Thirty-six percent of responding companies said they had enacted a hiring freeze and 56.7% indicated their revenues have declined since their last billing cycle. When asked about their firm's short-term outlook during the week that ended April 6 compared with the previous week, 48.9% indicated it had gotten worse and another 44.4% said there was no change. Asked how the fallout from the pandemic has impacted their operations, 53.3% said their operations have been severely impacted while 28.9% said the impact has been moderate. Respondent firms' top three concerns were revenue/sales (86.5%), employee well-being (59.6%) and profits (58.4%).

The following breaks down how long firms believe they could remain afloat based on projected cash flow and without federal assistance:

Time Period	**Respondents**
1-2 weeks	0.0%
3-4 weeks	6.7%
5-6 weeks	6.7%
7-8 weeks	12.2%
3-6 months	26.7%
Longer than 6 months	40.0%
Don't know	7.8%

According to PwC's Survey, More CFOs Say They Anticipate Layoffs

Over a quarter of CFOs say they expect to lay off employees as they deal with financial impact of pandemic. The third release of PwC's COVID-19 CFO Pulse Survey reveals 26% of US Chief Financial Officers (CFOs) anticipate layoffs, a marked increase from two weeks ago, when PwC surveyed US and Mexico CFOs and found that only 16% of them were expecting layoffs. As the crisis stretches farther into 2020, financial impacts of COVID-19 now rate as the top concern, with 75% of CFOs citing the pandemic's effects on operations and liquidity. In fact, 82% of CFOs are now focused on reining in costs — up considerably from two weeks ago, as they continue to deal with the economic impact of the COVID-19 pandemic. Two thirds (67%) of survey respondents are considering deferring or canceling planned investments. Most companies are looking to contain costs by halting investments in facilities and capital expenditures, IT, workforce and other areas. "As we see the economic ramifications of the pandemic continue, workforce discussions are shifting," said Tim Ryan, US Chair and Senior Partner, PwC. "Many of the business leaders I am speaking to want to do everything they can to protect their workers' jobs. However, we are seeing that without normal revenue flows, many leaders are being forced to make tough decisions around staffing and costs. Unfortunately, it is becoming increasingly difficult for some to avoid reducing headcount given the continued uncertainty around how long the pandemic will last." The prospect of mounting layoffs is reflected by a vast majority (81%) of those surveyed who expect COVID-19 to decrease their company's revenue and/or profits this year. Furthermore, fewer financial leaders (61%) feel they could return to "business as usual" within three months if COVID-19 were to end immediately, a considerable drop from two weeks ago.

PwC's survey of financial leaders also found the pandemic's impact on workforce investments varies by sector. Only 13% of Financial Services business leaders expect layoffs, while more Industrial Products (36%) and Consumer Markets (30%) CFOs say they expect layoffs. "Companies are cutting costs and putting planned investments in technology, workforce and capital expenditures on hold while they try to weather an unprecedented economic storm." said PwC Chief Clients Officer, Amity Millhiser. "Before this pandemic hit, many businesses were focused on long-term growth. Now they are being forced to think short-term and protect liquidity."

A Second Round of Coronavirus Layoffs Has Begun. Few Are Safe.

The first people to lose their jobs worked at restaurants, malls, hotels and other places that closed to contain the coronavirus pandemic. Higher skilled work, which often didn't require personal contact, seemed more secure. That's not how it's turning out. A second wave of job loss is hitting those who thought they were safe. Businesses that set up employees to work from home are laying them off as sales plummet. Corporate lawyers are seeing jobs dry up. Government workers are being furloughed as state and city budgets are squeezed. And health-care workers not involved in fighting the pandemic are suffering. The longer shutdowns continue, the bigger this second wave could become, risking a repeat of the deep and prolonged labor downturn that accompanied the 2007-09 recession. The consensus of 57 economists surveyed this month by The Wall Street Journal is that 14.4 million jobs will be lost in the coming months, and the unemployment rate will rise to a record 13% in June, from a 50-year low of 3.5% in February. Already nearly 17 million Americans have sought unemployment benefits in the past three weeks, dwarfing any period of mass layoffs recorded since World War II.

Gregory Daco, chief U.S. economist of Oxford Economics, projects 27.9 million jobs will be lost, and industries beyond those ordered to close will account for 8 million to 10 million, a level of job destruction on a par with the 2007-09 recession. Oxford Economics, a U.K.-based forecasting and consulting firm, projects April's jobs report, which will capture late-March layoffs, will show cuts to 3.4 million business-services workers, including lawyers, architects, consultants and advertising professionals, as well as 1.5 million nonessential health-care workers and 100,000 information workers, including those working in the media and telecommunications. Those employed in industries where working from home is feasible are facing widespread layoffs, said ZipRecruiter labor economist Julia Pollak. The recruiting site itself laid off more than 400 of its 1,200 full-time employees at the end of March. Law firms have had to reduce staff and cut pay as courts are largely closed, settlement discussions are on pause and few new deals are being struck. While the coronavirus has strained emergency services and intensive-care wards, hospitals have been cutting the elective surgical procedures and routine care that normally pay the bills in order to free up resources. The military had given stop-work orders to all nonessential contractors on base to limit any risk they might spread Covid-19. State and local governments, who employ 20 million, aren't immune. Unlike the federal government, they are generally required to balance their books every year. As tax revenue plunges, layoffs and other cost reductions become necessary. State and local employment at first held steady during the 2007-09 recession thanks to federal stimulus, but from the recession's end to mid-2013, it tumbled 700,000 as income and property tax receipts fell. State and local officials are again calling for federal relief to avoid cuts to services and payrolls. Many municipalities have laid off hundreds of workers. The biggest wild card in the jobs outlook is how long it will take for jobs to bounce back, which depends heavily on how long the pandemic and social-distancing measures last. The consensus among the economists surveyed by the Journal is for employment to return to its February 2020 level in 27 months, but views varied widely.

Economist Amy Crews Cutts, of AC Cutts & Associates LLC, expects the labor market to take 5½ years to fully bounce back. The sheer scale of job cuts so far, even if they don't worsen further, are "an extraordinary number of jobs to reverse and put back into the economy," she said. One optimistic sign: Nearly half of workers who reported themselves as newly unemployed in March said they were on a temporary layoff, up from 29% in February. In Colorado and Washington, which require large employers to specify whether layoffs are temporary or permanent, 70% this year have been temporary. In the prior recession, less than 1% were. Daiwa Capital Markets economist Michael Moran predicted many of those laid off will be recalled quickly, allowing the labor market to recover in six months. "The pre-virus economy was performing well," he said. "Employers and workers will be anxious to return to normal." If restrictions on public movement are lifted later this spring, Moody's Analytics economist Adam Kamins said the economy will regain about half the jobs lost to the pandemic by the end of the summer. But then the economy will operate more like it does in the middle of a recession. "Industries that are subject to cyclical cycles, like finance, real estate and manufacturing, are likely to have layoffs," he said. "The lockdown may be over, but there's likely to be a prolonged period of stagnation." The longer unemployment stays high, the greater the hardship, as health insurance and unemployment benefits run out. Joblessness also becomes harder to escape as a worker's skills and experience become obsolete.

IMF Predicts Worst Downturn Since '08 Crisis

The International Monetary Fund issued a stark warning April 14 about the economic toll of the coronavirus pandemic, saying that the world is facing its worst downturn since the Great Depression as shuttered factories, quarantines and national lockdowns cause economic output to collapse. The grim forecast underscored the magnitude of the shock that the pandemic has inflicted on both advanced and developing economies and the daunting task that policymakers face in containing the fallout. With countries already hoarding medical supplies and international travel curtailed, the IMF warned that the crisis threatened to reverse decades of gains from globalization. In its World Economic Outlook, the IMF projected that the global economy would contract by 3 percent in 2020, an extraordinary reversal from early this year, when the fund forecast that the world economy would outpace 2019 and grow by 3.3 percent. This year's fall in output would be far more severe than the last recession, when the world economy contracted by less than 1 percent between 2008 and 2009. "As countries implement necessary quarantines and social distancing practices to contain the pandemic, the world has been put in a Great Lockdown," said Gita Gopinath, the IMF's chief economist. "The magnitude and speed of collapse in activity that has followed is unlike anything experienced in our lifetimes." The figures were released as the Group of 7 finance ministers and central bankers, who were supposed to meet in Philadelphia this week, held a virtual discussion on Tuesday to assess the global economic crisis. In a joint statement after the meeting, they pledged to coordinate their efforts to restore growth, protect jobs and reinforce the global financial system. They noted that the IMF was prepared to deploy its $1 trillion lending capacity to help vulnerable economies cope with recessions and they endorsed a proposal to let poor countries suspend debt service payments. The broader Group of 20, which is also expected to convene virtually this week, must still sign off on the debt relief plan. "The scale of this health crisis is generating unprecedented challenges for the global economy," the G-7 officials said. The United States is expected to take a severe hit, with the IMF projecting that the American economy will contract by about 6 percent in 2020. The global group was skeptical about the prospect for a "V" shaped recovery in the United States, suggesting that a sharp rise in unemployment and disruptions to supply chains will keep the economy below its pre-virus trend next year. The impact is already evident in trade data, where slowing economic activity has caused global commerce to plummet. Gopinath said that the loss of global output would be "far worse" than the 2008 financial crisis and that policymakers were facing an unusual predicament in that traditional stimulus measures are little match for a pandemic that is being fought with shutdowns and quarantines. "It is very likely that this year the global economy will experience its worst recession since the Great Depression," she said.

NYC May Lose 475,000 Jobs, $10 Billion in Taxes

New York City may lose 475,000 jobs and run $9.7 billion short on tax revenue through mid-2021 because of the coronavirus outbreak, the city's Independent Budget Office estimated. Retail employment will take the biggest hit, followed by hotels and restaurants, and the arts, entertainment and recreation industries. Although finance and professional services are also expected to see declines in employment, the IBO projects the most severe job losses will be disproportionately concentrated in sectors with low- and moderate-paying jobs. The only major sector of the city economy likely to avoid job losses over the next year is health care.

Coronavirus Spurs Record Drop in Oil Demand

Global oil demand will plunge by a record 9% this year due to coronavirus lockdowns, thwarting efforts by OPEC+ to contain the resulting glut of crude, the International Energy Agency said. A decade of demand growth will be wiped out in 2020, when consumption will slump by just over 9 million barrels a day, the agency said in its monthly report. April will suffer the hardest hit, with fuel use contracting by almost a third to the lowest level since 1995.

Masks and Face Coverings: What Employers Need to Know

On April 12, 2020, New York State became the latest and largest jurisdiction to impose face-covering requirements in response to the ongoing COVID-19 pandemic. Governor Andrew Cuomo issued an executive order requiring "all essential businesses or entities" to provide "any employees who are present in the workplace" with face coverings to wear "when in direct contact with customers or members of the public," and specifying that businesses "must provide" such face coverings "at their expense." This order becomes effective Wednesday, April 15 at 8 p.m. New York thus joins New Jersey, the District of Columbia, Los Angeles City and County, Miami-Dade County and numerous other localities in requiring or recommending the use of masks or other face coverings in the workplace and elsewhere in public. This trend is expected to continue in light of evolving recommendations from the Centers for Disease Control and Prevention (CDC).

What is a "mask," and what is a "face covering"?

In interpreting these orders, it is important to distinguish between different types of *masks* and *face coverings*. A *mask* is usually defined in workspaces as either (i) a filtering respirator such as an N95 or K95 or (ii) a specialized medical grade or surgical mask. Given continuing shortages and supply challenges, both types of masks should generally be reserved for health care providers, first responders and essential workers who need to fulfil task-specific OSHA and workplace safety requirements related to respiratory protection. A *face covering* is a cloth, bandana, or other type of material that covers an employee's mouth and nose. The CDC lists five criteria for "cloth face coverings," which should:

- fit snugly but comfortably against the side of the face
- be secured with ties or ear loops
- include multiple layers of fabric
- allow for breathing without restriction
- be able to be laundered without damage or change to shape.

Does a face covering prevent the wearer from contracting COVID-19?

A face covering is not necessarily meant to protect the wearer *from others*. Rather, the intention is to prevent a possibly asymptomatic person from unknowingly transmitting the virus *to others*. In general, where an employer becomes aware that a worker is *actively symptomatic* for COVID-19, steps should be taken to exclude that worker from the workplace as well as to identify others who may have been exposed, and to develop an appropriate return-to-work plan when the worker's symptoms have resolved.

Who pays for face coverings?

OSHA and the DOL have not provided guidance whether face coverings must be provided or paid for by the employer.

What about training?

Employers should provide employees with training on how to wear, maintain and clean their face coverings. Employees need to know that they must securely cover their noses and mouths, should not reverse, move or remove their masks unnecessarily in the workplace, should not share their masks with others, and must keep them clean. Single-use face coverings must be properly and safely discarded into trash receptacles after each use. Employers that opt to provide employees with single-use coverings must provide a sufficient supply to enable employees to replace them as needed, which may be more than once a day.

Who does the cleaning and maintenance, and who pays for it?

As the CDC states, multiple-use face coverings should "be able to be laundered without damage or change to shape," generally at least once a day or more often if contamination occurs. Responsibility for cleaning expenses could vary based on state uniform maintenance rules. If there are questions about whether employees will be able to manage regular maintenance, employers are strongly advised to either provide employees with a cleaning subsidy or set up an in-house cleaning program at the employer's expense. Whatever approach employers take, they must ensure that their program complies with all locally applicable wage and hour requirements.

Where can employers obtain face coverings for their employees? What should employers do if they cannot obtain them?

This is perhaps the most pressing question related to face coverings, and the least easily answered given ongoing shortages of protective equipment. Where states and localities are mandating face coverings, employers should be making and documenting good-faith efforts to secure face coverings as a required element of doing business. The CDC's website includes do-it-yourself (DIY) options for making one's own face covering using materials such as T-shirts, bandanas, and hair ties, and numerous similar tutorials can be found online. Employers should consider providing employees with such instructions and materials (at the employer's expense) as an interim measure while they continue to source more standard face coverings. In such cases, the employee's time spent making masks is likely to be compensable and the employer should factor that expense into its planning.

What if employees want to use their own face coverings?

This may be a good option where the employer is having difficulty sourcing face coverings. Employees who are using their own face coverings must make sure that these coverings meet the CDC's recommendations and that they clean them correctly. Employers should provide employees a reimbursement or subsidy for material and cleaning costs. Given the proliferation of novelty masks and materials, employees should be cautioned that DIY face coverings must be workplace-appropriate and cannot feature offensive images or content.

What if an employer has distributed face coverings, but an employee fails to bring their face covering to work?

Because face coverings are considered protective equipment, the employee should not be permitted to work on-site until they are able to obtain a face covering.

What if an employee declines to wear a face covering for medical reasons?

Generally, employers should be providing training to employees at the time that face coverings are distributed or implemented, and the training process should include identification of any medical issues that could interfere with wearing face coverings, such as claustrophobia, asthma, COPD or other conditions. Employers are advised to engage in the interactive process with such employees as required by the Americans with Disabilities Act (ADA) and similar state and local provisions. An employee who cannot breathe through a face covering should not be required to wear one, but may need to be temporarily removed from customer-facing responsibilities, provided with leave or accommodated in some other fashion.

What if an employee declines to wear a face covering for non-medical reasons?
Employee objections should be evaluated in light of all of the relevant circumstances. For example, an employee may raise objections based on religious grounds, where their pre-existing grooming or dress requirements conflict or interfere with prescribed face coverings. In such cases, the employer should engage in the interactive process as required by Title VII and similar state and local provisions. Individuals have also raised legitimate bias concerns, such as where people of color wearing face coverings are wrongly suspected of criminal intent and activity. Employers should take steps to minimize this risk by sourcing face coverings that more clearly look like protective masks and by posting notices that employees are required to wear face coverings on site. Individuals may also object based on the fact that a face covering interferes with their ability to perform the job. Again, employers should assess this issue during the rollout process, identify cases where face coverings may inhibit job performance and develop workarounds that do not compromise safety or performance. Individuals who simply decline to wear face coverings, but do not raise a medical or otherwise protected objection, should not be permitted to work and may be disciplined for not following work requirements.

What are the penalties for non-compliance?
States and localities are imposing a variety of penalties for non-compliance, and local police are generally tasked with enforcement. In New Jersey, non-compliance will be prosecuted as disorderly conduct. In the City of Los Angeles, failure to comply constitutes a misdemeanor subject to fines and/or imprisonment. In New York, fines and penalties may be imposed for violation of the Public Health Law.

What's next?
Face covering requirements are expanding, and are likely to remain in place for the next several months. The CDC has also recommended face covering as a protective measure for returning essential employees to work following COVID-19 exposure. As such, employers should make reasonable efforts to source face coverings for essential workers, particularly those who interface with customers and others, and consider what other safety measures may be needed as employees transition back to on-site work in greater numbers.

Ten Common Benefits Issues Related to the COVID-19 Pandemic, Employee Furloughs and Reductions in Force

1. What are employers doing regarding health plan eligibility during a furlough period?
A main employer concern is providing health care to employees who will be furloughed. There are many issues of which an employer must be cognizant before providing coverage. First, the employer's plan document must be reviewed to see how furloughed employees are to be treated. Generally, furloughed employees can be viewed as employees on an unpaid leave. It would not be surprising to find that there is no provision in the plan document or summary plan description that clearly deals with this issue. If these documents are silent on the matter, or if the documents do not provide for the desired level of coverage, the employer should take the following actions prior to extending coverage to furloughed employees:

- Amend the plan to provide for the desired coverage.
- Procure from the insurer (or stop-loss carrier if the plan is self-insured) written permission to provide this coverage to furloughed employees. Failure to procure written permission could result in an insurer disclaiming coverage.

A key component to determining if those on a furlough are covered by a plan is the manner in which full-time employees are determined under the Affordable Care Act employer mandate. Generally, if the employer uses a "lookback/stability" method for determining full-time status, then generally, furloughed full-timers will be extended coverage until the end of the employer's stability period. If the employer measures full-time employment on a monthly basis, the coverage could end for the employee at the end of the month that begins the furlough. *The plan may need to be amended to provide additional coverage for furloughed employees.*

2. Can employers subsidize premium payments?
Generally, employers can subsidize coverage. They must, however, be cognizant of the following issues:

- Cash paid directly to employees will be taxable as wages.
- Nondiscrimination rules may impact self-insured plans.
- Employment laws (*e.g.*, FMLA and USERRA) may affect the amount of the subsidies.

3. What should employers advise furloughed employees with respect to benefits they have elected?
A furlough may impact employee rights relating to benefits the employees elected at their last open enrollment. So, too, may the diagnosis and care associated with COVID-19. Specifically, there may be the ability of those who have made certain elections to change those elections. Employers may wish to consider advising employees of their rights to change certain benefits. These include:

- *Dependent Care Spending Accounts* – both non-furloughed and furloughed employees may be able to change elections on account of daycare centers closing as well as a change in employment status.
- *Healthcare Flexible Spending Accounts* – it might be more advantageous for furloughed employees if employers terminate participation in the FSA and allow furloughed employees to elect COBRA for the spending account.

- *Qualified Transportation Expenses* – both non-furloughed and furloughed employees may wish to change these elections while they are not commuting to work locations. These elections generally may be changed at any time.

4. Can an employer provide life insurance and long-term disability insurance to furloughed employees?
Many employers desire to extend coverage of life insurance and long-term disability insurance to furloughed employees. Employers generally must contact insurers to negotiate an end date for this coverage. Insurers generally will only extend coverage for a limited period of time during the furlough period. There may be conversion privileges for those losing coverage.

5. Can employers change their contributions under qualified retirement plans?
Employers often wish to suspend matching and other employer contributions to 401(k) or 403(b) plans. The ability to suspend matching contributions mid-year may be subject to a variety of factors. These include:

- If the plan is a "safe harbor" plan, the safe harbor notice that was distributed to employees before the beginning of the plan year must be examined as it may permit the plan to be amended to reduce matching contributions mid-year.
- A safe harbor plan also may be amended mid-year if the employer is experiencing an "economic loss."
- The determination of whether a non-safe harbor plan can be amended depends upon a number of factors, including:
  - Whether contributions are allocated periodically or annually.
  - Whether the plan has a "last day" or 1,000-hour rule as an eligibility condition for a matching contribution.
- Depending upon plan language and communications made to employees, some 2019 discretionary non-elective and matching contributions need not be made in 2020.
- Certain contributions that employers have committed to make may be deferred until the employer's tax filing deadline.

Special 2019 Contribution Considerations
With respect to a 401(k) plan, is it permissible to forego making employer contributions for the 2019 plan year? The answer depends on the plan's terms and any communications made to plan participants regarding employer contributions. If the plan's language defines an employer contribution as "discretionary" (regardless of whether the contribution is an employer match or an employer non-elective contribution) and the company/plan has not made ANY representations to plan participants (verbal or written) that a contribution will be made to the plan on their behalf for the 2019 plan year (for example, a communication that informs participants that the company will match employee deferrals for the 2019 year at a certain percentage), then the company has the discretion to NOT make an employer contribution for the 2019 plan year. Otherwise, if the plan's terms require a contribution to be made or the company/plan previously communicated to participants that an employer contribution would be made, then once the 2019 plan year has ended (or once any conditions precedent regarding the employer contribution have been satisfied), the employer contribution is deemed to have "accrued" and must be made in order for the plan to maintain its tax qualified status. One area where employers are

making changes affecting employee deferrals is automatic deferrals. Some employers now question whether in this economically uncertain time, they should be deferring employee pay without procuring an affirmative consent.

6. How can a reduction in force create a partial plan termination?
Employers must be cognizant of partial plan termination rules when making reductions in force.

- A reduction of 20% of plan participants may create a partial plan termination, which would require the vesting of all plan participants whose jobs are terminated during the year of the reduction.
- A partial plan termination must be communicated to affected employees.

7. Can plan distributions be made to furloughed employees and those affected by COVID-19?
The Coronavirus Aid, Relief, and Economic Security (CARES) Act permits a plan to be amended to provide furloughed employees and others affected by COVID-19 to receive penalty-free plan distributions of up to $100,000, which may be repaid within three years of the distribution. If amounts are unpaid within three years, there will be ratable income from the year the distribution is made for the three-year period.

8. How does the CARES Act provide more flexibility regarding plan loans and required minimum distributions?
The CARES Act allows a plan to be amended to receive plan loans as high as $100,000 or if less, 100% of a vested plan account balance. Additionally, the CARES Act waives minimum required distribution plans for 401(k), 403(b) and governmental 457(b) plans.

9. Can employees donate paid time off to their colleagues who are absent from work due to a medical emergency or a major disaster?
An employer may establish a paid time off (PTO) donation plan. Under the PTO donation plan, employees may elect to donate PTO hours. The employer converts the PTO hours and holds them in a PTO bank. Employees who (i) have a medical emergency, or they or their family member(s) have a medical condition that will require their absence from work that will result in a substantial loss of income because all of their PTO has been used or (ii) are impacted by a major disaster as declared by the president of the United States, may apply to the employer's PTO bank for payment of donated PTO. The donated PTO is converted at the employee's hourly rate and is paid to the employee as if it were regular PTO. The PTO is subject to normal income and employment taxes. The employee who donates the PTO is not subject to income tax on the donated amounts as this is deemed an exception to the income tax doctrine known as assignment of income. Care must be taken as the requirements are far more extensive than typically found in a payroll policy.

10. May an employer make "qualified disaster relief payments" to employees?
An employer may make qualified disaster relief payments to employees. In addition, an employer may establish a private foundation that will make the payments to the employee. The payments made by the employer are deductible and the employee will not be subject to income tax or most employment taxes if the relief payments are in conformity with Section 139 of the Internal Revenue Code.

OSHA Sheds Light on COVID-19 Recording Requirements

On April 10, 2020, the Occupational Safety and Health Administration (OSHA) updated its guidance on whether employers are required to record cases of COVID-19 in their 300 Logs for reporting occupational injuries and illnesses. OSHA's memo is a welcome update from the Agency on an issue that has been of significant concern to all industries.

When is an Illness Recordable?
OSHA's recordkeeping rules apply only to injuries or "illnesses." The rule defines an injury or illness as "an abnormal condition or disorder." As the virus began to spread across the country, OSHA confirmed that COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. By mandating that COVID-19 is a recordable illness, OSHA placed employers in the difficult situation of attempting to determine when an employee contracted the virus—was the employee infected at work or while away from work?

OSHA's COVID-19 Recordability Test
In its April 10 memo, OSHA restated that COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, *if*:

1. the case is a tested-positive confirmed case of COVID-19, as defined by CDC;
2. the case is "work-related," which is defined as an event or exposure that either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness; and
3. the case involves one or more of the following:
   - death
   - days away from work
   - restricted work or transfer to another job
   - medical treatment beyond first aid
   - loss of consciousness
   - a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Given that most every employer directs employees to remain away from work after a positive COVID-19 test, every instance of a positive test could result in a recordable event ***if*** the illness was "work-related."

But is it Work-Related?
In the memo, OSHA acknowledges that employers "may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposures at work." In light of these "difficulties," OSHA has provided the following guidance:

> Employers of workers in the healthcare industry, emergency response organizations, and correctional institutions must continue to make work-relatedness determinations pursuant to 29 CFR § 1904. Until further notice,

however, OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations, except where:

1. There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. The evidence was reasonably available to the employer. For purposes of this memorandum, examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees' health and safety in the ordinary course of managing its business and employees.

Going Forward

For non-frontline employers (employers that are not healthcare providers or emergency first responders) and employers that are not correctional institutions, OSHA explicitly states that except in limited situations, OSHA will not enforce its recording requirements. OSHA highlights, however, that there might be some scenarios where these employers would have to record a positive COVID-19 illness such as when there are a cluster of workers that all contract the virus. The guidance, however, for healthcare providers, emergency first responders, and correctional institutions, becomes less clear. By explicitly stating that non-frontline/non-correctional institution employers do not generally have a recording requirement, it appears that, in contrast, frontline employers and correctional institutions must take a closer look at their confirmed cases of COVID-19. There may be non-cluster scenarios where these employers must record the illness. Ultimately, while shedding some light on employer recording responsibilities, OSHA's new guidance places the onus on all employers to track carefully COVID-19 cases in their workplaces. Furthermore, OSHA's guidance does not specifically address an employer's obligation to report to OSHA work-related cases of COVID-19 that result in a fatality or an in-patient hospitalization. By not doing so, employers must still make a judgment as to how to proceed if a reportable case arises. We recommend consulting with legal counsel when determining whether to record or to report.

Sources: Littler; Houston Chronicle; Greater Houston Partnership; Wall Street Journal; Bloomberg