



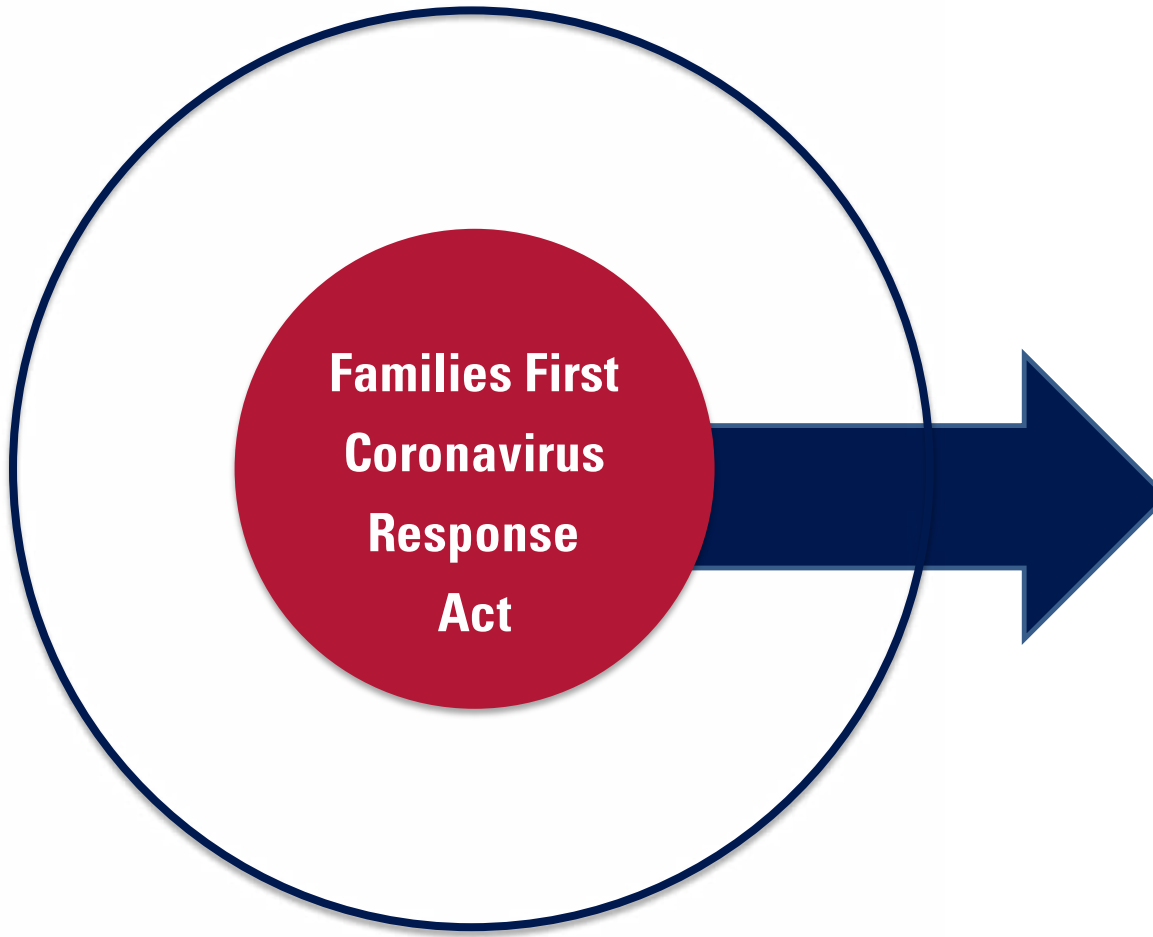
HBI Webinar
Answers for Employers on COVID-19
April 3, 2020

AGENDA

- Families First Coronavirus Response Act (FFCRA) – Effective April 1
 - Paid Sick & Paid Family Leave
 - Tax credits
- Continuation of coverage during layoff, furlough, reduced hours
- Workplace issues – Privacy issues, how to address ill employees
- CARES Act– New Act as of March 27th
- Address Questions

NEED REGULATIONS AND FORMAL GUIDANCE

- Department of Labor FAQs may be considered by courts as informal guidance but do not have the force of law (or even of regulations, which have not yet been issued by the DOL).
- As is evident by the manner in which the DOL is currently publishing these FAQs, they can also be changed by the DOL without notice.
- We have just received new DOL temporary rules for a few of the provisions, most specifically those tied to existing FMLA and FLSA regulations.
- As a result of the limited guidance we have to date, the material presented in this webinar is subject to change.



**Families First
Coronavirus
Response
Act**

- **Employee Paid Sick Leave (EPSL)**
- **Paid Family Leave (PFL)**
- **Employer Tax Credits**

EMPLOYEE PAID SICK & PAID FAMILY LEAVE **DETERMINING <500 EMPLOYEES**

- Went into effect April 1
- Applies to companies with 499 or fewer employees
- Calculate threshold at the time an employee's leave is to be taken
- Take into account:
 - full-time and part-time employees within the United States;
 - employees on leave;
 - temporary employees who are jointly employed by the employer and another company (regardless of whether the jointly-employed employees are maintained on only one employer's payroll);
 - day laborers supplied by a temporary agency (regardless of whether the employer is the temporary agency or the client firm if there is a continuing employment relationship)
- If two entities are found to be joint employers, all of their common employees must be
- **Integrated employers in accordance with FMLA regulations are treated as a single employer**

The integrated employer test includes the factors of:

- (1) common management;
- (2) interrelation between operations;
- (3) centralized control of labor relations; and
- (4) degree of common ownership/financial control.



EXEMPTION FOR SMALL EMPLOYERS (<50 EEs)

Child care-related Paid Sick and Paid FL Expenses *only*

Exemption will be considered if an Officer of the Company reports 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. (DOL FAQ #58)

KEY FACTS

Eligibility:

Paid Sick: entitled immediately

Paid Family Leave: After at least 30 calendar days of employment (on payroll for 30 days)

Duration:

Paid Sick: Limited to 80 hours for Paid Sick Leave, regardless of reason

Interpreted to mean employee can use Co. benefits first, then use 80 hours of EPSL.

- Employers can't require that EEs use existing Co. PTO/sick leave
- However, with employer approval EEs **may chose to substitute** EPSL with Co. PTO/sick leave
- When employer and EE agrees, existing PTO/sick leave can be used to "top off" the 2/3 (66%) benefit

Paid Family Leave: 12 weeks, first two weeks unpaid (in many cases can be addressed by EPSL)

For the entire duration of Paid Family Leave, FMLA protections apply— job and benefit protection

In no circumstances are employers allowed to require employees to find a replacement worker.

KEY FACTS

Wages:

- To determine paid leave wages for full-time:
 - Average of regular wages for six months prior to leave
 - Use hours available for EEs who have worked less than six months
- To determine paid leave wages for part-time (use reasonable expectations and error on the side of caution):
 - For those that work set hours, calculate hours based on hours EE is normally scheduled to work
 - If variable hours, use six-month average
 - Employees working less than 80 hours over two weeks on average, will receive less than 80 hours
- For new hire use the number of hours agreed upon at the time of hire
- If normally scheduled to work overtime, include overtime hours when calculating wages -really only applies to Paid Family Leave

Interaction with State and City Leave Laws:

- Paid sick leave is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or the employer's existing company policy

EMPLOYEE PAID SICK LEAVE (EPSL)

Reason Employee is <u>Unable to Work</u>	Daily Benefit
The employee is subject to a government quarantine order or has been advised by a health care provider to self-quarantine	100% Max \$511
The employee is experiencing COVID-19 symptoms and is seeking medical attention	100% Max \$511
Someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine	66% Max \$200
The employee is caring for his or her "son or daughter" whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19	66% Max \$200

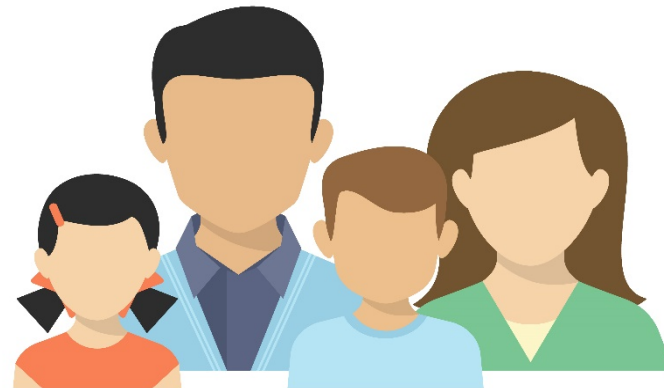


New DOL temporary rules clarify this. The regulators have decided to follow the FMLA rules on this, which includes "children under 18 years of age and children age 18 or older who are incapable of self-care because of a mental or physical disability"

PAID FAMILY LEAVE

Reason Employee is <u>Unable</u> to Work	Daily Benefit
EE is caring for a child under 18 years of age and children age 18 or older who are incapable of self-care because of a mental or physical disability that is home from school or day-care because the entity is closed due to the COVID-19 public emergency	66% Max \$200

Note: Employees that have already exhausted their FMLA are not entitled to additional benefits under this new requirement.





How do I take into account overtime for the Paid Sick Leave Benefit if it is capped at 80 hours?

Answer: Paid Sick Leave is capped at 80 hours regardless of whether an employee averages 50 hours each week. – so if 50 hours of wages are paid the first week, only 30 hours of wages are paid for week two.

KEY FACTS



Intermittent EPSL & PFL at Employers Discretion:

- Employee teleworking (remote work) – employee may take intermittent PFL and EPSL leave for any reason

- Employee working at Employer's Premise
 - EE may use intermittent EPSL, but *only* when the need for leave is due to school closures or lack of childcare
 - No restrictions on EE using intermittent leave for PFL

PAID SICK LEAVE & PAID FAMILY LEAVE CHART

Reason <u>Unable to Work</u> COVID-19 Concerns	Paid Sick Leave 80 hours	Paid Family Leave 10 weeks	Paid Medical Leave	Short term Disability Coverage
EE subject to a Federal, State, or local quarantine or isolation order related to COVID-19	100% to \$511	No	No	File if ill
EE advised by a health care provider to self-quarantine	100% to \$511	No	No	File if ill
EE experiencing symptoms of COVID-19, seeking care	100% to \$511	No	No	File if ill
EE experiencing similar condition specified by Secretary of HHS	100% to \$511	No	No	File if ill
EE caring for indiv. who is subject to quarantine or isolation order or has been advised by a provider to self-quarantine	66% to \$200	No	No	No
EE caring for child - < 18 year child home from school or day-care due to public order	66% to \$200	Yes	No	No

Employees may be able to file for unemployment benefits

UNEMPLOYMENT

[Link to Chart on UC.PA.gov](https://uc.pa.gov)

COVID-19 GUIDE

Scenarios & Benefits AVAILABLE

SCENARIOS	Paid Leave if available through your employer	Paid Leave Families First Coronavirus Response Act	Expanded Unemployment Compensation	Workers' Compensation
	Contact your employer	Check your eligibility	Learn more	Learn more
1 Worker is quarantined. Business remains open.	✓	✓	✓	?
2 Employer closes or suspends operations.	?	✗	✓	✗
3 Employer reduces hours.	✓	✗	✓	✗
4 Worker is caring for a sick family member.	✓	✓	✓	✗
5 Worker chooses to remain home, though not infected and business remains open.	✓	✗	✗	✗
6 Worker stays home to care for child for whom they're the primary caregiver due to school/daycare closure - school/daycare is required for worker to work.	✓	✓	✓	✗
7 Other school employee (non-teacher) whose school is closed outside of normal seasonal closures.	✓	?	✓	✗
8 Teacher is home because school is closed outside of normal seasonal closures.	✓	?	?	✗
9 Healthcare Worker/first responder contracts COVID-19 at work.	✓	✗	✗	✓
10 Healthcare worker/first responder is under quarantine but does not have the virus.	✓	✓	✓	✗
11 Worker is an independent contractor (self-employed, gig worker, freelancer) and has lost income due COVID-19.	✗	?	✓	✗
12 Worker's unemployment recently ran out.	✗	✗	✓	✗

EMPLOYER PAID LEAVE DISCLAIMER:
This chart is a general guide. Each employer's paid leave policy is unique. Check with your employer to see what paid leave policy.

UC DISCLAIMER:
Please be advised that the above scenarios are intended to serve as a guide for the possible circumstances under which an individual may be eligible for unemployment compensation benefits, where all other eligibility requirements are otherwise met. This is not intended to be an official UC. Such eligibility determination is fact-specific and will be made on a case-by-case basis in accordance with the PA Unemployment Compensation Law.

WC DISCLAIMER:
Please be advised that the above scenarios are intended to serve as a guide for the possible circumstances under which an individual may be eligible for workers' compensation benefits. This is not intended to be an official UC. Such eligibility determination is fact-specific and will be made on a case-by-case basis in accordance with the provisions of the Pennsylvania Workers' Compensation Act.

GRAPHIC DISCLAIMER:
This graphic will be updated as it receives additional guidance.



DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION

Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program

✓ YES
✗ NO
? MAYBE (case by case)

UC.PA.GOV

We are an essential business but in order to keep everyone safe, we are doing a 50/50 workforce. So one week Team 1 is here and then the next week Team 2 is here and Team 1 is off. This is all paid also at least until the end of April.



My question is with the FFCRA are we also required to allow an employee to stay home if they have a child in daycare and the daycare is closed? Since we are doing this rotating schedule, I'm not sure what our obligation is.

Answer: DOL FAQ #18 helps to address this question. In general, employee that is unable to do work that an employer is requiring him/her to do as a result of one of the FFCRA qualifying leave reasons is entitled to Paid Sick Leave and potentially Paid Family Leave.

If we offer remote work options to employees and they do not choose to work this way, are we required to offer them leave and pay under the new regulations?



Answer: No. If an employer permits/allows an employee to perform work while he/she is at home without burdensome restrictions, and that employee has no qualifying reason preventing him/her from teleworking, then no FFCRA paid leave benefits should be made available.

Are there circumstances in which we would be required to provide paid leave if the reason they say they can't work is due to child care issues?

Answer: Yes. If an employee is permitted to telework but is unable to perform the required work for the required hours because of one of the qualifying reasons for paid leave, then the employee is entitled to take paid sick. (refer to FAQ#19)

Regarding FFCRA, do you interpret “healthcare provider” to include residential programs for intellectual and developmental disabilities?



Answer: (DOL FAQ #56) Likely No. For purposes of EPSL and PFL and who may be exempt by their employer, a health care provider is 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 permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

WORKSITE CLOSURES

DOL FAQ Reports for Worksite Closures:

If the worksite closes, employees do not receive, or continue to receive, any type of COVID-19 paid leave. It does not matter whether:

- 1) the closure occurs before or after the law takes effect;
- 2) an employee is on leave when closure occurs;
- 3) an employer furloughs an employee;
- 4) the worksite temporarily closes and the employer says it will reopen in the future. This is true whether the worksite closes for lack of business or per a federal, state, or local directive. If this occurs, an employee's only recourse is to seek unemployment benefits.

Do employees receive EPSL for Shelter in Place & Mandated Closures?

Shelter-in-Place and Business Closure Orders do not likely support the need for EPSL:



Although it did not carve out a specific question for these types of orders, the DOL appears ready to deny EPSL to those covered by these sweeping orders.

In FAQ #27, the DOL notes:

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.*

Update: A new DOL temporary rule states that an "employee subject to one of these orders may not take paid sick leave where the employer does not have work for the employee"

TAX CREDIT FOR EPSL & FML EXPENSES

- Employers are entitled to a refundable tax credit equal to 100% of qualified paid sick & family leave wages paid by an employer for each calendar quarter.
- Employer's take their credit by retaining their payroll taxes, including
 - Employee's share of SS tax and Medicare tax
 - Employer share of SS tax and Medicare
 - Federal tax
- If the credit exceeds the employer's total liability for all employees for the quarter, the excess credit is refundable to the employer.
- If an employer's federal employment taxes liability is insufficient to cover the amount of EPSL & PFM expenses, Eligible Employers may request an advance payment of the credits from the IRS by submitting **Form 7200**. <https://www.irs.gov/forms-pubs/about-form-7200>

Form **7200** Advance Payment of Employer Credits Due to COVID-19
(March 2020)
Department of the Treasury
Internal Revenue Service
OMB No. 1545-0029

▶ Go to www.irs.gov/Form7200 for instructions and the latest information.

Name (not your trade name) _____ Employer identification number (EIN) _____

Trade name (if any) _____ Applicable calendar quarter (check one)
 April, May, June
 July, August, September
 October, November, December

Number, street, and apt. or suite no. If a P.O. box, see instructions. _____

City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.) _____

Foreign country name _____ Foreign province/county _____ Foreign postal code _____

Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name. _____ Third-party payer's EIN (if applicable) _____

Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I Tell Us About Your Employment Tax Return

A Check the box to indicate which employment tax return form you file (or will file for 2020):
(1) 941, 941-PR, or 941-SS (2) 943 or 943-PR (3) 944 or 944(SP) (4) CT-1

B Is this a new business started on or after January 1, 2020? _____ ▶ Yes No
If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.

C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions. _____ ▶ _____

D Enter the total number of employees you have. See instructions. _____ ▶ _____

CLAIMING TAX CREDIT – DOCUMENTATION

Employees are to provide a written request for leave that contains the following:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

CLAIMING TAX CREDIT – DOCUMENTATION

Its quite possible HRIS could be built out to reflect:

Check boxes for each leave reason - EE selects correct box

Dates for leave request: ___/___/___ - ___/___/___

Check box for “unable to work, including remote work”

Fill-in box for the employee to type in “Details for why leave has been requested (if reason for leave is due to school closure, you must provide school district name & phone number)”

Requires electronic signature for employee upon conclusion of the request

CLAIMING TAX CREDIT – DOCUMENTATION

Employer must retain the following:

- Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages.
See FAQ #31 for methods to compute this allocation.
- Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
- Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

CLAIMING TAX CREDIT

New IRS FAQs report:

Health Plan Expenses

Tax credits can be taken for an employer's qualified health plan expenses for employees on paid sick or paid family leave. This applies to insured and self-funded plans.

IRS FAQs 31-36 address the specifics on how to determine each employee's prorated share relative to the time the employee is taking paid leave.

PAID SICK & PAID FAMILY LEAVE

Employee Rights Notice

Post April 1

Employers may satisfy the posting requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). 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 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take 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; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:

1-866-487-9243

TTY: 1-877-889-5627

[dol.gov/agencies/whd](https://www.dol.gov/agencies/whd)



WH-1422 REV 03/20

PAID SICK & PAID FAMILY LEAVE

Penalties for Non-Compliance

New DOL temporary rules (29 CFR Part 826): The EPSLA also provides that employers who fail to provide paid sick leave as required are considered to **have failed to pay minimum wages in violation of section 6 of the FLSA**, and that such employers are subject to enforcement proceedings described in sections 16 and 17 of the FLSA. 29 U.S.C. 206, 216, 217. In addition, the EPSLA prohibits employers from discharging, disciplining, or in any other manner discriminating against an employee who takes paid sick leave under the EPSLA, files any complaint under or relating to the EPSLA, institutes any proceeding under or relating to the EPSLA, or testifies in any such proceeding. See FFCRA section 5104, as amended by CARES Act section 3611(8). Employers who violate this prohibition are considered to have violated section 15(a)(3) of the FLSA, and are subject to the penalties described in sections 216 and 217 of the FLSA. 29 U.S.C. 215(a)(3), 216, 217. The EPSLA also authorizes the Secretary to investigate and gather data to ensure compliance with the EPSLA in the same manner as authorized by sections 9 and 11 of the FLSA, and the CARES Act section 3611(9) (adding FFCRA section 5105(c)); 29 U.S.C. 209, 2

STATES AND CITIES EXPAND LEAVE LAWS OR UPDATE GUIDANCE

States:

[California](#)

[Colorado](#)

[District of Columbia](#)

[Nevada](#)

[New Jersey](#)

[New York](#)

[Oregon](#)

[Washington](#)

[Rhode Island](#)

[Connecticut](#)

[Massachusetts](#)

[Vermont](#)

[Minnesota](#)

Cities:

[Los Angeles](#)

[Minneapolis](#)

[Philadelphia](#)

[San Francisco](#)

[San Jose](#)

[Seattle](#)

[Duluth](#)

HENDERSON BROTHERS UPDATE

Coronavirus (COVID-19): State and City Leave Requirements

Date: March 25, 2020

NO CHANGES AS OF MARCH 27, 2020

This resource collects coronavirus developments related to employee leaves on the state and local level. It will be continually updated and added to as developments with the coronavirus (COVID-19) pandemic unfold.

Covered employers may be required to provide employees job-protected leave based on federal, state or local law, and in some instances, paid sick leave or family leave to eligible workers. Among other requirements, leave laws generally specify the qualifying reasons for leave. While several of these laws already contain protections when there is a public health emergency, some jurisdictions have issued various measures such as rules, guidance and FAQs expanding and/or clarifying employees' leave rights in light of the COVID-19 pandemic, including:

State Requirements

California

California's Department of Industrial Relations published [Coronavirus Disease \(COVID-19\) - FAQs](#) (FAQs) on laws enforced by the California Labor Commissioner's Office. The FAQs address various issues including paid sick leave, such as protections for self-quarantine as a result of potential exposure to COVID-19.

Colorado

Effective March 11, 2020, [Colorado's Health Emergency Leave with Pay Rules](#) (Rules), temporarily provide paid sick days to employees working in the following industries:

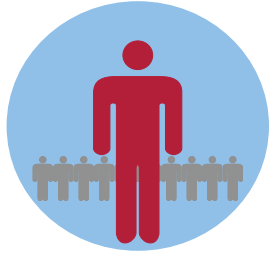
- Leisure and hospitality;
- Food services;
- Child care;
- Education at all levels (including related services, including but not limited to cafeterias and transportation to, from, and on campuses);
- Home health care (working with elderly, disabled, ill, or otherwise high-risk individuals);
- Nursing homes; and

BENEFIT CONCERNS

FURLOUGHS, LAYOFFS

Employers that want to continue welfare benefits for employees that are on temporary lay off or working reduced hours should consider:

- 1) Make sure each policy has a continuation of benefits provision for temporary layoff/furlough or request an amendment to include one (note: many of the insurers are automatically providing continued coverage for temporary layoffs and furloughs as result of COVID-19)
- 2) If reducing hours for some or all employees, make sure the policies are amended to reflect a lower hours requirement for eligibility
- 3) In normal circumstances, disability benefits can't be continued but some insurers are making exceptions
- 4) Address stop loss if self-insured
- 5) Amend the Plan, revise Plan Documents
- 6) Determine communication and process for collecting employee's share of the premiums, including "catch-up", if finances allow (can't do catch-up if Section 125 Plan year falls in the lay off period)
- 7) Have a plan in place if the lay off is longer than expected or employees are permanently laid off



WORKPLACE ISSUES

- During the pandemic, ADA-covered employers may ask EEs 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
- Because public authorities of 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
- The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace (the ADA allows employers to demand EEs stay home)



Are we permitted to take the temperature of just a few of our employees that don't look well and are coughing quite a bit?

Answer: Yes, with limitations. The EEOC states that if an employer seeks to question only one employee regarding COVID-19 or take their temperature, the employer must have a reasonable belief based on objective evidence that the employee may have COVID-19. For example, an employer may ask an employee with a persistent hacking cough if they have seen a doctor or might have COVID-19 because this is a symptom of COVID-19. If an employer notices that an employee is merely distracted from work this would be an insufficient reason to question them regarding COVID-19.

EMPLOYEE WANTS TO WEAR A MASK

If an employee asks to wear a face mask as an accommodation of another condition (such as an autoimmune condition that, the employee reports, may cause a “direct threat” of harm to the employee if they contract the virus), the ADA requires the employer to, at the very least, engage the employee in the interactive accommodation process to determine whether the employee’s request may be granted or not.

The ADA also requires that, pending the conclusion of the interactive process, such an employee should not be required to remain in the workplace. If, through the interactive process, the employer determines that the employee does, indeed, have a disability and that wearing a face mask is the only accommodation that will sufficiently reduce or eliminate any threat to the employee or others, the ADA requires the employer to allow the employee to wear a face mask unless it would interfere with the employee’s ability to perform the essential job functions or it would pose an “undue hardship.”

PRIVACY ISSUES

If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace.

Employers should not, however, disclose to co-workers the identity of the quarantined employee because confidentiality requirements under federal law, such as the Americans with Disabilities Act (ADA), or state law, such as California's Confidentiality of Medical Information Act (CMIA), may apply. If the employer learns of the diagnosis thru its health plan, then HIPAA prohibits the disclosure as well.

Report instead that employees may have possibly been exposed to COVID-19.



Are we permitted to ask our employees each day they come to work if a family member has COVID-19 symptoms or is ill?

Answer: No. The EEOC advises that an employer should avoid asking employees physically coming to work if they have family members who have COVID-19 or related symptoms because this unnecessarily limits the possible extent of an employee's potential exposure to COVID-19 and may violate the Genetic Information Nondiscrimination Act's (GINA) prohibition on asking employees medical questions about family members.

A better question from a public health and workforce management perspective is to ask the employee if they had contact with anyone they know that has COVID-19 or related symptoms.



Is our company permitted to tell our employees over age 60 who do not have symptoms associated with COVID-19 not to come to work because the CDC has identified their age group as being at higher risk of severe illness if they contract COVID -19?

Answer: No. The EEOC advises that the Age Discrimination in Employment Act's (ADEA) prohibition on employment discrimination against workers 40 years of age and older prevents an employer from taking any of the following actions based on age-related concerns with respect to COVID-19:

- Barring an older employee from the workplace;
- Placing them on telework; or
- Placing them on involuntary leave.



When an employee calls to tell us s/he is no longer ill with COVID-19 and wants to return, how do I know s/he is no longer contagious?

The CDC reports that individuals should not return to work until the criteria to **discontinue home isolation** are met, in consultation with healthcare providers and state and local health departments.

The decision to discontinue home isolation should be made in the context of local circumstances.
Options:

- 1) a **time-since-illness-onset and time-since-recovery (non-test-based) strategy**,
and
- 2) a **test-based strategy**

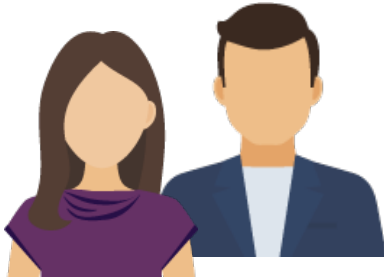
EMPLOYEES RETURNING AFTER COVID-19 ILLNESS

CDC criteria to discontinue home isolation:

Time-since-illness-onset and time-since-recovery strategy (non-test-based strategy) for persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue home isolation under the following conditions:

- At least 3 days (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*.

EMPLOYEES RETURNING AFTER COVID-19 ILLNESS



Test-based strategy (simplified from initial protocol)

Previous recommendations for a test-based strategy remain applicable; however, a test-based strategy is contingent on the availability of ample testing supplies and laboratory capacity as well as convenient access to testing. For jurisdictions that choose to use a test-based strategy, the recommended protocol has been simplified so that *only one swab is needed at every sampling*.

Individuals with laboratory-confirmed COVID-19 who have not had any symptoms may discontinue home isolation when at least 7 days have passed since the date of their first positive COVID-19 diagnostic test and have had no subsequent illness.

EMPLOYEE COMMUNICATIONS & POLICY

SAMPLE

Employee COVID-19 Memo

To: ABC Co. Employees:

As the coronavirus (also known as COVID-19) continues to spread, responding to this global health crisis.

We would also like to remind you of the steps that we can all take to continuing our operations as normally as possible.

Important Note: In addition to this letter, we will be requesting that policies we will be distributing regarding your responsibilities if you have been exposed to someone who is sick with COVID-19. The policies

Reducing the Spread of Infection

Wash your hands often and thoroughly with soap and water for at the bathroom; before eating; and after blowing your nose, coughing readily available, use an alcohol-based hand sanitizer with at least

In addition, please ensure that you:

- Cover your mouth and nose with a tissue or your sleeve (not your hands)
- Throw all used tissues in the trash right away and wash your hands
- Avoid touching your eyes, nose or mouth;
- Avoid close contact with people who are sick; and
- Clean and disinfect frequently touched objects and surfaces with regular household cleaning spray or wipe.
- Refer to qualify websites for up-to-date information like CDC

Symptoms

UPDATED SAMPLE Modified text appears in red font

[Enter Employer Name] Contagious Disease (COVID-19) Policy

It is the goal of [Enter Employer Name], during any period of quarantine or contagious disease outbreak, to ensure that all essential services are continuously provided, and to make certain employees are safe within the workplace. This Contagious Disease Policy applies to the current COVID-19 pandemic and when applicable, governs all individuals on company premises, including contracted personnel and visitors.

Policy Overview

[Enter Employer Name] reserves the right to exclude any person with any contagious disease, including those potentially sick with COVID-19, from all facilities, programs and functions if [Enter Employer Name] decides that the restriction is in the best interests of the organization.

Individuals shall not be excluded solely on the basis that they have a contagious disease, including COVID-19. Factors that will be considered in determining whether to exclude individuals will include whether the individual is contagious in ordinary public association, the nature of the disease, including the typical risks to individuals in good health, the public health situation in the region, the nature of the individual's employment or (if applicable) clinical, cooperative or service learning placement, and whether [Enter Employer Name] is required by law to exclude individuals with the disease. Any individual suspected of having a highly communicable disease will be asked to leave company premises immediately and will be expected to seek medical treatment promptly.

[Enter Employer Name] reserves the right to require a written statement from an individual's physician indicating that the person is no longer contagious.

[Enter Employer Name] has a commitment to treat all employees, contractors and visitors openly. This policy represents the intention to inform all individuals of the [Enter Employer Name] community about the risk of exposure to communicable diseases. This policy also represents a commitment to strive to preserve and protect the confidentiality of employees, contractors and visitors who have developed a communicable disease. [Enter Employer Name] protects those affected from discriminatory or imposed isolation from the

Employers should issue this policy to all new employees and current employees and have a signature verifying that the policy has been read and understood. It should be used to enforce all health concerns for an employee who may come to work with a contagious disease.

UPDATED SAMPLE New CDC Recovery Guidelines added

Summary of Quarantine & Isolation Procedures - Employees with known exposure to COVID-19

Employees are required to contact Human Resources immediately if they believe they are currently sick, or will likely become sick, with the COVID-19 virus as illustrated below. This Policy is a summary of [Enter Employer Name's] Quarantine and Isolation protocol for employees directly impacted by the COVID-19 virus.

You must go under self-quarantine for 14 days, at a minimum, if you have:

- Been diagnosed with COVID-19
- Been in contact with a person known to have COVID-19

Additionally, you may be required to go under self-quarantine for 14 days, at a minimum, if you have recently traveled from any area classified by the Centers for Disease Control and Prevention (CDC) as Level 3 risk, or any other area identified by [Enter Employer Name] as an area of concern to the company.

Self-Quarantine/Self-Isolation Procedures:

- Employees that have COVID-19 symptoms (i.e., fever, cough, or shortness of breath), have been exposed to COVID-19, or are ill with the virus should notify their supervisor (or HR) immediately, stay home, self-isolate for a minimum of 14 days, and follow CDC recommended guidelines for care. Employees ill with COVID-19 must provide a physician statement indicating they have recovered from the illness prior to returning work.
- Employees who have no symptoms, but who have a family member who has been exposed to COVID-19 or is sick at home with COVID-19, should notify their supervisor (or HR) immediately, stay home, and follow CDC recommended precautions. In certain cases, employees will be required to stay home for a minimum of 14 days.

When a physician return-to-work statement is not obtainable, employees who have been ill at home must

EMPLOYEE COMMUNICATIONS & POLICY

STOP

Feeling Sick?
Stay home when you are sick!

If you feel unwell or have the following symptoms please leave the building and contact your health care provider. Then follow-up with your supervisor.

DO NOT ENTER if you have:

- FEVER**
- COUGH**
- SHORTNESS OF BREATH**

[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

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Steps to help prevent the spread of COVID-19 if you are sick

FOLLOW THE STEPS BELOW: If you are sick with COVID-19, follow these steps to help prevent the spread of the virus to other people in your workplace.

- Get medical care:** If you are sick with COVID-19, get medical care. Be sure to wear a facemask when you are around other people. It is an emergency. Do not use public transportation, ride in a car, or take a train.
- Wash your hands:** Wash your hands often with soap and water for at least 20 seconds. This is especially important after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.
- Hand sanitizer:** If soap and water are not available, use an alcohol-based hand sanitizer that contains at least 60% alcohol.
- Soap and water:** Soap and water are the best way to clean your hands, especially if hands are visibly dirty.
- Avoid touching:** Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid sharing personal household items:** Do not share dishes, drinking glasses, cups, eating utensils, towels, or bedding with other people in your home.
- Wash thoroughly after use:** After using the items, wash them thoroughly with soap and water in the dishwasher.

Share Facts About COVID-19

FACT 1: Diseases can make anyone sick regardless of their race or ethnicity. Fear and anxiety about COVID-19 can cause people to avoid or reject others even though they are not at risk for spreading the virus.

FACT 2: For most people, the immediate risk of becoming seriously ill from the virus that causes COVID-19 is thought to be low. Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more serious complications from COVID-19.

FACT 3: Someone who has completed quarantine or has been released from isolation does not pose a risk of infection to other people. For up-to-date information, visit CDC's coronavirus disease 2019 web page.

[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

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SHARE FACTS ABOUT COVID-19

Know the facts about coronavirus disease 2019 (COVID-19) and help stop the spread of rumors.

FACT 4: There are simple things you can do to help keep yourself and others healthy.

- Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.

FACT 5: You can help stop COVID-19 by knowing the signs and symptoms:

- Fever
- Cough
- Shortness of breath

Seek medical advice if you develop symptoms AND

- Have been in close contact with a person known to have COVID-19 or if you live in or have recently been in an area with ongoing spread of COVID-19.

[cdc.gov/COVID-19](https://www.cdc.gov/COVID-19)

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CARES ACT

Benefit Enhancements:

- All private insurance plans must cover COVID-19 treatments, vaccine and coronavirus tests at no member cost share
- OTC Medications may be purchased on a pre-tax basis (permanent change)
- Provide opportunity for Dependent Care Assistance participants to make changes now

COVID-19 CARES ACT UPDATES

On March 27, 2020, the U.S. Congress passed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to provide \$2.2 trillion in federal funding to address the COVID-19 crisis.



THE CARES ACT REPEALS THE ACA'S "MEDICINE CABINET TAX", ALLOWING INDIVIDUALS TO USE THEIR MEDICAL SPENDING ACCOUNT TO PURCHASE OVER-THE-COUNTER PRODUCTS AND MEDICATIONS.

The CARES Act allows over-the-counter (OTC) drugs to be purchased on a pre-tax basis for employees on an Health Reimbursement Arrangement (HRA, if applicable), HSA or FSA.

Some examples of allowed OTC items are:

- ✓ Cough medicines
- ✓ Cold medicines
- ✓ Allergy medicines
- ✓ Pain relievers, such as acetaminophen

Menstrual products are also now eligible and would include products such as, but not limited to:

- ✓ tampons
- ✓ pads
- ✓ liners
- ✓ cups

The changes are permanent and will remain after the Coronavirus has been contained.

WHAT DOES THIS MEAN FOR DEPENDENT CARE?

Unlike Health FSAs, the provisions of the IRS regulations about Dependent Care Assistance (DCA) are competitively more permissible, enabling participants to make changes in their payroll contribution amounts as the daycare services utilized may change during the plan year.

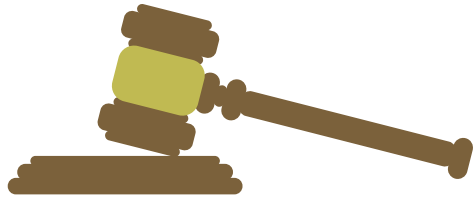
Unless the employer has deliberately specified otherwise and limitations are written in the plan documents, DCA participants are not limited to only the occurrence of traditional status changes to make midyear adjustments any time to their annual election amounts for DCA.



CARES ACT

Other provisions:

- Advance Refundable Tax Credit (Rebate)- \$1,200 single filer, \$2,400 joint filers, \$500 for each child under 17 – contains phase out provision
- Suspension of Student Loan Repayments
- Employee Retention Credits - Refundable tax credit for the employer's share of the 6.2% Social Security tax (the "SSI Tax Credit").
- Access to telehealth in HSA compatible HDHPs- plans may cover all telehealth services prior to a covered individual reaching the applicable deductible without risking the plan's status as a high deductible health plan.



CARES ACT

Unemployment provision:

- Individuals who exhausted such unemployment benefits will be eligible to receive the same amount of assistance that is provided under the state's unemployment benefits program for the period beginning on January 27, 2020 and ending on December 31, 2020.
- Individuals will be eligible to receive an additional \$600 per week for up to 4 months
- If an individual remains unemployed after their state employment benefits are exhausted, the federal government will fund up to 13 weeks of unemployment benefits

CARES ACT

Unemployment:

- Funding for the first week of UI for states that waive the traditional "waiting week" before UI benefits begin (through December 31, 2020);
- States with temporary flexibility to hire temporary staff or rehire former employees to quickly process UI applications and claims; and
- Temporary financing of state short-time compensation programs.

CARES ACT

Payroll Tax Credit:

Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose:

(1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

Credit is based on qualified wages paid to the employees.

Employers and self-employed individuals can defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.

CARES ACT

Student Loan Repayment-Employee Education Assistance Program:

Employers may provide a student loan repayment benefit to employees on a tax-free basis of up to \$5,250 annually towards an employee's student loans. The cap takes into account both any new student loan repayment benefit as well as other educational assistance currently provided by the employer.

The provision applies to any student loan payments made by an employer on behalf of an employee after March 27, 2020, and before January 1, 2021.



Thank you

Please note that the information contained in this presentation is designed to provide authoritative and accurate information, in regard to the subject matter covered. However, it is not provided as legal or tax advice and no representation is made as to the sufficiency for your specific company's needs. Please consult with your legal counsel or tax consultant before use.