

March 26, 2020

Summary

The coronavirus has killed more than 1,000 people in the United States, and the United States now has the sixth-highest death toll in the world behind Italy, Spain, China, Iran and France. The Department of Labor reported about 3.3 million Americans filed for unemployment benefits last week – a record high since the government began tracking the data in 1967. DOL highlighted hundreds of layoffs in hospitality, food service, entertainment, transportation, and manufacturing industries.

The Senate unanimously passed a \$2 trillion emergency relief package on a 96-0 vote. The relief bill is the largest emergency aid package in modern history. It provides for small business retention loans, expanded unemployment benefits, direct cash payments to American individuals, and additional funding for hospitals on the front lines of the pandemic. The House is expected to vote on this plan on Friday. President Trump recently expressed his support for the bill. Additional detail about the bill can be found [here](#).

New York Governor Cuomo criticized the stimulus package as insufficient to bridge the virus-related budget gap the state is facing. Under the plan, New York would receive \$3.8 billion, with \$1.6 billion allocated to New York City. Mayor de Blasio called the deal “immoral,” noting that New York City would receive less than one percent of the total funding when it accounts for 30 percent of the nation’s COVID-19 cases. Recent estimates report that New York City has nearly 18,000 COVID-19 cases – constituting 54% of the cases in New York State and 32% of cases in the United States. 5,327 people are hospitalized. Of those, 1,290 people are in intensive care — up 45% from yesterday. Locally, two Trader Joe’s locations in New York City were closed after workers tested positive for COVID-19. In an effort to provide more space for social distancing throughout the city, a pilot street closure program will begin this weekend.

General/Employer Guidance

Presidential updates

- [*Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*](#), March 25
 - President Trump announced that FEMA has delivered 9.4 million N95 respirators and 20 million surgical masks to states across the country. He also expressed support for the Senate’s proposed stimulus package and encouraged the House to pass the legislation. The President stated that he intends to immediately sign it into law.

- [President Donald J. Trump Approves Major Disaster Declarations](#), March 26
 - President Trump declared that a major disaster exists in Louisiana, Iowa, Texas, Florida, and New Jersey. He ordered Federal assistance to supplement state, and local recovery efforts in the areas affected by COVID-19. The action makes Federal funding available for crisis counseling for affected individuals in the State, and for other emergency protective measures.
 - President Trump recently issued similar declarations for New York, California, and Washington State.

World Health Organization (WHO)

- [WHO Director-General's opening remarks at COVID-19 media briefing](#), March 25
 - In a recent media briefing, WHO Director-General Tedros provided an update on the measures required to stop COVID-19 transmission. WHO warned that social distancing measures are not enough to stop transmission of the virus.
 - WHO urged countries to develop additional targeted measures to ensure that COVID-19 does not resurge when restrictions are lifted. These measures include: creating a system to find every suspected case, ramping up testing availability, equipping facilities used to treat and isolate patients, developing a clear plan to quarantine contacts, and refocusing the whole government on controlling COVID-19.
 - WHO also urged individuals to check in regularly on older parents, neighbors, friends or relatives who live alone or in care homes.
- [Coronavirus disease 2019 \(COVID-19\) Situation Report – 65](#), March 25
 - WHO reports that two new countries have reported cases of COVID-19, including Laos and Libya.
 - WHO also highlighted the importance of continuing essential health services to protect those with malaria or other health conditions. These prevention measures are an important strategy for reducing the strain on health systems, freeing up resources for COVID-19.
 - WHO launched the Information Network for Epidemics ([EPI-WIN](#)), providing information for the health sector, individuals, and employers on how to create a COVID-safe workplace. EPI-WIN conducts regular calls with different sectors to address the workplace transmission of COVID-19, the use of PPE by public-facing workers, and the mental health and psychosocial impact of COVID-19 in workplaces.

U.S. Centers for Disease Control and Prevention (CDC)

- [Comprehensive Hospital Preparedness Checklist for Coronavirus Disease 2019](#), March 25
 - CDC updated guidance for hospitals on how to improve their preparedness for responding to a community-wide outbreak of COVID-19. Hospitals should ensure staff is trained to promptly identify and isolate possible COVID-19 patients, care for a larger number of patients in an escalating outbreak while maintaining adequate care for other patients, and manage health care personnel that might be exposed to COVID-19.
 - CDC also released a [personal protective equipment \(PPE\) burn rate calculator](#) that provides information for health care facilities to plan and optimize the use of PPE. It is designed to estimate the average consumption rate for each type of PPE and can be used to estimate a facility's remaining supply of PPE.

New York State

- [*Governor Cuomo Press Conference*](#), March 25
 - Governor Cuomo announced that 40,000 health care workers, including retirees and students, have signed up to volunteer to work as part of the state’s surge health care force. Additionally, more than 6,000 mental health professionals have signed up to provide free online mental health services.
 - The Governor urged the federal government to implement a “rolling deployment” of equipment and personnel to address the critical needs of hotspot areas with high numbers of positive COVID-19 cases, instead of providing limited quantities to the entire country at once.
 - Governor Cuomo also addressed the Senate relief bill which would provide \$3.8 billion to New York, with \$1.6 billion allocated to New York City. The Governor criticized this measure as a “drop in the bucket” noting that the State requires much more direct aid.
 - In New York City, the Four Seasons Hotel agreed to provide free housing for nurses, doctors, and medical personnel working to respond to COVID-19. To address lack of adherence to social distancing protocols, the City will pilot closing streets to vehicles and opening them to pedestrians. The streets will close to vehicles from 10 a.m. to 7 p.m. Police officers will enforce social distancing of at least six feet.
 - The Governor also approved orders to postpone scheduled rate increases for 2 million water and electricity customers – and asked other utilities to consider postponing rate increases during the pandemic.
- [*Emergency Relief for New Yorkers Demonstrating COVID-19 Financial Hardship*](#), March 25
 - The New York State Department of Financial Services (DFS) issued an emergency regulation pursuant to Governor Cuomo’s March 21 Executive Order.
 - It requires that “New York regulated institutions” provide residential mortgage forbearance on property located in New York for a period of 90 days to any individual residing in New York who demonstrates financial hardship as a result of the COVID-19 pandemic. Commercial mortgages are expressly excluded, as are mortgage loans insured by a U.S. government instrumentality.
 - A “New York regulated institution” is “any New York regulated banking organization as defined under New York Banking Law and any New York regulated mortgage servicer entity subject to the authority of the [DFS].” The regulation does not apply to national banks located in New York or to the New York branches of foreign banks.
 - The regulation outlines the qualifying criteria for individuals affected by the COVID-19 pandemic to apply for forbearance relief and the procedures that New York regulated institutions must follow in processing applications

New York City

- [*Mayor de Blasio Holds Media Availability on COVID-19*](#), March 25
 - In a recent press conference, Mayor de Blasio warned New Yorkers against “clinging to false hope” that the City would be able to return to its normal state in the near future. He noted that the growing crisis will likely extend through April – and warned that May could be even tougher than April.
 - Recent estimates suggest that New York City has nearly 18,000 COVID-19 cases – constituting 54% of the total in New York State and 32% of cases in the United States. The Mayor again called on the federal government to maximize its use of the Defense Production Act, and stated that the military’s involvement is necessary for timely aid.
 - Mayor de Blasio also criticized the Senate’s stimulus package as insufficient and stated that it is “immoral” to give New York City less than one percent of the funding allocated for the whole country, when the City accounts for one-third of the nation’s COVID-19 cases.

- The Mayor also reported that, for the most part, New Yorkers are following social distancing protocols, with the exception of group activities in certain parks. In an effort to cut down on group sport gatherings, the City plans to remove basketball hoops from many city parks.
- [*Mayor de Blasio Targets Repeat Price Gougers Preying on New Yorkers*](#), March 25
 - Mayor de Blasio and the Department of Consumer and Worker Protection Commissioner (DCWP) announced a DCWP case against Metro Drugs for knowingly increasing the price of face masks in violation of price gouging regulations under the City’s Consumer Protection Law.
 - DCWP inspected Metro Drugs twice and both times the pharmacy was selling face masks at drastically increased prices—as high as \$200 for 20 masks. In total, DCWP received 23 complaints about Metro Drugs and issued 75 violations for price gouging of face masks. The case will be heard at the City’s Office of Administrative Trials and Hearings where DCWP is seeking up to \$37,500 in fines.
 - This is the first of several cases that DCWP will be filing against repeat offenders of its price gouging regulations.

Other Related Updates

- [*The Senate unanimously passed a \\$2 trillion stimulus plan*](#), March 25
 - The Senate unanimously passed a \$2 trillion economic rescue plan on Wednesday to bolster the economy as it weathers the COVID-19 pandemic. The bill was the product of intense bipartisan negotiations among Republicans, Democrats and the White House. The House is expected to vote on this plan on Friday.
 - Please see the Ropes & Gray alert [here](#) for additional detail.
- [*Department of Labor Online Dialogue on Families First Coronavirus Response Act*](#), March 25
 - The recently enacted Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons relating to COVID-19. DOL published [guidance](#) to assist employers in complying with FFCRA, which takes effect on April 1.
 - The guidance addresses how an employer must count the number of their employees to determine coverage; how small businesses can obtain an exemption; how to count hours for part-time employees; and how to calculate the wages employees are entitled to under this law.
 - DOL is also hosting a national online dialogue for employers, workers, and advocacy groups to play a key role in shaping the development of DOL’s compliance assistance materials and outreach strategies related to the implementation of FFCRA. Interested employers may register [here](#).
- [*HHS Implements President Trump’s Hoarding Prevention Executive Order*](#), March 25
 - Earlier this week, President Trump signed an executive order invoking the Defense Production Act to prohibit the hoarding of vital medical equipment and supplies.
 - Under Section 102 of the Defense Production Act, the President is authorized to prohibit the hoarding of needed resources by designating those materials as “scarce,” or as materials whose supply would be threatened by persons accumulating excessive amounts. Once specific materials are so designated, persons are prohibited from accumulating those items in excess of reasonable personal or business needs, or for the purpose of selling them in excess of prevailing market prices.
 - HHS announced a list of certain health and medical resources that are subject to the enacted hoarding prevention measures, including: N-95 respirators; portable ventilators; chloroquine or

hydroxychloroquine; face shields; medical gowns; surgical gloves; and clinical disinfecting products.

- [COVID-19 Update: FDA Daily Roundup](#), March 25
 - FDA issued additional [guidance](#) on the preparation and distribution of alcohol for incorporation into hand sanitizer products. It provides recommendations for firms that manufacture alcohol (i.e., ethanol or ethyl alcohol) for use as the active pharmaceutical ingredient in alcohol-based hand sanitizers for use by consumers and health care providers.
 - As part of its interim [policy](#) on compounding bulk drug substances, FDA announced that it does not intend to object to registered outsourcing facilities using hydroxychloroquine to compound human drugs provided the drugs meet other conditions and requirements in the Federal Food, Drug, and Cosmetic Act.
 - FDA issued an [emergency use authorization](#) for ventilators, anesthesia gas machines modified for use as ventilators, and positive pressure breathing devices modified for use as ventilators (collectively referred to as "ventilators"), ventilator tubing connectors, and ventilator accessories.

Send questions to COVID-19-Implications@ropesgray.com