

Updates on Coronavirus Disease (COVID-19) in the US: Policy and Force Majeure

March 20, 2020

Policy



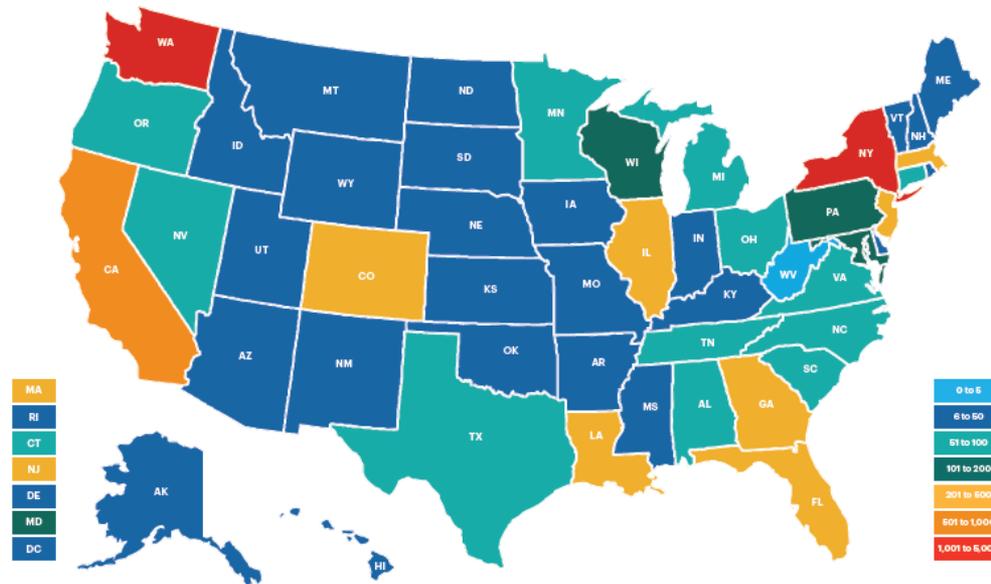
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Coronavirus Disease (COVID-19) in the US



Total cases: 10,442
Total deaths: 150

States with confirmed and presumptive positive cases of COVID-19:

None

- 1 to 5
- West Virginia

6 to 50

- Alaska
- Arizona
- Arkansas
- Delaware
- Hawaii
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Maine
- Mississippi
- Missouri
- Montana

- Nebraska
- New Hampshire
- New Mexico
- North Dakota
- Oklahoma
- Rhode Island
- South Dakota
- Utah
- Vermont
- Washington DC

51 to 100

- Wyoming
- Alabama
- Connecticut
- Michigan
- Minnesota
- Nevada
- North Carolina
- Ohio

- Oregon
- South Carolina
- Tennessee
- Texas
- Virginia

101 to 200

- Maryland
- Pennsylvania

201 to 500

- Wisconsin
- Colorado
- Florida
- Georgia
- Illinois
- Louisiana
- Massachusetts
- New Jersey

501 to 1,000

- California

1,001 to 5,000

- New York
- Washington

Date updated: March 19, 2020

Source: CDC, www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html

State Mitigation Strategies

Action	Number	State
Declared State of Emergency	52	
Postponed primary elections	5	Georgia, Kentucky, Louisiana, Maryland, Ohio
Temporary honoring of out-of-state licenses	4	Colorado, Maryland, Tennessee, Texas
Required insurers waive all cost sharing for testing	10	California, Connecticut, Idaho, Maryland, Montana, New Jersey, New York, Texas, Vermont, Washington
Activated National Guard	23	Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Kansas, Louisiana, Maryland, Mississippi, Montana, New Jersey, New Mexico, New York, Puerto Rico, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin
Imposed curfew	1	Puerto Rico
Recommended curfew 8PM – 5AM	3	Connecticut, New Jersey, New York
Restricted out-of-state travel for state employees	21	Alaska, Arkansas, Connecticut, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, Washington, West Virginia, Wisconsin
Closed schools	43	All but California, Colorado, Idaho, Iowa, Kansas, Maine, Missouri, Nebraska, Texas
Closed non-essential businesses	3	Pennsylvania, Washington, Puerto Rico
Closed bars and/or restaurants	23	California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Vermont, Washington DC
Prohibited gatherings greater than: 10	5	Colorado, Iowa, Nebraska, Virginia, Wisconsin
25	3	Massachusetts, Oregon, Rhode Island
50	14	Connecticut, Delaware, Illinois, Indiana, Louisiana, Maryland, Michigan, North Carolina, New Hampshire, New Jersey, New York, Ohio, Tennessee, Washington
100	1	New Mexico
250	3	California, Vermont, Washington DC

*Includes Washington DC and Puerto Rico

Information as of 3/17/2020: 6:30 p.m.

First Package Provided US\$8 Billion

Public Law 116-123, enacted on March 6, provided US\$6.5 billion for the Health and Human Services Department

- US\$3.4 billion for Public Health and Social Services Emergency Fund
- US\$2.2 billion for Centers for Disease Control and Prevention
- US\$836 million for National Institutes of Health
- US\$61 million for the Food and Drug Administration
- Waived Medicare telehealth restrictions, which CBO estimated would increase mandatory spending by US\$490 million

Provided US\$1.25 billion for State Department and USAID

- Includes funds for global health programs, humanitarian and health assistance, diplomatic operations, evacuation and emergency preparedness costs

Enabled Small Business Administration to provide about US\$7 billion in disaster loans

H.R. 6201 would create emergency paid leave programs to respond to the outbreak

- Private sector employers with fewer than 500 workers, government entities would have to provide as many as 12 weeks of partially paid family leave under the FMLA to care for a child whose school or day care has closed
- Employers also would have to provide full- and part-time workers with two weeks paid sick time, including for a quarantine order or to care for another affected individual
- Labor Department could exempt small businesses with fewer than 50 workers from the paid leave requirements

Paid leave would be financed through tax credits

- Refundable tax credits for employers to cover costs under the bill's sick leave and family leave programs
 - Would include amounts employers pay for a worker's health insurance plan
- Similar refundable credit for self-employed workers

House Democrats want third coronavirus relief package to expand the scope and length of family and sick leave, according to Speaker Nancy Pelosi (D-Calif.)

Jobless Benefits for Workers Set to Increase

Joint federal-state unemployment insurance program generally provides income support for as long as 26 weeks to workers who have been involuntarily laid off

Doesn't cover workers who are self-employed, quit voluntarily, or fired for misconduct

H.R. 6201 would provide:

As much as US\$1 billion for states to process and pay unemployment benefits to workers affected by coronavirus outbreak

Full federal funding for extended benefits in states with rising unemployment

Flexibility for states to modify requirements for job searches and payment waiting periods

Labor Department clarified that states can make other changes under current law to cover workers who are quarantined or leave their jobs due to Covid-19

Congress and the administration could also expand unemployment benefits by:

Temporarily extending benefits beyond 26-week limit

Some workers qualified for 99 weeks following 2007-2009 recession

Letting affected workers receive jobless benefits under separate disaster aid program if they don't qualify for regular unemployment compensation

National Emergency Frees Up Federal Aid

Trump issued a national emergency declaration March 13 under the Stafford Act

- Frees up US\$50 billion in disaster relief funds for state, territorial, and local governments
- Trump also invoked the Defense Production Act on March 18 to increase supply of masks and protective equipment
- Trump may declare major disaster next to authorize even more federal aid, including for health-care infrastructure

National emergency declaration allows FEMA to provide broad assistance, and other agencies to take actions not otherwise authorized by federal statute

- HHS can enable telehealth, allow doctors to practice across state lines, waive restrictions on stays in critical hospitals and nursing homes
- States can adjust their Medicaid and CHIP eligibility and coverage
- FEMA has been coordinating testing with states

Other emergency executive actions include:

- Education Department will waive student loan interest, although borrowers' monthly payment rates won't change
- Transportation Department waived trucker hours of service rules

Notes: CHIP – Children's Health Insurance Program; FEMA – Federal Emergency Management Agency

Sources: [Declaration](#); Trump [March 13](#) and [March 15](#) remarks and [letter](#); "White House Option for Virus Response Could Set Legal Precedent," Bloomberg Law; "Trump Coronavirus Student Loan Step Seen Having Limited Benefit," Bloomberg Government

Administration Requests Additional US\$46 Billion

The Trump administration requested more fiscal 2020 funding, including:

- US\$17.7 billion for Veterans Affairs and other civil defense programs
 - Includes US\$13.1 billion for medical services account, US\$2.1 billion for community care
- US\$11.5 billion for the Health and Human Services Department
 - Includes US\$5.3 billion for the Public Health and Social Services Emergency Fund to support vaccines and medical supply procurement, US\$3.4 billion for the CDC
- US\$8.3 billion for the Defense Department
- US\$3.2 billion for Homeland Security
- US\$3 billion for a new unanticipated needs account at OMB

White House also adjusted its fiscal 2021 budget to request extra funds, including:

US\$1.3 billion for various CDC programs

US\$439.6 million for the NIH for vaccine development and other applied research

Force Majeure



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In 'defining moment,' San Francisco to order residents to stay home over coronavirus

Mayor announces drastic measures to curb spread of COVID-19 alongside five other Bay Area counties



New Jersey activates National Guard, urges residents to stay home after 8 p.m.



Macy's is closing stores nationwide because of coronavirus

The New York Times

Glastonbury Festival Canceled Because of Coronavirus

The Washington Post

Volkswagen Group, world's largest carmaker, to suspend production in Europe over coronavirus

VW said it was responding to the virus's rapid spread, disruptions to supply chains and the rapid decline in demand.



NBA suspends season until further notice after player tests positive for the coronavirus



Coronavirus: Monaco Grand Prix cancelled, Dutch and Spanish races postponed

- existence of a force majeure event
- force majeure event makes performance impossible
 - standard differs in some jurisdictions -- impracticable
 - may vary according to contract -- “inadvisable”
 - more than just economic difficulty required
- not reasonably foreseeable
- cannot be mitigated

In no event will either party be liable to the other or any third party for any delay or failure in performance under this Agreement due to governmental restrictions, applicable law, ordinances, or regulations; acts of God, hurricanes, earthquakes, disasters, other adverse weather conditions; war or terrorism; strikes or other labor disputes; third party failures; or other causes outside of a party's control.

Other Defenses to Non-Performance

- available in some jurisdictions
 - unexpected intervening event occurred
 - parties' agreement assumed such event would not occur
 - unexpected event made performance impossible (or impracticable in some jurisdictions)

- basic assumption on which contract was made?
 - destruction of subject matter of contract 
 - market shifts, economic difficulty 

- change in circumstance makes one party's performance worthless to the other / frustrates purpose of contract
 - focus on purpose of contract
 - no requirement that one party's performance be impossible
- nonoccurrence of event must have been basic assumption underlying contract
 - cataclysmic and unforeseeable events
 - does not apply when there is just some financial hardship

- contracts for sale of goods
- “Delay in delivery or non-delivery . . . is not a breach under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.”

Questions?

Thank you

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