

COVID-19: HR Guidance and Best Practices

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Poll #1

What actions have you already taken in response
to COVID-19?

(choose all that apply)

Agenda

- Current Guidance from the CDC
- Illness and Quarantine – FAQs
- The Families First Coronavirus Response Act
- Reducing Hours or Closing

Current Guidance from the CDC

Keeping the Workplace Safe

- Follow CDC's "Interim Guidance for Businesses and Employers"
- Have employees wash their hands at the door and schedule regular handwashing
- Provide disinfecting wipes and schedule cleaning of frequently touched surfaces; search "COVID list N"
- Increase ventilation with *outside air*
- Cancel travel if at all possible
- Use videoconferencing
- If in-person meetings are necessary, hold them in open, well-ventilated spaces
- Eliminate shared food

Keeping the Workplace Safe

- Use booking and scheduling to stagger customer flow
- Use online transactions where possible
- Remove tables and chairs to reduce capacity and create distance
- Encourage tap-and-pay
- Provide disinfecting wipes and hand sanitizer at the door



Can we take temperatures or ask about health daily?

Yes, but keep it specific to COVID-19.

Illness and Quarantine – FAQs



Sick Employees

Sick employees need to go home and stay there, but when can they come back?

They should talk to their healthcare provider.

- At least 72 hours have passed *since recovery*, defined as resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g., cough, shortness of breath); **and**,
- At least 7 days have passed *since symptoms first appeared*



If an employee is diagnosed, do we tell everyone else?

Do notify employees of exposure, but don't reveal who is sick.



Can we ask about symptoms if employees are out sick and we don't know why?

Yes, but keep it specific to COVID-19.



Can we make an employee with a sick family member stay home?

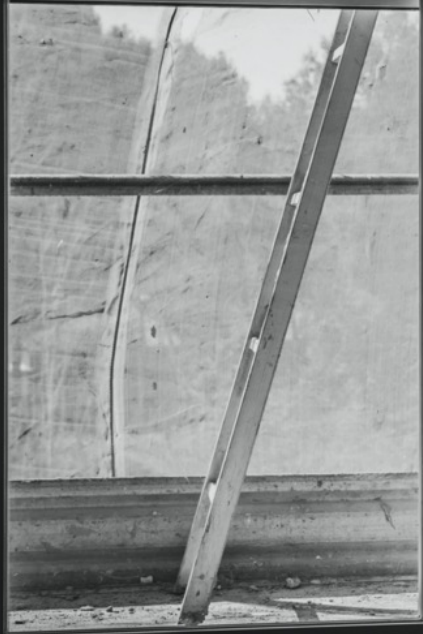
Yes, if the family member is showing symptoms of COVID-19.

Employees with an nth Degree of Separation

In most workplace settings, the CDC does not currently recommend special scrutiny for people exposed to asymptomatic people with potential exposures to COVID-19.

If you decide to send someone home anyway, we recommend that you find work they can do from home or pay them for the time and not take it from their sick leave or PTO bank.





Employees don't want to come in. Can we make them?

Yes, as long as there is no legitimate threat and they don't require an accommodation.



Work From Home Policies

1. Hours of work
2. Expectations regarding reachability
3. Expectations regarding productivity
4. Check-ins
5. Office expenses



Reminders About Pay

Non-exempt employees

- Must be paid for all hours worked, even at home.
- If you send them home before their shift is complete, you may owe reporting time pay, even if they are symptomatic.



Reminders About Pay

- No partial day deductions. You can fill in with paid time off.
- If they do any work (including at home) during a workweek, they are entitled to their full weekly salary.
- Exception: if they miss a full day for *personal reasons* (like wanting to stay home).
- Exception: if they miss a full day because they are sick, do no work, and you offer a *bona fide sick leave plan* (at least 5 paid days per year).

Families First Coronavirus Response Act



Highlights

- Exceptions and Exemptions
- Payroll tax credit
- FMLA expansion
- Paid sick leave

This Does Not Apply to Stay-at-Home Orders

If an employer closes its worksite, even for a short period of time, employees are not entitled to take paid sick leave or expanded family and medical leave. This is true whether the worksite is closed for lack of business **or because it was required to close pursuant to a Federal, State, or local directive.**

Employees will generally be eligible for unemployment insurance benefits and should apply as soon as possible.

Exemption from Childcare Leave (EPSL and EFMAL)

Employers with fewer than 50 employees may be eligible for an exemption from the childcare leave provisions if at least one of the three statements below are true:

- Providing leave would result in the small business's expenses and **financial obligations exceeding available business revenues** and cause it to cease operating at a **minimal capacity**;
 - The absence of the employee or employees requesting leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their **specialized skills, knowledge of the business, or responsibilities**; or
 - There are **not sufficient workers** who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business to operate at a **minimal capacity**.
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Brief Non-Enforcement Period

The DOL won't bring enforcement actions against employers for violations of the FFCRA through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act.

For purposes of this non-enforcement position, an employer who violates the Act behaved “reasonably” and “in good faith” when **all** the following are true:

- The employer remedies any violations as soon as possible, including making all affected employees whole as soon as practicable;
 - The violations of the Act were not “willful” (you could have paid, but chose not to); and
 - The Department receives a written commitment from the employer to comply with the Act in the future.
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Exempt Health Care Workers

Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

This includes any individual employed by an entity that contracts with any of the above to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

To minimize the spread of the virus associated with COVID-19, the DOL encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

How to Pay for Leave

Fast Funds

Reimbursement will be quick and easy to obtain.

- An immediate dollar-for-dollar tax offset against payroll taxes will be provided
- Where a refund is owed, the IRS will send the refund as quickly as possible.

Complete Coverage

Employers will receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.
 - Employers face no payroll tax liability.
 - Self-employed individuals receive an equivalent credit
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Emergency FMLA Childcare Expansion

Coverage

- Applies to all employers with fewer than 500 employees
- Applies to all employees who have worked at least 30 days for the employer
- Health care providers or emergency responders may be excluded

Interaction with other paid time off benefits

This benefit is in addition to any other PTO or sick leave offered. Employees cannot be required to use other benefits first and employers cannot reduce other benefits in response to the Act.

Uses

To care for a child under 18 if their school or place of care is closed for public health emergency

Emergency FMLA Childcare Expansion

Duration and Pay

- No pay for first 10 days of leave, but employees may use *any other leave* they have available to them during the first 10 days, including new emergency sick leave.
- After 10 days, cap of \$200 per day (up to 2/3 of their regular pay) and \$10,000 total
- Can be used intermittently if employer agrees

Job Restoration

Required, though there is an exception for employers with fewer than 25 employees who meet certain criteria (essentially made all best efforts).

Emergency Paid Sick Leave

Coverage

- All private employers with fewer than 500 employees
- All employees, no matter how long employed
- Health care providers or emergency responders can be excluded

Interaction with other paid time off benefits

This benefit is in addition to any other PTO or sick leave offered. Employees cannot be required to use other benefits first and employers cannot reduce other benefits in response to the Act.

Emergency Paid Sick Leave

Uses

1. If subject to a federal, state, or local quarantine or isolation order (not shelter-in-place, stay-at-home, or hunker down orders)
2. When advised by health care provider to self-quarantine
3. For seeking medical diagnosis for symptoms of COVID-19
4. To care for an individual who qualifies under #1 or #2
5. To care for child if school or place of care is closed
6. When experiencing other substantially similar condition

Emergency Paid Sick Leave

Duration and Pay

- Full time employees (40+ hours per week) get 80 hours
- Part time employees (less than 40 hours per week) get the number of hours worked on average over a 2-week period
- Can be taken intermittently for childcare purposes if employer agrees
- Can be taken intermittently for illness-related reasons *only if teleworking* and employer agrees
- Cap of \$511 per day and \$5,110 total for uses 1, 2, and 3, up to 100% of regular pay
- Cap of \$200 per day and \$2,000 total for uses 4, 5, and 6, up to 2/3 of regular pay

Appropriate Documentation to Claim Tax Credit

You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit. *These forms and instructions have not been released yet.*

You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

Employers can ask for proof that a child's school or place of care has been closed, such as a forwarded email from the district, a posting in the local paper, or notice on the school district website.

We don't think employers will be able to require a doctor's note for illness-related leave

DOL “Questions and Answers” on the FFCRA

This page is updated regularly, though they aren’t identifying changes made within answers.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Google “FFCRA questions and answers”

Also watch [irs.gov/coronavirus](https://www.irs.gov/coronavirus)

Reducing Hours or Closing

Reducing Hours or Pay for Non-Exempt Employees

Non-exempt employees only need to be paid for hours worked.

Remember reporting time pay if you send people home after they've already arrived at work for the day.

A reduction in hourly *wage* may require a certain amount of notice under state law and cannot be retroactive if you are mid pay-period.



Reducing Hours or Pay for Exempt Employees

You can implement a pay cut, either for everyone or for certain departments or types of jobs. Check for unintentional discrimination.

Employees must remain above the federal minimum salary for exempt employees (\$684/week) or the higher state minimum. *No prorating!*



Reclassifying Exempt Employees as Non-Exempt

This is legal unless done to avoid the salary basis requirements under the FLSA.

Don't do this on a very short-term basis (e.g., three weeks or less).

Ensure state notice requirements are met and that it isn't applied retroactively if you're halfway through a pay period.



Furlough v. Temporary or Permanent Layoff

Furlough:

Temporary reduction in hours of work or weeks of work. This could be, “we only need you 10 hours this week” or, “we’re closing for two weeks, see you all soon.” Probably involves an estimated date of reopening.

Temporary Layoff:

A layoff with the intention of rehire, generally within six months. (WARN notice does not apply if six months or less.)

Permanent Layoff:

A layoff with no anticipated rehire date.



Furloughs

Employees will be eligible for unemployment insurance and many states are waiving waiting weeks and work searches.



Furloughs

You don't pay UI directly.

Your SUI rate is tied to your turnover rate, but many states will be forgiving COVID-19-induced layoffs.



Furloughs

Communicate in writing.

Share options for use of paid leave.

Address health insurance options.

What if we can't make payroll?

Call an attorney to determine the best course of action under your circumstances in your state.





Staying Afloat - The CARES Act

- Small businesses may be eligible for emergency grants of up to \$10,000 to cover immediate operating costs.
- The SBA may provide loans of up to \$10 million per business; any portion of that spent to pay employees, keep workers on payroll, or pay for rent, mortgages, or existing debt could be forgiven, provided workers remain employed through the end of June.
- Small businesses with existing SBA loans may have up to six months of payments waived.
- Businesses may be eligible for a refundable tax credit for 50% of *qualified* employee wages up to \$10,000 per employee.
- Businesses may defer payment of employer payroll taxes imposed between the enactment of this law through December 31, 2020