

LEGAL CHANGES IN THE COVID ERA

Terin Cremer, Esq

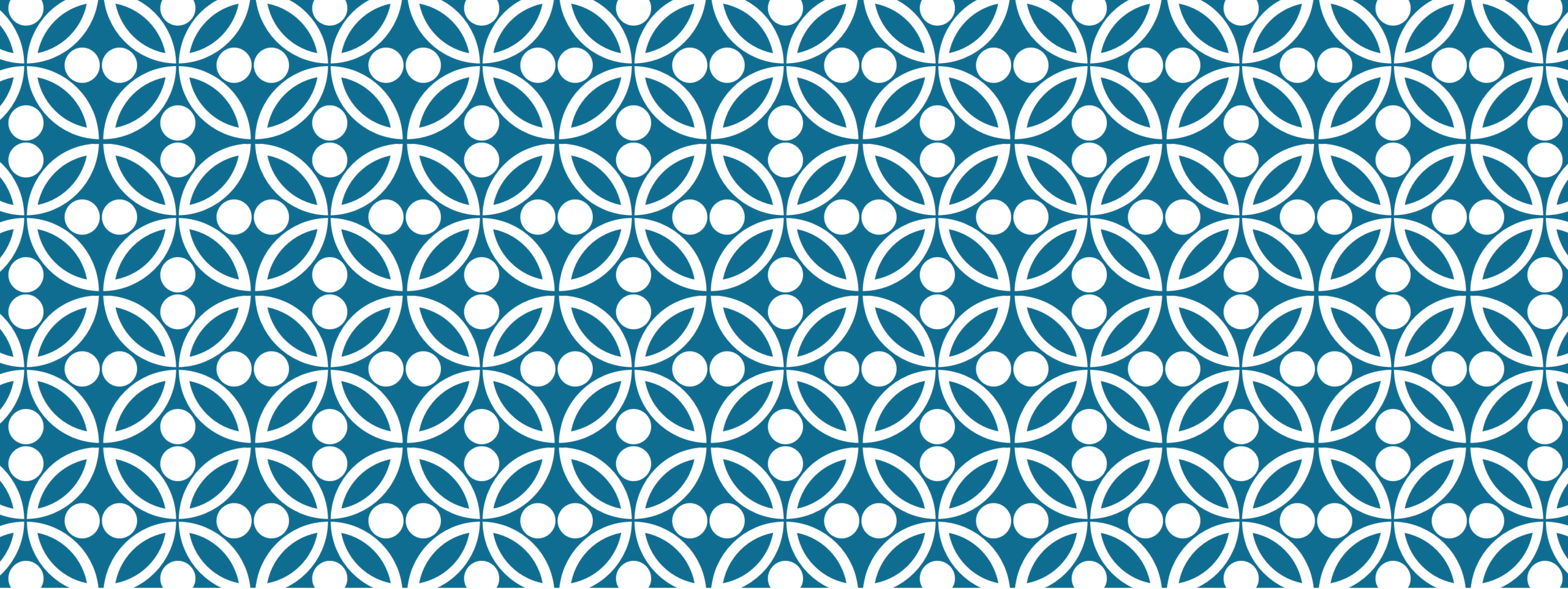


BACKGROUND / KEEP IN MIND

- **This is an unusual time and things are changing rapidly.**
 - **What I tell you today may be different from what I said last week, and what I would say next week.**
- **Because of this there are limits to the answers I am able to provide.**



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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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FFCRA

The Families First Coronavirus Response Act has two major components that affect employers:

(1) the Emergency Family and Medical Leave Expansion Act ("EFMLEA") and

(2) the Emergency Paid Sick Leave Act ("EPSLA").

While both can require an employer to provide paid leave to employees, there are important differences between them.

Effective April 1, 2020 – December 31, 2020

Make sure you have the required DOL poster up in all work environments and have emailed to remote employees

EMERGENCY PAID SICK LEAVE

Qualifying Reasons: an employee can take paid sick leave if he or she is unable to work (or telework) due to a need for leave because:

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in paragraph (2);
5. Employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. Employee is experiencing any other substantially similar condition specified by the Sec'y of HHS in consultation with the Sec'y of the Treasury and the and Secretary of Labor

Leave Required:

- If full-time employee: 80 hours
- If part-time employee: number of hours equal to the number of hours that such employee works on average over a 2-week period

Pay Required:

- If qualifying reason is # 1, #2, #3: regular rate of pay x hours provided.
(Capped at \$511 per day ; \$5,110 aggregate)
- If qualified reason is #4, #5, or #6: 2/3rds of regular rate of pay x hours provided
(Capped at \$200 per day ; \$2,000 aggregate)

Covered Employers:

- Private-sector: any employer with fewer than 500 employees
- Public-sector: any employer with 1 or more employees and all public agencies
- Employers with health care providers and emergency responder employees can opt out

Eligible Employees:

- Any employee of a covered employer is immediately eligible

EXTENDED FMLA

Qualifying Reasons: an employee can take FMLA leave if:

- Employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

Leave Required:

- Up to 12 weeks of FMLA leave

Pay Required:

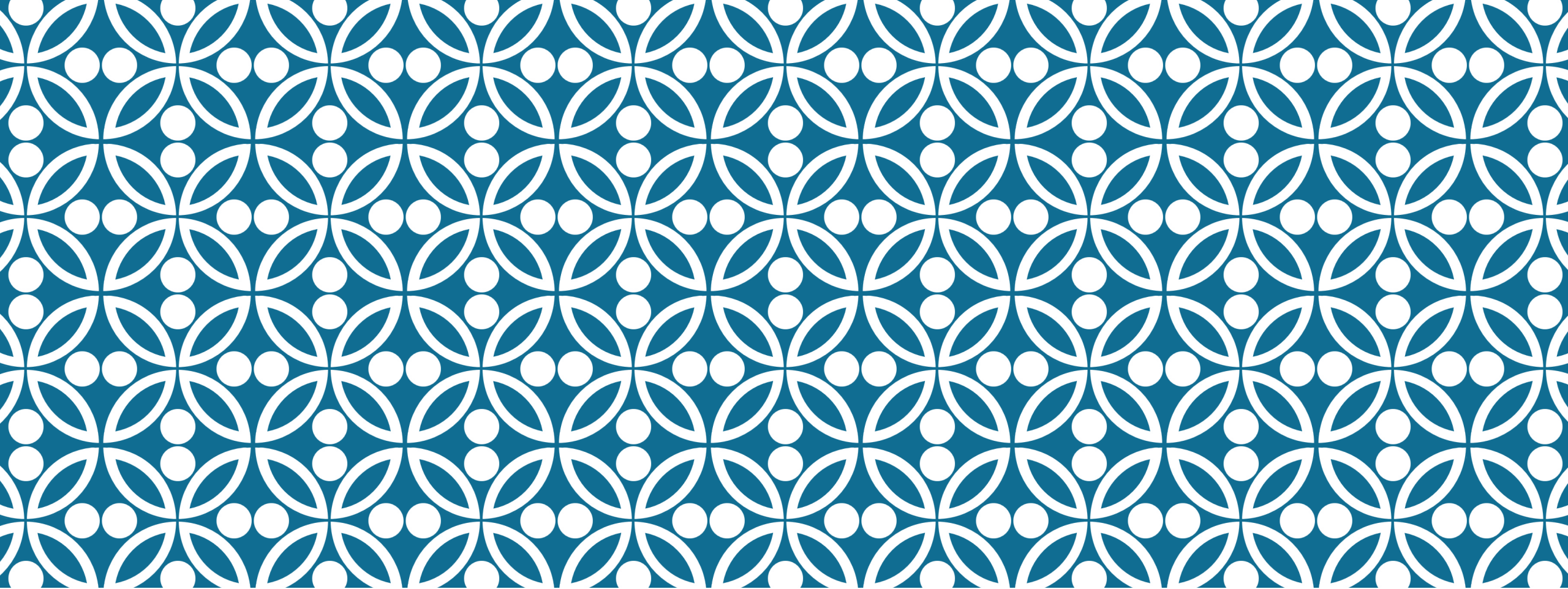
- Unpaid for first 10 days
 - Employee can substitute accrued paid leave for these 10 unpaid days
- Paid for remainder of leave at 2/3rds regular rate x regular hours
- (Capped at \$200 per day ; \$10,000 aggregate)

Covered Employers:

- Any employer with fewer than 500 employees
- All public agencies
- Employers with health care providers and emergency responder employees can opt out

Eligible Employees:

- Any employee of a covered employer who has worked at least 30 calendar days for the covered employer



REDUCING PAYROLL OR HEADCOUNT

QUESTIONS FROM EMPLOYERS

Furlough

- <https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs>

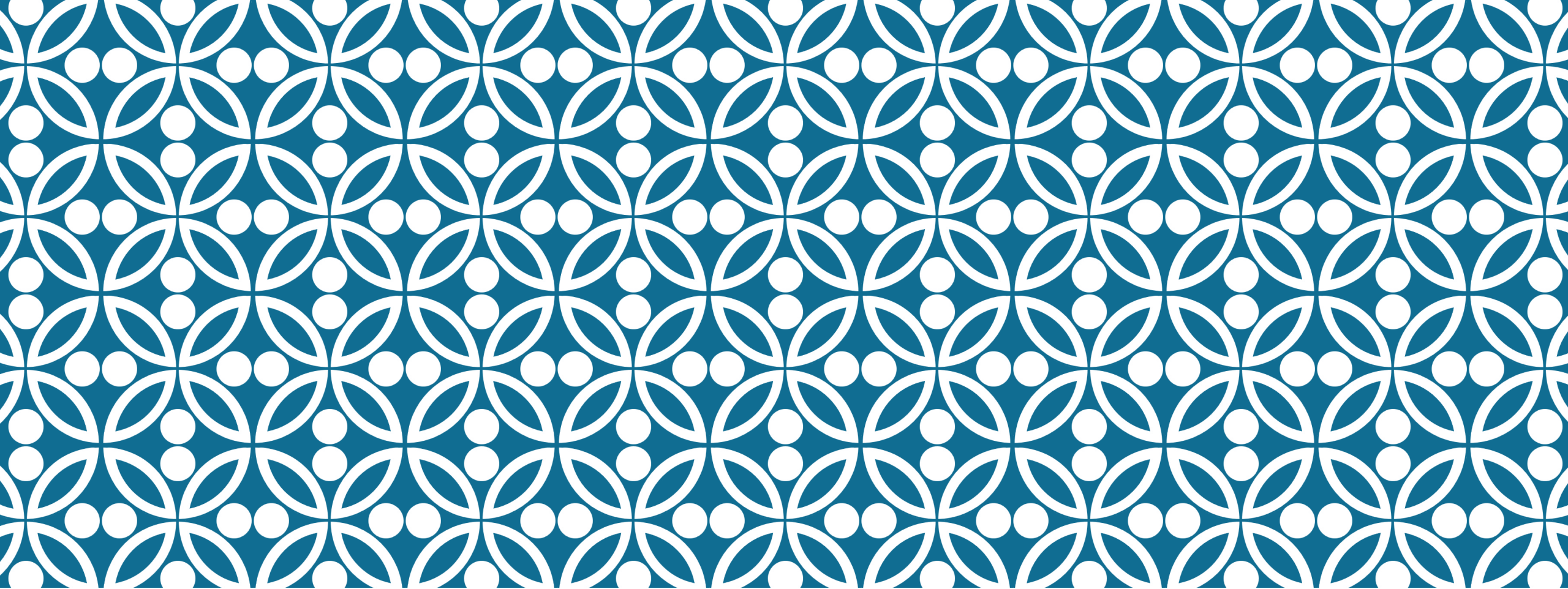
Temporary Layoff

Permanent Termination

Reduction in Force



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UNEMPLOYMENT

UNEMPLOYMENT CONTINUED

- Weekly benefit amount and Maximum benefit amount
 - WBA = highest quarter wages divided by 26 capped at \$274
 - MBA = base period wages divided by 4, capped at \$3300
- Duration of benefits
 - Limited to 12 weeks
 - This can be extended during periods of high unemployment – but haven't happened yet
- Benefits become payable after a “waiting week”
 - Paid via direct deposit or a DEO issued debit card
 - Paid biweekly
 - Renew request every 2 week



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UNEMPLOYMENT CHANGES AT STATE LEVEL

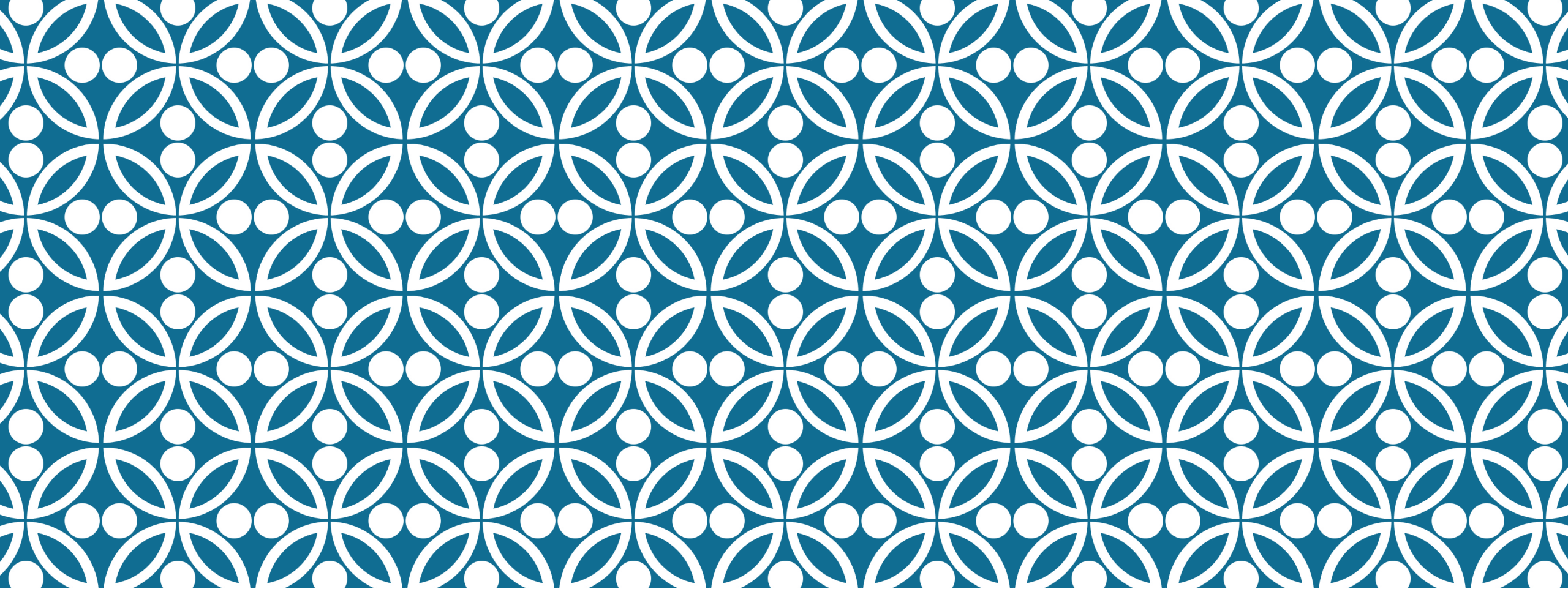
- State is revamping CONNECT System
- Mobile App developed to accept applications
- Paper applications available
- Working to implement retroactivity, but it's not official yet
- Governor eliminated key requirements
 - Actively seeking work suspended for claims between 3/15 – 5/2
 - No requirement to register for work through 5/2
 - Work search reporting suspended between 3/15 and 5/2
 - Waiting week suspended – eligible within 1st week of unemployment

EMPLOYER ACTION PLAN:

Title II of recently passed CARES Act contains multiple provisions supplementing state unemployment programs

Three Key Programs

- **Federal Pandemic Unemployment Compensation**
 - provides an extra \$600 per week beyond state's max benefit
 - For claimed weeks from March 29-July 31
 - Get it even with partial unemployment
- **Federal Pandemic Emergency Unemployment Compensation**
 - Provides up to 13 weeks of additional benefits once state benefits are exhausted
- **Federal Pandemic Unemployment Assistance**
 - Provides coverage for gig workers and self-employed who are not normally covered



CONTINUING OR RESUMING WORK

EMPLOYER SUGGESTED MEASURES

Adhere to CDC Guidelines (constantly evolving)

Daily Temperature screenings

Requiring masks

Limiting / eliminating all common space areas

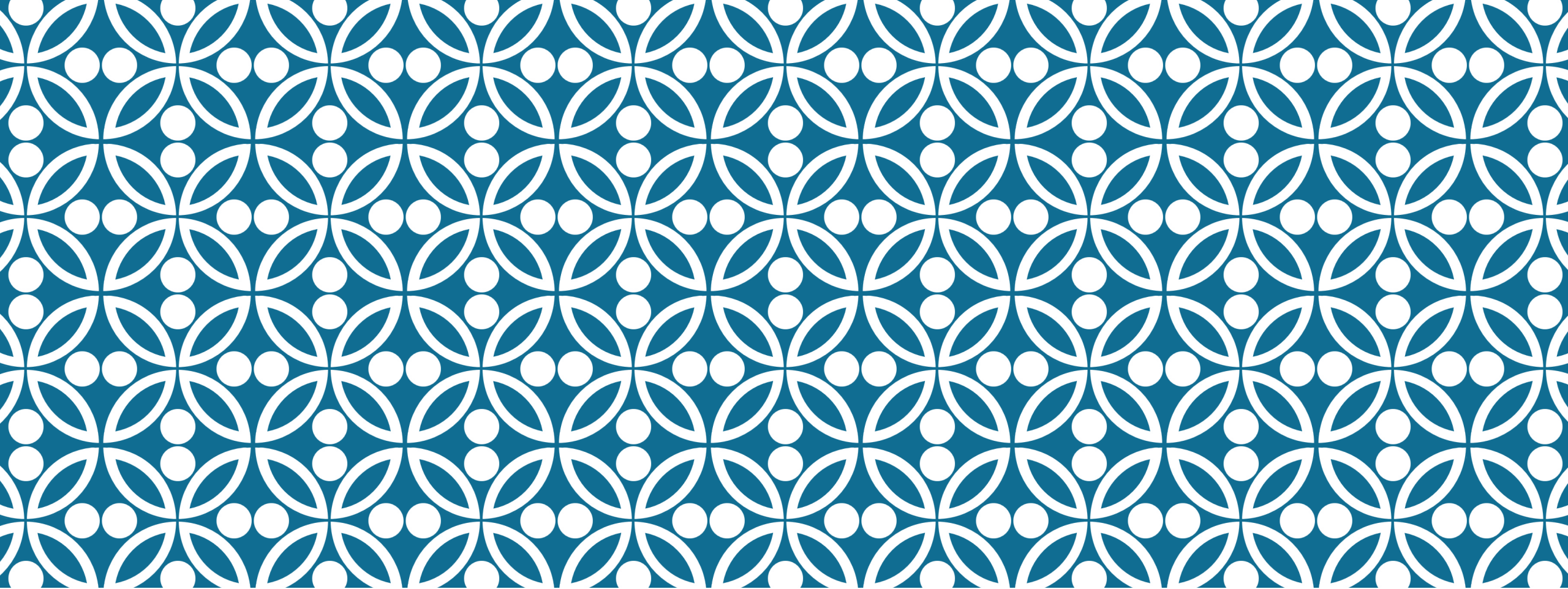
COVID Testing

Remote Work

Shift Work

WRITTEN PANDEMIC PREPAREDNESS PLAN





QUESTIONS?

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