COVID-19 Update. Set forth below is a quick roundup of policy developments and implications concerning the COVID-19 virus.

**Labor and employment laws.** The virus has raised many employment law–related questions, including those related to work-from-home policies, paid sick leave, family and medical leave, confidentiality, and workplace safety, to name a few.

**Paid sick leave.** “Never let a crisis go to waste” is an old adage in Washington, D.C., so it is no surprise that the current situation has spurred debate over the issue of paid sick leave. On March 11, 2020, a subcommittee of the U.S. House Committee on Education and Labor held a hearing on the Healthy Families Act (H.R. 1784), which would require employers with 15 or more employees to allow employees to accrue up to seven days of paid sick leave per year. Further, legislation was introduced last week that would add to the Healthy Families Act by requiring employers to provide employees with an additional 14 days of paid sick leave, which would be available immediately at the beginning of a public health emergency. While these bills may get a bit
more traction in the current climate, they still face an uphill climb, as Republicans are inherently wary of new mandates.

- **OSHA guidance.** On March 9, 2020, the Occupational Safety and Health Administration (OSHA) issued COVID-19 guidance to help employers and workers “identify risk levels in workplace settings and to determine any appropriate control measures to implement.”

- **Stakeholders demand OSHA involvement.** The AFL–CIO, as well as Democrats on the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor and Pensions, recently called on OSHA to issue an Emergency Temporary Standard (ETS) to protect workers from COVID-19. Legislation has also been introduced in the House to direct U.S. Secretary of Labor Eugene Scalia to issue an ETS.

- **Congress compromised?** Several legislators in both the U.S. Senate and U.S. House of Representatives were under self-quarantine this week after learning that they may have come in contact with people that have tested positive for COVID-19. This has some people concerned that as the virus spreads, Congress may not be able to meet and pass needed legislation, as neither the Senate nor the House has a process to enable remote, or virtual, legislating. Accordingly, on March 9, 2020, bipartisan legislation called Members Operating to Be Innovative and Link Everyone, or MOBILE, was introduced in the House. It would allow federal lawmakers both to participate in hearings and to vote remotely. Though the bill had been introduced previously, it is obviously being viewed in a different context this time.

**EEOC Modifies Litigation Authority.** Effective March 10, 2020, the Equal Employment Opportunity Commission (EEOC) modified its delegation of litigation authority from the commissioners to the general counsel. Over the years, the business community has generally maintained that much of the litigation authority should be retained by the Commission itself (as set forth in Title VII of the Civil Rights Act of 1964) in order to ensure consistency of enforcement policies and provide better accountability. As part of the modification of the delegation of litigation authority, approval of the commissioners will now be required “for cases presenting issues where the Commission has taken a position contrary to precedent in the Circuit where the case will be filed, as well as cases where the General Counsel is proposing to take a position contrary to the precedent in the Circuit where the case will be filed.” The new delegation also grants more authority over litigation matters to the chair.

**Unions Challenge NLRB Election Changes.** Late last week, the AFL–CIO sued the National Labor Relations Board (NLRB) over its December 2019 changes to its election procedures. The changes were made via a “direct to final” rule, as the NLRB did not make the proposed changes available for public comment on the grounds that the changes were procedural rather than substantive, in nature. The AFL–CIO’s lawsuit, which seeks to block the election rule changes from taking effect, alleges that this process was faulty and that some of the changes are arbitrary and capricious—all in violation of the Administrative Procedure Act. The rule is currently scheduled to go into effect on April 16, 2020.
DOL Finalizes Apprenticeship Changes. On March 10, 2020, the U.S. Department of Labor’s (DOL) Employment and Training Administration finalized its rule to establish Industry-Recognized Apprenticeship Programs under the authority of the National Apprenticeship Act. The rule is intended to expand apprenticeship opportunities by giving industries more say in the establishment and monitoring of apprenticeship programs. Significantly, the construction industry is excluded from participating in the new program. The rule is scheduled to go into effect on May 11, 2020.

H-1B Memo Invalidated. U.S. Citizenship and Immigration Services has taken advantage of subregulatory tools to enact policy prescriptions over the last few years. One such “policy memorandum,” concerning H-1B petitions involving off-site employment, was invalidated this week by a federal court in Washington, D.C. Specifically, the court ruled that provisions of the memorandum that redefine the employer-employee relationship and require employers to provide proof of nonspeculative work assignments should have gone through Administrative Procedure Act rulemaking.

Congress and Quarantine. The concept of quarantining individuals goes back centuries. Indeed, the word is a variant of the Italian phrase, quaranta giorni, meaning 40 days, which was applied to passengers and crews of ships seeking ports during the plague. In the United States, the power to quarantine was initially left to state or local officials. However, in 1878, Congress passed the National Quarantine Act, which granted the federal government power to quarantine ships “from any foreign port or country where any contagious or infectious disease may exist.” In 1944 the Public Health Service Act consolidated public health services within the federal government and established the U.S. Public Health Service. Now a division of the Department of Health and Human Services, USPHS oversees the Centers for Disease Control, which originally opened its doors as the Communicable Disease Center in Atlanta in 1946. Why Atlanta? Well, CDC was an offshoot of the Office of Malaria Control in War Areas, and the south was the part of the country with the most malaria transmission.