

COVID-19 Guide for Human Resources

I. **Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act**

A. 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;
- 2/3 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 2/3 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.

B. 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;**
2. **has been advised by a health care provider to self-quarantine related to COVID-19;**
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);**
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**
6. **is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.**

II. **COVID-19 and the Americans with Disabilities Act: During the Pandemic**

- A. May an ADA-covered employer send employees home if they display COVID-19-like symptoms during the pandemic?

Yes.

- B. What may ADA-covered employers request from employees who report feeling ill at work or who call in sick?

Employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Currently these symptoms include, for example, fever, chills, cough, shortness of breath, or sore throat.

- C. May an ADA-covered employer take its employees' temperatures to determine whether they have a fever?

Yes, employers may measure employees' body temperature. As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

- D. When an employee returns from travel during the pandemic, must an employer wait until the employee develops COVID-19 symptoms to ask questions about exposure to COVID-19 during the trip?

No. Employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

- E. During the pandemic, may an ADA-covered employer ask employees who do not have COVID-19 symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to COVID-19 complications?

No, but ADA-covered employers may make disability-related inquiries or require medical examinations of asymptomatic employees to identify those at a higher risk of COVID-19 complications if employers, after having sufficient objective information from public health advisories, reasonably conclude that employees will face a direct threat if they contract COVID-19.

- F. May an employer encourage employees to telework (i.e., work from an alternative location such as home) as an infection-control strategy during a pandemic?

Yes. In addition, employees with disabilities that put them at high risk for complications of COVID-19 may request telework as a reasonable accommodation to reduce their chances of infection during the pandemic.

- G. During the pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace?

Yes. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

- H. During the pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?

Yes. An employer may require employees to wear personal protective equipment during the pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

- I. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than de minimis cost" to the operation of the

Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. As of the date this document is being issued, there is no vaccine available for COVID-19.

- J. During the pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship?

Yes. An employer's ADA responsibilities to individuals with disabilities continue during an influenza pandemic. Only when an employer can demonstrate that a person with a disability poses a direct threat, even after reasonable accommodation, can it lawfully exclude him from employment or employment-related activities.

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

All employees with disabilities whose responsibilities include management during the pandemic must receive reasonable accommodations necessitated by pandemic conditions, unless undue hardship is established.

The rapid spread of COVID-19 has disrupted normal work routines and may have resulted in unexpected or increased requests for reasonable accommodation. Although employers and employees should address these requests as soon as possible, the extraordinary circumstances of the COVID-19 pandemic may result in delay in discussing requests and in providing accommodation where warranted. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.

- K. During a pandemic, may an employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

- L. May an ADA-covered employer require employees who have been away from the workplace during the pandemic to provide a doctor's note certifying fitness to return to work?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic is 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 the 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 COVID-19

III. **COVID-19 and the Americans with Disabilities Act: Hiring During the Pandemic**

- A. 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. 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 allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.

- B. 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.

- C. 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.

CDC has issued guidance applicable to all workplaces generally, but also has issued more specific guidance for particular types of workplaces (e.g. health care employees). Guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety. To repeat: the ADA does not interfere with employers following recommendations of the CDC or public health authorities, and employers should feel free to do so.

- D. 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.

IV. Families First Coronavirus Response Act

A. Qualifying Reasons for Leave Related to COVID-19

This is repeated from above, but under the FFCRA, an employee at a business with fewer than 500 employees is entitled to take leave related to COVID-19 if the employee is unable to work because he or she:

1. Is subject to a federal, state or local quarantine or isolation order.
2. Has been advised by a health care provider to self-quarantine.
3. Is experiencing symptoms associated with COVID-19 and is seeking a medical diagnosis.
4. Is caring for an individual subject to a quarantine or isolation order.
5. Is caring for a child whose school or place of care is closed or unavailable due to coronavirus- related reasons.
6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services. The agency has not specified any other substantially similar condition as of yet.

Up to two weeks of paid sick leave is available to qualifying employees. For the first three reasons, the amount of pay is based on either the employee's regular rate of pay or the applicable state or minimum wage, whichever is higher, and it is to be paid at 100 percent, up to \$511 daily and \$5,110 total. For the fourth and sixth reasons, the amount of pay is two-thirds of either the employee's regular rate of pay or the applicable state or minimum wage, whichever is higher, up to \$200 daily and \$2,000 total.

An additional 10 weeks of partially paid expanded family and medical leave is available to some employees when their children's school or place of childcare is closed. The payment amount in this instance is two-thirds of either the employee's regular rate or the applicable state or minimum wage, whichever is higher, up to \$200 daily and \$12,000 total (\$10,000 plus up to \$2,000 of unused paid sick leave if applied to the first 10 days). To be eligible for this leave, an employee must have been employed for at least 30 days prior to his or her leave request.

Note that an individual generally is entitled to paid sick leave under the FFCRA regardless of how much leave has been taken under the Family and Medical Leave Act (FMLA). But if someone takes paid sick leave concurrently with the first two weeks of emergency family and medical leave, which otherwise would be unpaid, those two weeks do count toward the 12 workweeks in the FMLA's 12-month period.

B. Documentation of Need for Leave

The DOL said the employee must provide a signed statement containing:

- The employee's name.
- The date(s) for which leave is requested.
- The coronavirus-qualifying reason for leave.
- A statement that the employee can't work or telework because of this reason.

In addition, an employee must provide the name of the government entity that issued the quarantine or isolation order to which the employee is subject, if that is the reason for paid sick leave, according to the DOL.

An employee seeking leave because he or she is self-quarantined must provide the name of the health care provider making the quarantine recommendation. Someone caring for a person who is quarantined must provide either the government entity that issued the quarantine or isolation order or the name of the health care provider who advised the individual to self-quarantine.

The DOL said an individual requesting expanded family and medical leave must provide:

- The name of the child being cared for;
- The name of the school, place of care or child care provider that closed or became unavailable due to coronavirus reasons; and
- A statement representing that no other suitable person is available to care for the child during the period of requested leave.

The normal FMLA certification rules apply to an employee's own serious health condition related to the coronavirus and to the employee's need to care for a spouse, son, daughter or parent with a serious health condition.

If an employee fails to give proper notice, the employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave, the regulations state.

C. **IRS Guidance**

The IRS issued guidance stating that eligible employers claiming tax credits for qualified leave wages "must retain records and documentation related to and supporting each employee's leave to substantiate the claims for the credits." Such employers also must retain:

- Form 941, Employer's Quarterly Federal Tax Return;
- Form 7200, Advance of Employer Credits Due to COVID-19; and
- Any other applicable filings made to the IRS requesting the credit.

Question 44 in the IRS guidance outlines the information an eligible employer must both receive from an employee and maintain to substantiate eligibility for sick-leave or family-leave credits.

The employee must provide:

- His or her name;
- The date(s) for which leave is requested;
- A statement of the reason the employee is requesting leave and written support for such reason; and
- A statement that the employee is unable to work, including telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the government entity ordering the quarantine or the name of the health care professional advising self-quarantine. If the person subject to quarantine is not the employee, that person's name and relation to the employee shall be provided.

If a school closes or a child care provider is unavailable, the statement from the employee should include:

- The name and age of the child or children;
- The name of the school or place of care that has closed or is unavailable;
- A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave; and
- With the care of a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

Question 45 provides further guidance about additional documentation that employers claiming tax credits must maintain, including:

- Documentation to show how the employer determined the amount of qualified sick- and family-leave wages paid to employees, including records of work, telework, qualified sick leave and qualified family leave; and
- Documentation to show how the employer determined the amount of qualified health plan expenses that it allocated to wages.