



The right answer. Faster.

myHRcounsel's Attorneys Answering Employer's Most Frequently Asked Questions about Coronavirus/COVID-19

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Presenters and Agenda

Presenters

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Agenda

- Wage and Hour Issues
- Traditional FMLA/PSL Laws
- Unemployment Insurance
- WARN Act and Layoffs
- ADA/Medical Information Questions
- Legislative Updates

Wage and Hour Issues

Non-
Exempt
Employees

Not required to pay non-exempt workers for work not performed

Be mindful of state waiting/reporting time laws

Wage and Hour Issues

Exempt Employees

Not required to pay exempt workers for full-week absences

Need to pay exempt employees for any workweek in which they perform work – regardless of amount

Wage and Hour Issues

- ❖ Some companies choosing to continue pay/give stipend
- ❖ Be mindful of Collective Bargaining Agreements
- ❖ Short-Term Disability may provide income replacement

Wage and Hour Issues FAQs

- ❖ Can I pay employees for COVID-19 related absences even if they are not entitled to paid sick or vacation leave, or PTO?
- ❖ Can I provide employees with additional sick days or allow employees to go “into the red” on PTO for absences related to COVID-19?
- ❖ Do I have to pay an exempt employee if the business is closed, shut down, or no work is available due to COVID-19?

Traditional FMLA/PSL Laws

FMLA:

- ❖ Applies to companies with 50 or more employees
- ❖ Covers employees who are incapacitated with a serious health condition and to care for family members with a serious health condition
- ❖ Employees without symptoms should not count absences against FMLA allotment

Traditional FMLA/PSL Laws

Paid Sick Leave Laws:

- ❖ Many states have state-wide laws; cities/counties have their own laws
- ❖ Provide paid leave to eligible employees to care for their own illness, a family member's illness or in situations where employees' children's schools/daycares closed due to public health emergency
- ❖ Applies to employee's suffering coronavirus symptoms

Traditional FMLA/PSL FAQs

- ❖ Is COVID-19 covered by FMLA?
- ❖ How do state and local paid sick leave laws relate to COVID-19 related absences?

ADA/Medical Information

The ADA prohibits employee disability-related inquiries or medical examinations *unless* they are job-related and consistent with business necessity.

COVID-19 guidance states that if an employee's ability to perform essential job functions will be impaired by a medical condition, or that an employee will pose a direct threat due to a medical condition – then inquiries ok.

ADA/Medical Information FAQs

- ❖ How much information may an employer request from an employee who calls in sick during the COVID-19 pandemic?
- ❖ When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?

ADA/Medical Information FAQs

- ❖ Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?
- ❖ When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

ADA/Medical Information FAQs

- ❖ Do I have to provide reasonable accommodations to an employee with COVID-19 under the ADA?
- ❖ Can we tell other employees, customers, vendors, contractors, or others on the premises if one of our employees has tested positive or been exposed to COVID-19?

Unemployment Insurance

A number of states have enacted changes to UI laws

Arkansas waived requirements that applicants search for work for 30 days – allows for telephone/online unemployment applications

Massachusetts waived 1-week waiting period

Unemployment Insurance

- ❖ Federal Emergency Unemployment Insurance Stabilization Access Act of 2020
 - ❖ Requiring employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment.
 - ❖ Ensuring that applications for unemployment are accessible in at least two of the following: in-person, by phone, or online.
 - ❖ Notifying applicants about steps the applicant can take to ensure the successful processing of the application."

Unemployment Insurance FAQs

- ❖ When do unemployed workers become eligible for unemployment benefits?
- ❖ Won't all these unemployment claims impact my business negatively – I usually contest terminated employees' unemployment claims?
- ❖ What reason should I list for unemployment to ensure my terminated employees qualify?

WARN Act/Furloughs, Layoffs, RIFs

- ❖ Furlough, Layoff or RIF
 - ❖ Furlough – working less hours or taking unpaid time off
 - ❖ Layoff – temporary separation from employment
 - ❖ Reduction in Force (RIF) – position is eliminated without the intent to replace it

WARN Act/Furloughs, Layoffs, RIFs

Should I do
a furlough,
layoff or
RIF

- If you furlough – employees may remain eligible for benefits and emergency FMLA and paid sick leave
- If you layoff or RIF, not eligible for benefits or the emergency FMLA/paid sick leave
- Must be able to document economic need to conduct layoff

WARN Act/Furloughs, Layoffs, RIFs

❖ WARN Act

- ❖ Federal applies to companies with more than 100 employees
- ❖ Many states have mini-WARN laws that apply to companies as small as 50 employees
- ❖ Require additional notice procedures
- ❖ Exceptions for unforeseen business circumstances or faltering company

WARN Act/Furloughs, Layoffs, RIFs FAQs

- ❖ Are employees entitled to the Emergency FMLA or Emergency PSL if they are terminated?
- ❖ Should I tell employees I will rehire them once this has all passed?
- ❖ Can I keep terminated employees on our health insurance plan?

Legislative Updates

- Emergency Family and Medical Leave Expansion Act
 - Effective 4/2/20 – 12/31/20
 - Covers private employers with less than 500 employees and employees who have worked at least 30 days
 - Provides leave for 12 weeks
 - First 10 days unpaid – then 2/3 of regular rate after that
 - Use when employee cannot work due to minor child's school/daycare closure

Legislative Updates

- Emergency Paid Sick Leave
 - Effective 4/2/20 – 12/31/20
 - Covers private employers with less than 500 employees and all employees eligible without a days of service requirement
 - Provides 2 weeks (80 hours of leave) for FT employees, prorated for part time employees

Legislative Updates

- Employee is subject to a quarantine or isolation order related to COVID-19
- Employee has been advised by a health care provider to self-quarantine because of COVID-19
- Employee is caring for an individual ordered or advised to quarantine or isolate
- Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- Employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions
- Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor

Legislative Updates

Employees should receive their regular rate of pay for leave related to their own care, diagnosis, quarantine, or isolation.

When employees use paid sick leave to care for a family member or for school or child care closures, they are entitled to two-thirds their regular rate of pay.

Legislative Updates

Tax Credits:

- The law provides for reimbursement for employers via payroll tax credits. Refundable tax credits equal to 100% of qualified family and sick leave wages an employer pays for each calendar quarter will be available.
- Tax credits against income taxes are also available to self-employed individuals (at a reduced, two-thirds rate when using emergency paid sick leave to care for family members or due to school or child care closures).

Legislative Updates

Keeping Workers Paid and Employed Act (*proposed*)

- Small business assistance
 - Small employers with 500 employees or fewer will be eligible to apply for the loans.
 - Loans would be immediately available through existing Small Business Administration-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.

Legislative Updates

Keeping Workers Paid and Employed Act (*proposed*)

- Loan guaranty program
 - The bill would expand the allowable uses for the existing 7(a) Small Business Administration loan program to permit payroll support, including paid sick leave, supply chain disruptions, employee salaries, mortgage payments, and other debt obligations to provide immediate access to capital for affected small businesses.
 - The maximum loan amount for SBA Express loans would be increased from \$350,000 to \$1 million. These loans provide borrowers with revolving lines of credit for working capital purposes.



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Questions?

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Let us know how we can help you and your business today!

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