



# COVID-19 Frequently Asked Questions for Employers

March 30, 2020

COVID-19 Frequently Asked Employer Questions	How Does this Apply to Us?
<p><b>Is my company required to offer leave for employees under the new Families First Coronavirus Response Act?</b></p>	<p>This Act applies to all employers with 500 or less employees and all government employers.</p> <ul style="list-style-type: none"> <li>* There are exceptions for employers with less than 50 employees if the required leave would jeopardize the viability of the Company.</li> </ul>
<p><b>What was added with the Families First Coronavirus Response Act (FFCRA)?</b></p> <p><b>Effective 4/1/2020- 12/31/2020</b></p> <p><b>For more information click <a href="#">here</a>.</b></p>	<ul style="list-style-type: none"> <li>* Allows for Emergency FMLA up to 12 weeks of job protected leave for “a qualifying need related to a public health emergency”</li> <li>* Employees are eligible after 30 days of employment.</li> <li>* 10-day elimination period that is unpaid however Emergency Paid Sick Leave could be applied for qualifying factor.</li> <li>* After 10-day period, remaining time off is paid at 2/3 of employee’s regular rate based on normal scheduled hours. Capped at \$200/day and \$10,000 total</li> <li>* Part-time employees are eligible for the number of hours of leave that the employee works on average over a two-week period. (Recommend use a look back of at least 90 days if not 6 months to determine average).</li> <li>* Mandated free COVID-19 testing</li> <li>* Emergency Paid Sick Leave: see notes below</li> <li>* Employer Tax Credits available if employees take Emergency Paid Sick Leave or employers continue to provide health coverage if employees take Emergency FMLA</li> <li>* Employers should maintain records on employees who qualify for leave, which includes the reason for the leave, and the days taken in order to substantiate qualifications for the credit.</li> </ul>
<p><b>What is required under the Emergency Paid Sick Leave (ESPL)?</b></p> <p><b>Effective 4/1/2020- 12/31/2020</b></p> <p><b>For more information click <a href="#">here</a>.</b></p>	<p>This applies to all employers with less than 500 employees</p> <ul style="list-style-type: none"> <li>* Requires employers to provide paid sick leave to any employee who is unable to work due to a qualifying factor.</li> <li>* Full-time employees entitled up to 80 hours of paid leave.</li> <li>* Part-time employees are eligible for the number of hours of leave that the employee works on average over a two-week period (up to 80 hours). (Use a lookback of average hours worked in a 2 week period for 6 months prior to the date of the leave request to determine average hours).</li> <li>* Paid leave is limited to \$511/ day and \$5,110 total for an employee’s own illness/ quarantine (paid at employee’s regular rate)</li> <li>* Paid leave is limited to \$200/ day and \$2,000 total for leave taken to care for others (paid at 2/3 of employee’s regular rate)</li> </ul>

	<ul style="list-style-type: none"> <li>* Employees are immediately eligible</li> <li>* Employers cannot require an employee to find a replacement or be involved in finding a replacement for their work shift</li> <li>* Employer Tax Credits available if employees take Emergency Paid Sick Leave</li> <li>* Employers should maintain records on employees who qualify for leave, which includes the reason for the leave, and the days taken in order to substantiate qualifications for the credit.</li> </ul>
<p><b>Can an employee take EPSL or EFMLA intermittently while teleworking?</b></p>	<ul style="list-style-type: none"> <li>* Yes, if company allows it</li> <li>* AND if the employee is unable to telework their normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.</li> <li>* Company and employee need to agree for the use of paid sick leave intermittently while teleworking.</li> <li>* OR if employee is prevented from teleworking their normal schedule of hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons</li> <li>* Company and employee need to agree to the use of expanded family medical leave intermittently for employees while teleworking.</li> <li>* If agreed by the company and employee, intermittent leave can be used in any increment</li> </ul>
<p><b>Can an employee take EPSL or EFMLA intermittently while working at their usual worksite (not teleworking)?</b></p>	<ul style="list-style-type: none"> <li>* If your company allows it AND if employee's leave is for a qualifying reason related to COVID-19</li> <li>* Paid sick leave for qualifying reasons must be taken in full-day increments</li> <li>* Intermittent leave CANNOT be taken if: <ul style="list-style-type: none"> <li>• Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>• Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;</li> <li>• Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;</li> <li>• Employee is 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</li> <li>• Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services</li> </ul> </li> <li>* For further information see #21 of the <b>DOL FAQ</b></li> </ul>
<p><b>How does an employee request Emergency FMLA or EPSL?</b></p>	<ul style="list-style-type: none"> <li>* Have the employee work with HR or their supervisor to discuss the leave. If your company has a third party that monitors your leave contact them as well to initiate Emergency FMLA.</li> <li>* Have the employee email documentation or explanation for leave and what the circumstances are if they are doing self-quarantine, if child-care/school is closed, or if they are home sick so you can track accordingly.</li> </ul>
<p><b>Can an employee take Intermittent EFMLA or EPSL?</b></p>	<ul style="list-style-type: none"> <li>* EFMLA, yes as guidance seems to follow FMLA rules in this area which would allow use of intermittent leave in this case.</li> <li>* EPSL is undetermined at this time. DOL has not provided guidance to this yet.</li> </ul>

<p><b>Do normal overtime rules apply to non-exempt employees during the pandemic?</b></p> <p><b>For more detailed guidance click <a href="#">here</a>.</b></p>	<ul style="list-style-type: none"> <li>* Yes, the DOL has the employer must pay non-exempt workers the minimum wage, and at least time and one half the regular rate of pay for overtime hours.</li> <li>* Also ensure you review the guidelines on paying exempt employees during this time to ensure you are paying them properly.</li> </ul>
<p><b>Does workers' compensation apply for COVID-19?</b></p>	<p>It depends...</p> <ul style="list-style-type: none"> <li>* Talk with your workers compensation adjuster to determine if there are any state specific rulings in the state the employee is working and to talk through each case</li> <li>* If an employee has a confirmed COVID-19 case where the work environment was likely the cause or contributing factor it might be recordable if one of the following occur: <ol style="list-style-type: none"> <li>1. Medical treatment (beyond first aid) is provided, such as prescription medication is issued</li> <li>2. Restricted duty is imposed by the treating physician or the employer</li> <li>3. Days away from work (lost time) is imposed by the treating physician (employee is kept from work and cannot work at home due to the virus)</li> </ol> </li> </ul>
<p><b>Can the company rescind and offer of employment for someone who has completed all pre-employment steps but the hire date is pending?</b></p>	<ul style="list-style-type: none"> <li>* Yes, offers can be rescinded due to business related needs relating to the pandemic. If it is a difficult to fill position however, the company may want to consider delaying the start date pending the companies needs as it continues to monitor the pandemic affect.</li> </ul>
<p><b>What should a company consider when conducting a furlough?</b></p>	<ul style="list-style-type: none"> <li>* Employees are still active; this is not a termination of employment.</li> <li>* Speak with HR and benefits advisor/carrier to see if the employee's benefits will be impacted.</li> <li>* Draft communication to be sent to employees and place a copy in their personnel file.</li> <li>* Complete the necessary internal paperwork to communicate with payroll.</li> </ul>
<p><b>What should a company consider when looking to reduce employees' hours?</b></p>	<ul style="list-style-type: none"> <li>* Work with HR and benefits advisor/ carrier to see if the reduction of hours will have an impact to the employees' benefits.</li> <li>* Draft letter to the employee and provide them a copy for use with unemployment benefits.</li> <li>* Complete the necessary internal paperwork to communicate with payroll.</li> </ul>
<p><b>What should a company consider when conducting employee terminations during COVID-19?</b></p>	<ul style="list-style-type: none"> <li>* Follow the companies For Cause Disciplinary Process</li> <li>* Ensure ADA, FMLA, or other laws do not apply to the situation.</li> <li>* Ensure proper documentation of conversations with the employee and management are in place or what policy was violated.</li> <li>* Draft a termination letter.</li> </ul>
<p><b>What should a company consider if facing employee layoffs?</b></p>	<ul style="list-style-type: none"> <li>* Work with HR and benefits advisor/ carrier regarding COBRA coverage or if there is other extension coverage available.</li> <li>* Draft letter to the employee and provide them a copy for use with unemployment benefits.</li> <li>* Draft clear communication with employees that will be effected by layoff and those that will remain employed.</li> <li>* Complete the necessary internal paperwork to communicate with payroll.</li> </ul>
<p><b>Is the company allowed to send employees home that are showing signs of flu-like symptoms?</b></p>	<p>Yes</p>

<p><b>Is the company allowed to take employees' temperatures prior to the start of a workday?</b></p>	<p>Yes, it has been approved by the EEOC for employers to take employee's temperatures however should be aware of the following:</p> <ul style="list-style-type: none"> <li>* Just because an employee has a fever does not mean they have COVID-19 and an employee could have COVID-19 and not display a fever.</li> <li>* Temperatures should be taken by a trained employee</li> <li>* Temperature recordings and other similar information must be kept confidential and separate from the employees personnel file.</li> <li>* Determine what the company will do if an employee refuses to have their temperature taken. Will they be sent home?</li> <li>* It is important to also encourage social distancing (at least 6 feet between employees) and other hygiene measures of employees while at work.</li> </ul>
<p><b>What does the company need to do if an employee is restricted from leaving a work location?</b></p>	<ul style="list-style-type: none"> <li>* Continue to pay wages for regular hours worked</li> <li>* Follow standard process for employees that are held over</li> <li>* Conduct wellness checks on employees to ensure they are safe mentally and physically for performing their work-related duties</li> <li>* Determine if there are tools/ opportunities that can be provided to allow employees to stay connected with their families</li> </ul>
<p><b>What should the company do if an employee is required to travel to get to their work location?</b></p>	<ul style="list-style-type: none"> <li>* If there is employee housing available the Company could have employees quarantine in housing for 14 days</li> <li>* If no symptoms present after 14 days, allow the employee to report for their shift</li> <li>* If they present symptoms, employee will need to remain quarantined until no symptoms present</li> <li>* If the employee cannot get to the work location they can use PTO or other company paid leave and after 10 days can apply for Emergency FMLA or Emergency Paid Leave under the FFCRA.</li> </ul>
<p><b>Can the company discipline an employee if they fail to follow company restrictions due to COVID-19?</b></p>	<p>Yes, this should fall under the Company's Corrective Action Policy.</p>
<p><b>If an employee has traveled out of state what should the company do?</b> <b>Click <a href="#">here</a> for CDC resources.</b></p>	<p>The company can follow CDC's recommendations and have the employee work from home for a minimum of 2 weeks (14 days).</p>
<p><b>What should the company do regarding work related travel?</b></p>	<p>CDC has suggested to restrict all non-essential travel.</p>
<p><b>Should the company require a doctor's note for an employee to return to work after COVID-19?</b></p>	<p>The CDC does not recommend a company requiring a return to work doctor's note, however a company can choose to do so if an employee has tested positive for COVID-19.</p>
<p><b>If an employee calls in sick can the supervisor ask if the employee is experiencing flu like symptoms</b></p>	<p>Yes, during a pandemic, ADA employers are allowed to ask employees who call in if they are experiencing flu like symptoms. For COVID-19, these include fever, chills, cough, shortness of breath and sore throat.</p>

<p><b>What resources are available to employees?</b></p>	<ul style="list-style-type: none"> <li>* Check to see if your company offers an EAP</li> <li>* Check with HR and benefits advisor/ carrier if the company medical plan/employers offers telehealth options</li> <li>* Encourage them to stay informed: <ul style="list-style-type: none"> <li>* <b>CDC Website</b></li> <li>* <b>Alera Group COVID-19 Updates</b></li> <li>* Check with Local State Health Department</li> </ul> </li> </ul>
<p><b>What should an employee do if they are not feeling well?</b></p>	<ul style="list-style-type: none"> <li>* Stay Home</li> <li>* Call your Doctor or Emergency Room first for them to triage you over the phone and let you know if you should get tested for COVID-19</li> <li>* Keep you supervisor informed</li> </ul>
<p><b>What is the difference between a “Shelter in Place” and “Social Distancing”?</b></p>	<ul style="list-style-type: none"> <li>* A “Shelter in Place” means to stay in your place of residence except when you need to leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services, directing all businesses and governmental agencies to cease non-essential operations at physical locations, prohibiting all non-essential gatherings of any number of individuals, and ordering cessation of all non-essential travel.</li> <li>* Social Distancing means avoiding being in places with large amounts of people. The President has said to limit gatherings to no more than 10 people. If you need to be in a place whether others are gathered it is the act of keeping a safe distance between you and others which is typically a minimum of 6 feet apart.</li> </ul>