



FOLEY
HOAG LLP

ENET/MDG Webinar: “Sustaining Your Early Stage Life
Science Company During the COVID-19 Pandemic Crisis”:
Regulatory and Compliance Issues

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Education: University of Michigan Law School, J.D., *cum laude*; University of Michigan, B.A., *with highest distinction*, Phi Beta Kappa



- **Colin J. Zick** is a partner with Foley Hoag LLP, where he serves as Co-Chair of its Data Privacy & Security and Healthcare practice groups, and its COVID-19 Task Force. His practice is focused on health care and compliance issues, and often involves the intersection of those two subjects in investigations, administrative proceedings or litigation. His work has a particular emphasis on compliance issues related to life sciences, pharmaceutical and medical device companies, laboratories, and provider organizations. He counsels clients ranging from the Fortune 1000 to start-ups on issues involving information privacy and security, including compliance with state, federal and international data privacy and security laws and government enforcement actions (including GDPR and EU-US Privacy Shield, CCPA, HIPAA and other U.S. federal and state data privacy and security laws, privacy policies, cloud security, cyber insurance, the Internet of Things, and data breach response).
- Colin is ranked as one of the Best Lawyers in America® for Healthcare and for Privacy and Data Security Law, ranked by CHAMBERS USA as one of Massachusetts' leading health care lawyers since 2010, and he has been selected by his peers as a Massachusetts “Super Lawyer” since 2004.

- **280-attorney firm** founded in 1943 with offices in **Boston, New York, Paris** and **Washington DC**
- Focused on providing **senior-level attention** to each client
- Practice mix comprises a powerful blend of **regional, national** and **international** expertise and clients
- Long history of attorneys working together effectively to ensure that clients in diverse industries benefit from our **collective expertise**, receiving **comprehensive advice** in an **efficient** manner



Education



Energy & Cleantech



Healthcare



Investment Management



Life Sciences



Professional Services



Sovereign Governments



Technology

- Developed to provide businesses multi-faceted support in rapidly changing global health environment
- Coalition of attorneys and specialists across Foley Hoag with deep expertise in a range of affected areas, including:
 - Bankruptcy & Restructuring
 - Business Counselling
 - Commercial Contract Disputes
 - Debt Finance
 - FDA
 - **Healthcare**
 - Insurance Recovery
 - Intellectual Property
 - International Commercial Arbitration
 - **Labor and Employment**
 - **Privacy and Data Security**
 - Private Funds
 - Public Companies
 - State Attorneys General
 - Supply Chain
 - Tax
- For more information and resources, visit our web page

- Mass. AGO's *Frequently Asked Questions about COVID-19: Employee Rights and Employer Obligations*, updated April 23, 2020: <https://www.mass.gov/doc/covid-19-fld-faqs>
- Mass. Dept. of Unemployment Assistance has published resources for employers considering the Workshare Program for temporary layoff: <https://www.mass.gov/topics/workshare-program>
- U.S. DoL has published several resources related to COVID-19, including a FAQ about general wage and hour questions connected to the pandemic, a FAQ on the Families First Coronavirus Response Act (FFCRA), and the required federal notice posting: <https://www.dol.gov/agencies/whd/pandemic>
- U.S. EEOC has published "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

- Asking employees to stay home:
 - CDC recommended if sick/suspected sick
 - CDC recommended if exposure (e.g., travel)
 - Make sure complying with wage/hour requirements
 - Avoid discriminatory requests
- Informing other employees
 - Get permission
 - Otherwise, notify but avoid identification as much as possible

- Medical Inquiries (e.g., have you been coughing, have a fever, traveled outside the U.S.?)
 - Be careful of ADA – don't ask more than needed
 - Do not ask about underlying risks (disabilities, age)
- Medical Evaluations (e.g., temperature checks)
 - In addition to ADA – privacy torts
 - Weigh business necessity
- Communicating Employee Health-Related Information
 - Employers (generally) not subject to HIPAA on employee fitness to work issues
 - State-specific requirements may apply

- HIPAA Privacy Rule applies to “covered entities” but is “relaxed” in certain circumstances
- Even if HIPAA does apply, various exceptions applicable here
 - Treatment (patient or another)
 - Public Health – agencies and persons at risk
 - Family members, friends, relatives
 - Prevent a serious and imminent threat
- Enforcement is being relaxed in some respects
- Continue to safeguard information
- Only disclose “minimum necessary”

- VPN security
- Use of unsecured devices or connections
- Beware of the cost of “free” programs
 - Conference call lines
 - File sharing or storage (e.g., Dropbox)
- Physical file storage at home
- Use of personal email accounts
- Phishing and ransomware
- Other COVID-19 related scams

- Review and update anti-malware, intrusion prevention programs and systems
- Patch software
- Ensure firewalls in place
- Enhance system monitoring for abnormal activity
- Use dual-factor authentication
- Refresher training/reminders

Examples:

- MA AGO emergency debt collection regulations:
<https://www.mass.gov/news/ags-office-issues-emergency-regulation-to-protect-consumers-from-harmful-debt-collection>
- NY AGO statement on price gouging: <https://ag.ny.gov/press-release/2020/ag-james-price-gouging-will-not-be-tolerated>
- FL AGO consumer alerts on fraudulent products:
<http://myfloridalegal.com/ConsumerAlert>
- CA AGO on fraudulent charities: <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-issues-consumer-alert-fraudulent-charities-amid>
- IL AGO on price gouging and COVID-19 scams:
https://illinoisattorneygeneral.gov/pressroom/2020_03/20200310.html

- Special thanks to my colleagues who contributed to this presentation.

- For follow-up, please contact:

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