

FREQUENTLY ASKED QUESTIONS ABOUT HR AND CORONAVIRUS

SUMMARY OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

New laws addressing critical human resources issues have just been enacted in response to the coronavirus (COVID-19) pandemic. This legislation is called the Families First Coronavirus Response Act.

The new laws include refundable tax credits for employers that are required to offer emergency FMLA or paid sick leave.

WHAT DOES THE NEW **EMERGENCY FMLA FEDERAL LEGISLATION** REQUIRE?

The new legislation in response to coronavirus—which applies to businesses with FEWER than 500 employees—requires:

- Twelve weeks of job protection under the revised Family and Medical Leave Act
- The leave applies when
 - An employee is unable to work or telework in order to care for a minor child if the child's school or child care has closed or is unavailable due to a public health emergency
- The first 10 days of leave can be unpaid.
 - The employee **can** use PTO (vacation, sick, and/or personal).
 - Employers **cannot** require use of PTO for this leave.
- The remaining FMLA leave **MUST** be paid by the employer as follows:
 - Pay should be at 2/3 of the employee's regular rate.
 - Number of hours paid should be those that the employee would be otherwise scheduled to work.
 - Pay can be capped at \$200 per day.
 - Pay can be capped at \$10,000 total.
- The employee has job protection to return to their position or an equivalent position after their leave expires or their need for leave is resolved.
- Exception to job protection for employers with fewer than 25 employees:
 - If the employee's position has been eliminated due to operational changes resulting from a public health emergency, the employer does not have to provide a position for the employee at the end of their leave.

CRITICAL INFORMATION:

For companies with fewer than 50 employees:

- If the required leave provisions of this new legislation will jeopardize the viability of the company's business, the company can be excluded from the requirements of this Emergency FMLA legislation.

WHAT DOES THE NEW EMERGENCY FEDERAL PAID SICK LEAVE LEGISLATION REQUIRE?

The new legislation in response to coronavirus—which applies to businesses with FEWER than 500 employees—requires:

- All full-time employees are entitled to 80 hours of paid sick time.
- All part-time employees are entitled to paid sick time hours equivalent to the typical number of hours they are scheduled to work in a two-week time period.
- This sick time may be used by employees in the following circumstances:
 - Subject to a federal, state, or local quarantine or isolation order related to COVID-19
 - Following the advice of a healthcare provider to self-quarantine because of COVID-19
 - Experiencing symptoms of COVID-19 and seeking a medical diagnosis
 - Caring for an individual subject to quarantine or self-isolation
 - Caring for a minor child whose school or child care is unavailable due to COVID-19 precautions
 - Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.
- The Emergency Paid Sick Leave legislation caps an employer's paid leave requirement to \$511 per day (\$5,110 in the aggregate) where leave is taken for reasons of quarantine, advice of a medical provider, or when experiencing symptoms and seeking a diagnosis. For the remaining circumstances, employers are required to pay 2/3 the regular rate of pay, capped at \$200 per day (\$2,000 in the aggregate).

CRITICAL INFORMATION:

For companies with fewer than 50 employees:

- If the required leave provisions of this new legislation will jeopardize the viability of the company's business, the company can be excluded from the requirements of this Emergency Federal Paid Sick Leave legislation.

When the Emergency FMLA (E-FLMA) and Emergency Paid Leave (E-PLA) Act are read together, employers may use the E-PLA payments for the pay during the 10-day unpaid leave period of the E-FMLA. This means that workers taking E-FMLA leave receive at least a portion of their pay for 12 weeks.

OTHER FAQ:

WHAT IS THE DIFFERENCE BETWEEN FURLOUGH AND LAYOFF?

WILL OUR EMPLOYEES RECEIVE UNEMPLOYMENT COMPENSATION DURING A TEMPORARY LAYOFF OR FURLOUGH

A furlough is the same as a temporary layoff, which means that the employee may be called back in to work. Unemployment compensation criteria is determined by each state. Most states will pay unemployment compensation to furloughed or temporarily laid off employees. Some states suspend their requirement to seek new employment if the furlough/temporary layoff is of a predetermined period.

A regular layoff indicates that the employee is not going to be rehired by the company and the separation is considered permanent. Employees who are laid off are generally eligible for unemployment compensation and subject to the requirements to seek new employment.

Each state has a worker's compensation system in place. During this COVID-19 crisis, states may have activated their Disaster Unemployment Assistance. Eligibility information about the program can be found here: [Disaster Unemployment Assistance \(DUA\)](#). The DUA benefits often can be received more quickly than under the standard Unemployment Compensation (UC) system and may not require recipients to seek new employment for a period of time as they may be called back to their original employer.

If you are considering a reduction in force:

Worker Adjustment and Retraining Notification (WARN) Act notice requirements exist at the federal level and also can be found in many states. As of this update (March 24, 2020), federal WARN notice requirements have not been suspended. However, states are modifying or suspending their WARN notice requirements.

The federal WARN requirement allows an employer to forego the notice if unforeseen circumstances did not indicate that the layoff would be coming. The federal government has been silent about this provision, and there has not been a legal challenge to it yet, so it is not certain that the current circumstances are considered "unforeseen" under the law. However, in light of the governmental response to COVID-19 through February and the early part of March, it is absolutely arguable that there was no indication that such a dramatic and sudden downturn in the economy would be imminent and foreseeable. That combined with the unprecedented closure in many states of non-essential or life-sustaining businesses, which impacts the ability for companies to remain open and viable, appear to be very solid defenses to an inability to provide WARN notice.

CAN EMPLOYERS USE A REDUCED SCHEDULE FOR HOURLY EMPLOYEES IN RESPONSE TO A DOWNTURN FROM COVID-19?

Yes, employers can cut back on employee hours in response to an economic downturn due to the current public health crisis, governmental directives for company closures, and other economic consequences of the pandemic.

If the company is reducing hours, for instance closing one day each week (20% reduction based on a five-day work week) or two days (40%), then your employees may be covered by a work share program.

This program is state based, and not every state has one. Here is a link to information about the program: [Work Share Links: National Council of State Legislatures](#).

These programs may differ from state to state. The company applies for work share status, and once given, workers will receive unemployment compensation for the portion of work that has been reduced.

CAN EMPLOYERS REDUCE SALARY FOR EXEMPT EMPLOYEES IN RESPONSE TO A DOWNTURN FROM COVID-19?

Employers can prospectively reduce salary amounts due to anticipated long-term business needs related to an economic slowdown. If an exempt employee's salary is reduced below the \$35,568 threshold for exempt status, this is allowed as long as the reduction is not used to evade salary basis requirements.

CAN EMPLOYERS REQUIRE EMPLOYEES TO SELF QUARANTINE FOLLOWING TRAVEL BEFORE THEY ARE ALLOWED TO RETURN TO WORK?

A company can require a person who has traveled to high-risk areas to not report to work for 14 days after returning from travel. The level of risk can be determined from the CDC travel information found here: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html>. Companies should follow the requirements of the new emergency legislation, which are outlined above.

Cruise ship travel is now considered to be high risk also.

<https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship>

An employee may be allowed to work if s/he shows no symptoms and can be accommodated so that s/he does not have close contact with coworkers, for instance, teleworking. If the position is not amenable to teleworking, the person may be able to return to work if s/he can be kept at least 6–10 feet from other employees and is restricted from break rooms and other places where people congregate. Availability of segregated restroom facilities would need to be considered as well.

However, the OSHA general duties clause requires employers to keep employees safe from recognized hazards. COVID-19 is a recognized hazard, so prohibiting employees from returning

to work after travel to high risk areas for 14 days would be conforming to OSHA's general duties requirements.

In addition, if an employee has traveled to a high-risk area, their likely exposure to the COVID-19 virus probably falls under the "direct threat" exception to protections afforded under the Americans with Disabilities Act.

Again, companies should follow the requirements of the new emergency legislation, which are outlined above.

HOW DO WE INTERVIEW CANDIDATES AND ONBOARD NEW EMPLOYEES?

All interviews should be via Skype, GoToMeeting, Facetime, or a similar service. If you must do an in-person interview, choose an outdoor space if possible and keep a distance. If interior spaces are required, use a larger room that allows for 6–10 feet of distance between the interviewer and the candidate.

Anytime a person comes into the building, they should be symptom free. Onboarding should respect physical distancing as closely as possible, and of course, all hygiene protocols such as handwashing, no handshakes, etc. should be observed. Both employers and employees should use hand sanitizer before touching forms.

Of course, all of the cleaning and distancing protocols should be adhered to once the employee starts work.