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COVID-19 Employer Q&As

March 2020

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Before We Begin…

- This webinar's recording and presentation slides will be shared with registrants tomorrow in a follow-up email.
- Take a moment to view the webinar control panel. Here is where you can:
  - Download the presentation slides
  - Access the questions box
    - Use this to ask questions during the presentation.
- Survey

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Introduction

By now, employers are aware of the coronavirus (officially named COVID-19) and its growing impact on the global supply chain. Employers are increasingly faced with a related concern—how the virus may impact the workforce, what employers should be doing right now to react and prepare, how to handle new federal and state laws and regulations as well as what to believe and rely on, given all of the information, misinformation and rumors floating around.

It is our goal today to supply you with reliable info as well as be clear where there isn't.

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Essential Services

If my business or a part of it has not been specified as essential in a government order, can I maintain a few limited operations other than through telecommuting from home? For now, at least in MN, this question has not been answered. It is important for our clients to know, that it is our opinion that a reasonable and very limited operation that is essential and critical is all that should be allowed. A number of other states have addressed this question. For example, here is what the California Order said:

For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations: i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions and the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

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Counting Employees

The Act requires employers with "fewer than 500 employees" to provide two new benefits: (1) federal emergency paid sick leave and (2) federal emergency paid family and medical leave (FMLA). As a result, employers need to know immediately how to determine if they have "fewer than 500 employees." How is that done?

Some employers may want their headcount to be fewer than 500 so that they can obtain assistance from the government to provide their employees with paid leave benefits. Those employers will benefit from a methodology that does not require employees of related companies or consolidated group members to be counted. Many small employers would like to assist their employees but cannot afford paid leave without federal assistance.
In contrast, other employers may prefer to avoid the mandatory paid leave requirements and would benefit from a more inclusive employee count.

Because these new mandates are grounded in two different federal laws, it seems that there are two different sets of rules for counting "fewer than 500 employees." Specifically, as described below, one method must be used for federal emergency paid sick leave while another method must be used for the federal emergency paid FMLA leave.

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Counting Employees

Counting Employees for Federal Paid Sick Leave

- **No controlled group concept**. The Fair Labor Standards Act (FLSA) definition of "employer" applies for federal emergency paid sick leave. FLSA does not seem to have a controlled group concept. Likewise, the new legislation simply says "employer" and does not include references to any sections of the Internal Revenue Code that would require all entities under common control be treated as if they were a single employer. Often (but not always), the Code requires related employers to be treated as if they were a single employer (for example, see Sections 1563 and 414(b), (c), (m), etc.). Also, the Code often (but not always) imposes ownership attribution rules (for example, under Sections 267(b) or 318). Congress certainly knew about the controlled group and ownership attribution concepts, which were used most recently in the SECURE Act and the Tax Cuts and Jobs Act, as well as many other laws. By not specifically including cross-references to any of those existing Code sections, it seems Congress did not intend for controlled group or ownership attribution concepts to apply when determining whether an employer has "fewer than 500 employees" for purposes of the new federal paid sick leave mandate. We have submitted this question to the IRS as needing priority guidance.

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Counting Employees

Counting Employees for Federal Paid FMLA Leave

- **Integrated employers**. The FMLA definition of "employer" applies for federal emergency paid FMLA leave. That definition includes an "integrated employer" concept, which is similar to (but not the same as) the Code's "controlled group" concept. Employers would apply the following four factors to determine if common law employers are required to be aggregated for FMLA purposes:
  - Common management
  - Interrelation between operations
  - Centralized control of labor relations and
  - Degree of common ownership/financial control
- FMLA regulations say that no single factor is determinative. Rather, the entire relationship must be reviewed in its totality. In other words, do the two entities work "hand in glove" so to speak? Do they share the same leadership? Ownership? The more intertwined, the more likely they are "integrated employers" for purposes of the new federal paid FMLA mandate.

  For purposes of determining employer coverage under the FMLA, the employees of all entities making up the integrated employer must be counted.

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Counting Employees

- For purposes of determining employer coverage under the FMLA, the employees of all entities making up the integrated employer must be counted.
- Employers who use professional employer organizations, or PEOs, need to take special care to determine how FMLA applies. FMLA includes a "joint employer" concept, so each employer may have a separate duty to provide the FMLA benefits. FMLA rules also include a "successor employer" concept.
- There is no "one size fits all" answer, since there is no bright-line, numerical ownership percentage test (like tax professionals are used to analyzing). It seems that FMLA may treat entities as employers, even if they are disregarded entities for tax purposes (such as partnerships or limited liability companies taxed as partnerships).

Who counts as an employee?
Employees who must be counted include:

- Any employee who works in the United States, or any territory or possession of the United States
- Any employee whose name appears on payroll records, whether or not any compensation is received for the workweek
- Any employee on paid or unpaid leave (including FMLA leave, leaves of absences, disciplinary suspension, etc.), as long as there is a reasonable expectation the employee will return to active employment
- Employees of foreign firms operating in the United States
- Part-time, temporary, seasonal, and full-time employees

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Counting Employees

- Do not count:
- Employees with whom the employment relationship has ended, such as employees who have been laid off
- Unpaid volunteers who do not appear on the payroll and do not meet the definition of an employee
- Employees of United States firms stationed at worksites outside the United States, its territories, or possessions
- Employees of foreign firms working outside the United States

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Counting Employees

As of what date should the headcount be made?

Generally, a private sector employer is subject to FMLA if it employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Although it is not clear, the same measurement period could be used to determine if an employer has "fewer than 500 employees" for purposes of the federal emergency paid FMLA leave. Guidance from the U.S. Department of Labor would be helpful in this regard, which hopefully would be more lenient, to take into account the rapid reduction in workforce that came without much warning for many employers, due to COVID-19.

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Counting Employees

Because the FMLA rules have been in existence for years, employers may want to ask their human resources department or employment legal counsel to determine how the employer has historically complied with these rules. Such past practice could be applied to interpreting the new federal FMLA mandate with respect to determining if the entities must be aggregated for the "fewer than 500 employees" rule.

Since enactment of the new law, in our discussions with clients, we are finding that the very low FMLA threshold of 50 employees often did not require much analysis of "integrated employer" concept. For example, if there are 5 entities that have some of the characteristics of being "integrated" with each of them having at least 50 employees, they never had to make the determination about being integrated because the answer would not change. Look for any entity that had fewer than 49 employees to see if it extended FMLA to its employees. Now that the threshold is 500, this could be the first time that the "integrated employer" concept becomes relevant.

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Q: We are confused on what it means for "essential businesses", like ours, dealing with employees that will want to take leave due to school/childcare facility closures. According to the MN Governor, they are leaving schools/day-care type facilities open for employees of essential businesses that need childcare. My question is, before employees try to take paid leave for the new Act for the reason of childcare/school closures, can we require that they bring their children to these locations first? Or, are we required to do paid leave?

You can only ask them. If they don't, until we see something from MN that says to the contrary, paid leave is the safest way to go.

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Q: We are a family practice clinics and have health care providers. Are we able to elect to NOT follow the new laws on Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act?

The option to exclude them, as in all, as well as just some of them, is up to each health care employer. If you are going to do that, you have to disclose that you have the option by law and why you are doing it. It will be a huge employee relations issue. The notice should only come from top management. If you are going to go the route of pick 'em and choose 'em, be real careful. All the usual discrimination dangers will apply.

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Q: We are exempt from the Stay Home MN order due to being in the construction field but we still need to reduce staff. We plan to do a layoff of some, and over the next 3 weeks, ramp back hours for everyone else. If we hold off on the lay-off's, would they be eligible for Family First Act pay for two weeks under this provision:

Here are the only reasons, the new sick leave benefit would apply.

Covered Employees: Any employee of a covered employer, regardless of how long they have worked for the employer, who seeks leave because:

- The employee is ordered into COVID-19 quarantine or isolation by a public official.
- The employee has been advised by a health care provider to self-quarantine or isolate due to COVID-19.
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
- The employee is caring for an individual due to reasons (1) and (2).
- The employee is caring for their son or daughter because their school or place of care has been closed or their childcare provider is unavailable due to COVID-19.
- The employee is experiencing any other substantially similar condition identified by the Department of Health and Human Services.

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Q: How do we handle furloughs and salary reductions, especially with exempt employees?

Furlough

The FLSA permits employers to place exempt employees on unpaid furlough. However, an exempt employee compensated on a salary basis—a predetermined amount regardless of the quality or quantity of work performed—must be compensated for the *entire* workweek if the employee performs *any* work during the workweek, or the exemption may be lost.

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Additionally, an exempt employee compensated on a fee basis—an agreed sum for a single job regardless of the time required to complete the job—must be compensated at a rate that would amount to at least the minimum salary per week required for FLSA exemption, assuming the employee worked forty (40) hours per week. As such, a fee basis exempt employee may no longer be exempt if unpaid furlough causes the rate of compensation to drop below the minimum salary per week threshold.

Accordingly, employers should furlough salary basis exempt employees in one-week increments, so that unpaid furloughs do not jeopardize FLSA exemptions. Additionally, employers should establish proper systems to ensure that exempt employees are not required to work, and do not work, during furlough.

Further, employers should not place fee basis exempt employees on unpaid furlough if doing so would cause the employees to be compensated at a rate below the minimum salary per week threshold.

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- Immigration Exception
- H-1B and E-3 workers cannot be furloughed without pay because of the prevailing wage requirements in those visa categories. These workers can be exempted from the furlough, but if this is not feasible from a business perspective, then they must be paid their normal wages while on furlough. This remains the case even if the employee chooses to spend the furlough outside the United States.
- **Salary and Hours Reduction**
- Alternatively, employers can reduce salary basis exempt employees' salaries and hours without affecting the exempt status of the employees. Such salary reductions will not jeopardize the FLSA exemption if they are prospective and bona fide, and, after the reduction, all other FLSA exemption requirements are still met.

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- However, employers should reconsider reducing the salaries of fee basis exempt employees because the fee basis exemption requires employees to be paid an "agreed sum," and a reduction of the agreed sum may jeopardize the exemption. The following discussion is applicable only to exempt employees compensated on a salary basis.
- Prospective Reductions
- Salary reductions must be prospective to preserve the FLSA exemption. A prospective reduction is one that does not occur within a pay period in which an exempt employee has performed work. Accordingly, salary reductions should not take effect until future pay periods in which affected exempt employees have performed no work and are not already entitled to the pre-reduction salary.

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- Bona Fide Reductions
- Bona fide salary reductions are those that are not designed to circumvent the FLSA salary basis requirement—that is, they do not reduce an exempt employee's salary to the functional equivalent of an hourly wage (compensation based on the quality or quantity of work).
- Generally, infrequent and permanent salary reductions for good cause are viewed as bona fide, and not the functional equivalent of an hourly wage. However, temporary salary reductions can also be bone fide. Temporary bona fide salary reductions have been triggered by economic downturns, loss of revenue, preferential reductions in operating costs, and attempts to avoid layoffs. Accordingly, temporary salary reductions triggered by the effects of COVID-19 are likely to be viewed as bona fide.

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- FLSA Exemption Requirements
- Employers must ensure that salary reductions do not result in a failure to meet the FLSA exemption requirements. For example, exempt employees must generally be compensated at a rate not less than $684 per week to be exempt; if a salary reduction brings an employee's weekly compensation to a rate lower than the $684 threshold, the exemption may be lost. Moreover, if a salary reduction is accompanied by a change in job duties and the new job duties do not adhere to the FLSA duties requirement, the exemption will be lost.

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Q: **We operate a convenience/hardware store, rental and sales of dock/lift equipment. I am looking for advice on sending a letter to employees. They are essential and operating and was potentially looking to send a letter to employees indicating I would like to keep them working and employed however if someone is uncomfortable given the potential exposure to the virus, etc. within the given workplace…..we would do our best to make sure they had a place for them when we are "back to normal". What do you suggest?**

A notice to employees is fine with the addition of a caveat like the following: When we get back to normal, we will use our best efforts to get you back to work, if we have a job available for which you are qualified in our sole discretion.

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Q: In MN, what is the Critical Sector Worker Exemption?

- **Please note that Executive Order 20-20 requires all employees who can work from home to do so, even if they are eligible for a Critical Sector worker exemption.** This is telling me that any of us that can work from home "are required to do so".
- **Eligibility for Critical Sector Work Exemption**
- Executive Order 20-20 provides an exemption for workers who (1) work in Critical Sector **and** (2) cannot perform their work duties from home. Below are steps to determine whether an employee qualifies for this Critical Sector worker exemption:
- First, please refer to the federal guidance from the Cybersecurity and Infrastructure Security Agency (CISA). If an employee fits into any of the CISA Guidance's critical infrastructure workforce categories, then they qualify for a Critical Sector worker exemption.

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- Second, if an employee does not fall into one of categories listed in CISA Guidance, please carefully review the Governor's Executive Order 20-20 for further guidance and additional categories of Critical Sector exempt workers.
- Third, you can also determine eligibility for at Critical Sector worker exemption by searching by your 4-digit NAICS industry code. If an industry description is marked as YES in the Critical Industry column, then a worker in that industry qualifies for a Critical Sector worker exemption.
- If an employee qualifies for a Critical Worker exemption based on the CISA Guidance, Executive Order 20-20, or the NAICS industry code list, and they cannot work from home, then they can leave home to work.

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- **Please note that Executive Order 20-20 requires all employees who can work from home to do so, even if they are eligible for a Critical Sector worker exemption.** If an employee does not fit into any of the Critical Sector worker categories, then they must remain at home as directed in Executive Order 20-20.
- If you still have questions about whether your business's workers are eligible for the Critical Sector work exemption after utilizing the resources above, the state can provide a form for you to com plete and send it and we will work with agency subject matter experts to review and respond as quickly as possible with a determination.

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Q: What did the MN Governor order regarding unemployment benefits?

- For unemployment insurance benefit accounts established between March 1, 2020 and December 31, 2020, I am suspending the nonpayable week requirement under Minnesota Statutes 2019, section 268.085, subdivision 1, clause 6, which will allow workers to become eligible for unemployment benefits as quickly as possible.
- To further ensure that unemployment benefits are available for workers who are not able to work directly or indirectly as a result of COVID-19, I order that suitable employment under Minnesota Statutes 2019, section 268.035, subdivisions 23a (a) and (b) does not include employment that puts the health and safety of the applicant at risk or employment that puts the health and safety of other workers and the general public at risk.

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- To further ensure that unemployment benefits are available for workers who are not able to work directly or indirectly as a result of COVID-19, I order that a leave of absence will be presumed to be involuntary in accordance with Minnesota Statutes 2019, section 268.085, subdivision 13a, when:
- A determination has been made by health authorities or by a health care professional that the presence of the applicant in the workplace would jeopardize the health of others, whether or not the applicant has actually contracted a communicable disease.
- A quarantine or isolation order has been issued to the applicant pursuant to Minnesota Statutes 2019, section 144.419 to section 144.4196.
- There is a recommendation from health authorities or by a health care professional that the applicant should self-isolate or self-quarantine due to elevated risk from COVID-19 due to being immunocompromised

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- The applicant has been instructed by their employer not to come to the employer's place of business due to an outbreak of a communicable disease.
- The applicant has received a notification from a school district, daycare, or other childcare provider that either classes are canceled or the applicant's ordinary childcare is unavailable, provided that the applicant made reasonable effort to obtain other childcare and requested time off or other accommodation from the employer and no reasonable accommodation was available.
- Notwithstanding Minnesota Statutes 2019, section 268.047, I order that the Minnesota Unemployment Insurance Program not use unemployment benefits paid as a result of the COVID-19 pandemic in computing the future unemployment tax rate of a taxpaying employer. This will provide immediate relief to employers impacted by the COVID-19 pandemic and will better allow their employees to access unemployment benefits.

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- What about terminations unrelated to Covid-19?
- It is business as usual. If the issue is performance, as always, you need to watch out for risk factors, specifically Protected Class discrimination. Especially now, having a reasonable just cause is key. Good documentation is also important. Having a final warning and an opportunity to correct is also key.
- If there has been misconduct, it is also business as usual. But remember, even in those situations it is very important to confirm all the facts, have a witness and avoid accusations for which you don't have proof.

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Q: If I have an employee that does come back with a positive result what communication should they be doing?

- It really depends on the circumstances. If they were already at home and didn't work with anyone, follow medical advice and advise to quarantine. If there was work exposure, they have to act immediately, and:
- Notify county and state health departments per CDC guidelines.
- Get any employee with whom they interacted with, out of the workplace quickly. They should be advised to self quarantine and seek medical advice right away. They also need to be personally informed of the potential exposure immediately by phone and by email if they have it. Also be careful to avoid a HIPAA violation with any more details.

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Families First Coronavirus Response Act (FFCRA)

- **Q: What types of absences are covered by the FFCRA?**

Effective 4/1/20 through 12/31/20, an employee is entitled to take up to 80 hours of paid leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing g COVID-19 symptoms and is seeking a medical diagnosis;

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Families First Coronavirus Response Act (FFCRA)

4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. is caring for his or her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons; or

6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

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Families First Coronavirus Response Act (FFCRA)

Q: What does 'subject to a Federal, State, or local quarantine or isolation order related to COVID-19' mean?

Likely means the event of a federal state or local governmental authority requiring self-isolation as a result of one's activity/exposure. Example: FL requiring those coming from NY to self isolate for 14 days.

This qualifying reason is likely NOT invoked simply because a general Shelter In Place or Stay at Home order has been issued.

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Families First Coronavirus Response Act (FFCRA)

Q: What does 'experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.' mean?

The meaning of this element is not clear and we are waiting for clarification. This language may simply be leaving room for further regulations.

It does not mean the event where someone is simply experiencing symptoms similar to COVID 19.

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Families First Coronavirus Response Act (FFCRA)

Q: What employees are eligible for the Emergency Paid Sick Leave pay?

Any employee, full time or part time, who is unable to perform available work due to one of the six qualifying reasons. There is no length of employment requirement. Temporary employees are also eligible. A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

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Families First Coronavirus Response Act (FFCRA)

Q: When might an employee be eligible for additional leave under the FFCRA?

Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 above.

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Families First Coronavirus Response Act (FFCRA)

Q: May an employer require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

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Families First Coronavirus Response Act (FFCRA)

Q: What employers are subject to the FFCRA?

All private sector employees with fewer than 500 employees and 'certain public sector employers'.

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Families First Coronavirus Response Act (FFCRA)

Q: I am a public sector employee. May I take paid sick leave under the Emergency Paid Sick Leave Act?

Generally, yes. You are entitled to paid sick leave if you work for a public agency or other unit of government, with the exceptions below. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of the United States, a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar government entity subject to the exceptions below. The Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees from taking certain kinds of paid sick leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take paid sick leave. Further, health care providers and emergency responders may be excluded by their employer from being able to take paid sick leave under the Act.

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Families First Coronavirus Response Act (FFCRA)

Q: I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

But if you are a Federal employee, you likely are not entitled to expanded family and medical leave. The Act only amended Title I of the FMLA; most Federal employees are covered instead by Title II of the FMLA. As a result, only some Federal employees are covered, and the vast majority are not. In addition, the Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees with respect to expanded and family medical leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take expanded family and medical leave. Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act.

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Families First Coronavirus Response Act (FFCRA)

Q: When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing paid sick leave and expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical 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
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

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- As in the previous slide, you are under 50 employees and intend to claim the exemption, you must make sure you follow all the governmental rules that will qualify you. It may be necessary for you to receive an approval.

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Families First Coronavirus Response Act (FFCRA)

Q: Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

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Families First Coronavirus Response Act (FFCRA)

Q: May I take leave under the Family and Medical Leave Act over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. If you take some, but not all 12, workweeks of your expanded family and medical leave by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Please note that expanded family and medical leave is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of Expanded Family and Medical Leave in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count against your entitlement to 12 weeks of FMLA leave in a 12-month period. If you are eligible for preexisting FMLA leave and need to take such leave in August 2020 because you need surgery, you would be entitled to take up to eight weeks of FMLA leave.

However, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

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Families First Coronavirus Response Act (FFCRA)

Q: May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

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Families First Coronavirus Response Act (FFCRA)

Q: If I am home with my child because his or her school or place of care is closed, or childcare provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

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Department of Labor Clarifications

What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

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Department of Labor Clarifications

Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

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Department of Labor Clarifications

If I am a private sector employer and have 500 or more employees, do the Acts apply to me?

No. Private sector employers are only required to comply with the Acts if they have fewer than 500 employees.

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Department of Labor Clarifications

How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

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Department of Labor Clarifications

When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

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Department of Labor Clarifications

As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?

It depends on your normal schedule as well as why you are taking leave.

- If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:
  - your regular rate of pay,
  - the federal minimum wage in effect under the FLSA, or
  - the applicable State or local minimum wage.
- In these circumstances, you are entitled to a maximum of $511 per day, or $5,110 total over the entire paid sick leave period.

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Department of Labor Clarifications

- If you are taking paid sick leave because you are: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.
- Under these circumstances, you are subject to a maximum of $200 per day, or $2,000 over the entire two week period.
- If you are taking expanded family and medical leave, you may take paid sick leave for the first ten days of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. The regular rate of pay used to calculate this amount must be at or above the federal minimum wage, or the applicable state or local minimum wage. However, you will not receive more than $200 per day or $12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

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Department of Labor Clarifications

What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave.[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

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Department of Labor Clarifications

How do I calculate regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate paid leave is the average of the regular rate over a period of up to six months prior to the date on which the employee takes the leave. If the employee has not worked for six months, then take the average of the regular rate of pay for each week the employee has worked. If the employee is paid with commissions, tips, or piece rates, those wages will be incorporated into the calculation. The regular rate can also be computed by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

The formula to compute the regular rate is:

Total compensation in the workweek (except for statutory exclusions) ÷ Total hours worked in the workweek = Regular Rate for the workweek

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Department of Labor Clarifications

Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

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Department of Labor Clarifications

How do I know whether I have "been employed for at least 30 calendar days by the employer" for purposes of expanded family and medical leave?

You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer's payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

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Department of Labor Clarifications

What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare provider.

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Department of Labor Clarifications

What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Your employer may also require you to provide additional in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

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Department of Labor Clarifications

When am I able to telework under the FFCRA?

You may telework when your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

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Department of Labor Clarifications

If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?

If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

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Department of Labor Clarifications

May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree.

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Department of Labor Clarifications

May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

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Department of Labor Clarifications

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

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Department of Labor Clarifications

If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

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Department of Labor Clarifications

If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced.

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Department of Labor Clarifications

If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage.

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Department of Labor Clarifications

If you elect to take paid sick leave, your employer must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual's premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

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Department of Labor Clarifications

If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

If your employee chooses to use existing leave you have provided, yes; otherwise, no. Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees' preexisting leave entitlements, including Federal employees. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee's normal earnings. Note, however, that you are not entitled to a tax credit for any paid sick leave or expanded family and medical leave that is not required to be paid or exceeds the limits set forth under Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

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Department of Labor Clarifications

Do OSHA's regulations and standards apply to the home office? Are there any other Federal laws employers need to worry about if employees work from home?

The Department of Labor's Occupational Safety and Health Administration (OSHA) does not have any regulations regarding telework in home offices. The agency issued a directive in February 2000 stating that the agency will not conduct inspections of employees' home offices, will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees. If OSHA receives a complaint about a home office, the complainant will be advised of OSHA's policy. If an employee makes a specific request, OSHA may informally let employers know of complaints about home office conditions, but will not follow-up with the employer or employee.

Employers who are required to keep records of work-related injuries and illnesses will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.

The FLSA and its implementing regulations do not prevent employers from implementing telework or other flexible work arrangements allowing employees to work from home. Employers would still be required to maintain an accurate record of hours worked for all employees, including those participating in telework or other flexible work arrangements; and to pay no less than the minimum wage for all hours worked and to pay at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek to non-exempt employees.

Employers are encouraged to work with their employees to establish hours of work for employees who telework and a mechanism for recording each teleworking employee's hours of work. Non-exempt employees must receive the required minimum wage and overtime pay free and clear. This means that when a covered employee is required to provide the tools and equipment (e.g., computer, internet connection, facsimile machine, etc.) needed for telework, the cost of providing the tools and equipment may not reduce the employee's pay below that required by the FLSA.

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Furlough, Layoff, Reduction of Hours

What's the difference between a furlough and a layoff?

A furlough is a temporary leave of absence from employment in the form of voluntary time off or mandatory time off. The time off may be in half-day (nonexempt), full-day or full-week increments, but the absence is generally short and the employee maintains his or her employment. A layoff may be for an indefinite period or may be a permanent termination of employment. Employers that implement temporary furloughs rather than layoffs may save on severance costs (if applicable), as well as future rehiring and retraining expenses.

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Furlough, Layoff, Reduction of Hours

Q: Are employees entitled to unemployment benefits if we decide to temporarily shut down or lay off employees or if the state or federal government mandates a temporary shutdown of our business operations?

Unemployment insurance provides benefits to eligible workers who are unemployed through no fault of their own and meet other eligibility requirements. Temporary shutdowns and/or layoffs generally meet those requirements.

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Furlough, Layoff, Reduction of Hours

Q: Our business conducted temporary layoffs and furloughs before April 1, 2020 due to a decline in business related to COVID-19. Are we required to provide emergency paid sick leave under the FFCRA on April 1, 2020 to those employees not currently working due to the layoff?

No, in order to be eligible to receive Emergency Paid Sick Leave under FFCRA, there must be work available and the employee must be "unable to work" for one of the reasons defined in the act. If the employee has been laid off, they do not meet the requirements under the Act, however they may be entitled to unemployment insurance benefits. When an employee is called back to work, but is unable to work due to one of the reasons defined in the Act, an employer would be required to provide Emergency Paid Sick Leave.

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Furlough, Layoff, Reduction of Hours

Q: I have an employee who is able to work and my employer has work available, but the employee does not want to work out of fear of being exposed to the virus. Is this employee eligible for benefits under the FFCRA?

No, in this situation the employee does not qualify for benefits under FFCRA. The employer can consider approving a personal leave of absence. Time off would be unpaid unless the employee has PTO or vacation benefits. Employers should bear in mind that the OSHA general duty clause requires employers to furnish "a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." Given the pandemic, the OSHA duty clause may apply and allow an employee to take a leave to avoid potential workplace exposure to the virus. An employer may also consider ADA or FMLA implications if the employee has a serious health condition, such as a mental health diagnosis, which is attributing to his or her fear.

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EEOC Clarifies Employer Rights During COVID-19 Outbreak

The Equal Employment Opportunity Commission weighed in on the impact that the COVID-19 coronavirus is having on American workforces. In summary, the EEOC has confirmed that during the COVID-19 pandemic employers can do the following without violating the provisions of the Americans with Disabilities Act (ADA) or the Rehabilitation Act:

- ask employees if they are experiencing symptoms of COVID-19, provided that the information is maintained as a confidential medical record;
- measure employees' body temperature;
- tell employees who become ill with symptoms of COVID-19 to stay home (or leave work);
- require employees returning to work to provide a doctor's note stating they are fit for duty;
- screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job; and
- withdraw a job offer when it needs the applicant to start immediately but the individual tests positive for COVID-19 or has symptoms of it.

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EOC Clarifies Employer Rights During COVID-19 Outbreak

In issuing its guidance, the EEOC expressly reaffirms its prior guidance on pandemics (publication entitled "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act"), that was issued during the H1NI outbreak in 2009.

The EEOC further recognizes that the World Health Organization has declared COVID-19 to be an international pandemic.

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EEOC issued Q&As

How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

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EEOC issued Q&As

When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

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EEOC issued Q&As

Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice

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EEOC issued Q&As

When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

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EEOC issued Q&As

If an employer is hiring, may it screen applicants for symptoms of COVID-19?

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

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EEOC issued Q&As

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

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What This Means For Employers

While the situation remains fluid, the above guidance confirms that when it comes to the ADA and Rehabilitation Act, the EEOC is deferring to recommendations and guidance from the CDC on steps that must be taken to protect both employees and members of the public. However, you must also be cognizant of state-specific requirements and workplace safety requirements that further impact your operations.

Further, OSHA has outlined recommended steps that you should take if you task a worker with taking the temperature of employees, applicants, or customers.

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EEOC Reference Material

Pandemic Preparedness in the Workplace and the Americans With Disabilities Act

https://www.eeoc.gov/facts/pandemic_flu.html

What You Should Know About the ADA, the Rehabilitation Act, and COVID-19

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

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Late Saturday night, the Department of Labor issued a ***third*** round of Q&As (FAQs #38-59) aimed at helping employers administer emergency paid sick leave (EPSL) and paid FMLA leave (FMLA+) as part of the Families First Coronavirus Response Act (FFCRA) (pdf), which as of April 1, 2020 will provide relief to American workers in the wake of the coronavirus pandemic.

Please see the HANDOUT that goes with these slides!

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Helpful Links

- Guidance on Preparing Workplaces for COVID-19: https://www.osha.gov/Publications/OSHA3990.pdf
- Minnesota Stay at Home Order: https://www.leg.state.mn.us/archive/execorders/20-20.pdf
- Wisconsin Stay at Home Order: https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf

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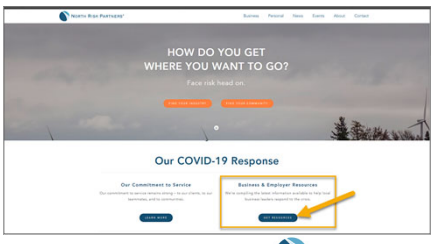
Visit Our Website for COVID-19 Materials

- For updates on COVID-19 and other resources, visit our website: https://northriskpartners.com.



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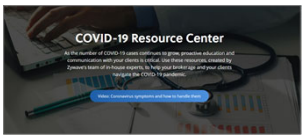
Zywave COVID-19 Resource Center

- Zywave's COVID-19 Resource Center: https://zywave.com/covid-19-resource-center/



- Resources include:
  - Compliance
  - HR
  - Employee

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