

LAST UPDATED: 3/31/2020 11:09 AM

The Illinois Manufacturers' Association is a trusted and respected source of information for the manufacturing sector in our state. The novel coronavirus is creating challenges and many questions. Below are answers for some of the most commonly asked questions that will continue to be updated as events unfold and laws change.

*This information is provided as a benefit of your membership in the Illinois Manufacturers' Association and does not constitute legal advice.*

## **Business Operations:**

**Q. Governor JB Pritzker issued an [Executive Order \(2020-10\)](#) requiring “stay at home” that runs from Saturday, March 21 through Tuesday, April 7. Can my manufacturing facility continue to operate?**

**A. Essential manufacturers as defined in the Governor’s Executive Order may continue operating. The following manufacturing facilities, distribution, and supply chains are considered essential and may continue to operate.**

Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.

Employees of essential manufacturers are also considered essential and may continue working in these facilities.

**Q: Do I need to apply, or receive some special certification, in order to be deemed an essential business?**

A: No. Manufacturers can self-determine if they fall under the guidelines set forth in the Governor’s Executive Order. It does not require a special permit or certification.

**Q: Does the Executive Order require minimum spacing requirements for employees?**

A: Manufacturers and other essential businesses shall comply with social distancing requirements to the extent possible or greatest extent feasible. Manufacturers should adhere to best practices issued by the [Centers for Disease Control](#) that include sanitation, cleaning, and spacing/social distancing.

**Q. Under the Governor's Executive Order, what businesses are considered essential and allowed to remain open?**

A: The Executive Order defined essential businesses in the following general categories. [Click here](#) to see a further definition of each business:

- A. Grocery stores
- B. Food, beverage, and cannabis and agriculture
- C. Charitable and social service providers
- D. Media
- E. Gas stations and transportation-related facilities
- F. Financial institutions
- G. Hardware and supply stores
- H. Critical trades (HVAC, plumbers, electrician, cleaning, etc)
- I. Mail, postal, shipping, logistics, delivery, and pick-up services
- J. Education institutions (does not supersede school closure announcement)
- K. Laundry services
- L. Restaurants for consumption off-premises
- M. Supplies to work from home (businesses that sell, manufacture, or supply products)
- N. Supplies for essential businesses and operations
- O. Transportation
- P. Home-based care and services
- Q. Residential facilities and shelters
- R. Day care centers for employees exempted by this order
- S. Manufacturing (see above)**
- T. Critical labor union functions
- U. Hotels and motels
- V. Funeral Services

**Q. If my facility is not deemed essential, or I want to run a skeleton staff, is that allowed?**

A: Yes. The Executive Order allows Minimum Basic Operations. These are the minimum necessary activities to maintain the value of the businesses' inventory, preserve the condition of the businesses' physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions. Employees may conduct minimum necessary activities while complying with social distancing requirements to the extent possible.

**Q: The Governor's Executive Order and Chicago Mayor's order bans restaurants and bars from serving customers. Can my company operate a cafeteria inside the facility?**

A: Yes. Manufacturers may continue operating cafeterias so long as the food is not served on the premises of the cafeteria, coffee shop, or cafe in the facility. Customers may purchase food and drink and consume it outside of the cafeteria, coffee shop, or cafe.

**Q. Are there any changes to freight shipping?**

A. Yes. Governor Pritzker issued an executive order increasing the truck weight limit by 10 percent. For example, a large truck on five axles can now haul 88,000 pounds (previously 80,000 pounds). In addition, the Department of Transportation is waiving all fees for overweight permits.

**Q: Can my employees work seven days per week?**

A: Yes. The Director of the Illinois Department of Labor announced that the Department is automatically granting permit applications to waive the One Day in Seven Rest Act (ODISRA). Employers must apply online and the application will be deemed authorized when the application is submitted. The Labor Department may request additional information. Employees must volunteer to work (not mandated) and all applicable wage and overtime laws apply. Employers with Collective Bargaining Agreement need to comply and may need to negotiate any change. The Department submitted emergency rules implementing this change on Friday, March 21 and the IMA will update this when they are issued.

## Unemployment Insurance

**Q: If an employer is an essential business and open and an employee chooses to stay home out of general fear, are they eligible for unemployment benefits?**

A. No – an employee is not eligible simply because they choose to stay home out of fear. Employees who are quarantined because they have COVID-19 or may have been exposed to the virus are eligible.

**Q: The Emergency Paid Sick Leave is effective on April 2. Are employees able to use emergency paid sick leave or extended FMLA benefits before that date? Can employers receive tax credits if employees use sick days before this date?**

A. The Act is not retroactive (to date), which means that any paid time currently being granted would not count toward FMLA leave or toward the 80 hours of sick leave, nor be eligible for the credit.

**Q: Can a quarantined employee who is unable to work file for unemployment insurance benefits?**

A. An individual in this situations is considered to be unemployed through no fault of his or her own. However, to qualify for UI, he or she would still need to meet all other eligibility requirements, including the requirements that the individual is able and available for work, registered with the state employment service and actively seeking work from the confines of his or her home. The individual would be considered able and available for work if there was some work that he or she could perform from home (e.g., transcribing, data entry, virtual assistant services) and there is a labor market for that work.

B. If the employees are quarantined (tested positive or exposed), and not being paid, they are eligible for UI benefits. If they are being paid, they cannot receive unemployment insurance.

**Q: In the event of a furlough, will an employee need to exhaust any accrued Paid Time Off (vacation, etc.) before being eligible to claim unemployment benefits?**

A. No.

**Q: If the employer has employees on 1 week, off 1 week on an ongoing basis, or does one day on and one day off, will unemployment be approved on/off for an ongoing basis?**

A. Yes.

## Business Assistance

### Q: Illinois declared a disaster. How can my company apply for economic assistance?

- A. Illinois was the second state in the nation to have its Economic Injury Disaster Loan Program approved by the U.S. Small Business Administration. This program provides low-interest loans of up to \$2 million to small businesses and non-profits affected by the pandemic. These working capital loans can be used to meet needs including payroll, accounts payable, and fixed debt payments with repayment up to 30 years. Interest rates are 3.75 percent for small businesses and 2.75 percent for non-profits. Loans will have a deferred payment of one year from the date of note. Employers can now [apply here at the SBA](#).

## Business Insurance

### Q. Is direct physical loss being redefined with the current coronavirus pandemic?

- A. Our partners at HeplerBroom recently [penned an article](#) regarding the coronavirus' impact on business interruption coverage. While looking at cyber losses as a comparison and providing supporting case law regarding contingent business interruption (CBI), HeplerBroom concludes:

*"It is very interesting to witness the evolution of business interruption coverage and how courts seem to be broadening their interpretation of these policies as more and more "nonphysical property damage" losses become prevalent, such as, pandemics and cyber-related claims. That said, as more and more businesses come to realize that these types of losses pose a serious threat to their operations and contingency planning, the insurance industry will increasingly be called upon to develop new products and/or craft exclusions in an effort to address these loss exposures. For the time being, however, courts will continue to grapple and likely offer unpredictable opinions on how these policy terms, conditions and exclusions should be construed."*

## Human Resources & Legal

**Q. When may an employee apply for unemployment insurance benefits? How long do those benefits last? Do individuals have to be actively looking for work to qualify?**

A. An employee may file a claim for unemployment benefits on the first day they are separated from work. Governor Pritzker issued an executive order waiving the one-week waiting period allowing impacted individual to apply for, and receive, benefits when separated from the company meaning the first unemployment benefit will cover two weeks (currently one week). Current Illinois law allows an individual to receive regular unemployment insurance benefits for up to 26 weeks, and extended benefits could be offered later based on economic data. The Governor's Executive Order waives the "available to work" requirement for unemployment insurance applicants.

**Q: How long must an employee have been employed by the company to receive UI benefits?**

There is no minimum time an individual is required to have performed services for an individual employer in order to receive benefits. Benefit eligibility is determined by the amount of wages earned by the individual for one or more employers during the first four of the last five completed calendar quarters. The chargeable employer is the last employer who employed the person for 30 days. In the case of a person with two jobs, it's the last employer of record. For example, assume John works for Company A full time and Company B part time. John is terminated by Company A on March 1. He is terminated by Company B on March 3. All of the charges go to the last employer in time who employed the person for 30 days.

**Q: Will my company's experience factor and taxes increase if my company lays off or terminated employees as a result of the public health emergency?**

A: Yes. Currently, any unemployment benefit charges will be charged to the employer. The IMA and business community are pushing for legislation that would "socialize" the charges so they are not charged to any specific employer.

**Q: Can an employer make up the difference to allow the employee to be whole during the COVID-10 crisis?**

According to the Department of Employment Security, this is a case by case basis.

With regard to the first, payments in lieu of a layoff notice will count against the unemployed worker's UI eligibility under the circumstances laid out in IDES's rules. See, 56 Ill. Admin. Code 2920.40. Employer payments made to an unemployed worker in exchange for the worker's commitment to remain ready to return to work have also counted against the individual's UI eligibility in past cases.

On the other hand, IDES's rules provide that employer payments to an individual per a supplemental unemployment benefit (SUB-pay) plan do not count against the individual's eligibility for UI benefits, as long as the plan meets the requirements set forth in the rules. See, 56 Ill. Admin. Code 2960.20, pasted below. Severance pay will not count against the claimant's eligibility either. Finally, payments that essentially constituted a gift would not count against the claimant's eligibility.

**Q: When does the Family First legislation with Paid Sick Leave and extended FMLA take effect?**

A: These provisions go into effect on April 2 and sunset on December 31, 2020.

**Q: The Families First legislation passed by Congress and signed by the President provides full-time employees with 80 hours of paid sick leave. If my company already provides this benefit, do I have to provide two additional weeks? Is there a size limit for companies? Does it apply to part-time employees?**

A: Yes, this Emergency Sick Leave Act time is in addition to any other sick time provided by the employer. This Act applied to employers with 500 or fewer employees. Part-time employees are entitled to the number of hours worked, on average, over a two-week period.

Q: My employer has multiple facilities with a total headcount of more than 500 employees. Is the headcount determined by facility or total headcount?

A: The 500-person headcount is determined by company, not by facility.

**Q: What is the sequencing of benefit time that an employee may use?**

A: An employee may first use the paid sick time under the Emergency Paid Sick Leave Act. An employer may not require that the employee use other sick time before the paid sick leave under the Families First Act.

**Q: How is Emergency Paid Sick Leave calculated under the Families First Act:**

A: It is calculated based on compensation and the number of hours the employee would otherwise be normally scheduled to work, not to exceed:

- \$511 per day and \$5,110 in the aggregate for employees who are under quarantine (government or health care ordered) or are experiencing symptoms of COVID-19 and being tested.
- \$200 per day and \$2,000 in the aggregate for employees who are caring for quarantined or sick individuals or a child whose school or childcare is closed or unavailable. In addition, if paid sick leave is taken in these circumstances, it is paid at two-thirds rather than 100 percent.

**Q: The Families First legislation expanded the Family and Medical Leave Act. What companies must offer this extended coverage? What qualifies for the extended FMLA?**

A: The extended FMLA applies to employers with less than 500 employees. A qualifying need related to a public health emergency which means the employee is unable to work (or telework) due to a need to care for a son or daughter under the age of 18 if the school or child care has been closed or is unavailable due to a public health emergency.

**Q: My company is a small business with less than 50 employees. Do I have to comply?**

A: Yes. However, small employers with less than 50 employees may seek a hardship waiver when the imposition of such requirements would jeopardize the viability of the business.

**Q: What is the relationship of expanded FMLA to the Emergency Paid Sick Leave? How much does it pay?**

A: The first 10 days may be unpaid, but the employee may elect to substitute accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. Leave is paid at two-thirds of salary after the 10 days for up to 12 weeks.

**Q: Is the federal government providing a tax credit to help businesses offset the cost of the sick time and FMLA?**

A: Yes, subject to limits, there shall be allowed as a credit an amount equal to 100 percent of the qualified sick leave wages and qualified family leave wages paid by the employer with respect to the calendar quarter.

**Q: Regarding the Expanded FMLA, if an employee is already on FMLA, and now asks for FMLA to care for their child as a result of the public health emergency, will that require a new set of FMLA documents to be completed by the employee?**

Yes. An employee must file new paperwork for each separate case under FMLA. If they are on FMLA for a personal reason, and need to take FMLA for a family member, they are required to file new forms.



**Q: If we have an employee that admitted to having contact with an individual infected with COVID-19. What is our legal right as an employer to require them to go home? If we do send them home, what is our financial obligation to that employee?**

If an employee presents at work and self discloses that he or she has had close contact with another individual who has positively contracted COVID-19, the employer may send the employee home, and require that the employee remain at home to protect the other employees in the workplace from being infected, for the recommended 14-day quarantine period. The legitimate business reason for doing so is the Americans with Disabilities Act's ("ADA") direct threat defense, specifically, that the employee's presence would be a "direct threat" to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation. The fact that the employee is not currently presenting with symptoms is irrelevant, as the symptoms may not appear for several days.

The obligation to pay is largely dependent on the employer's specific policies and the employee's specific classification under the Fair Labor Standards Act ("FLSA"). Exempt employees must be paid their full salary for any workweek in which they perform more than a de minimus amount of work. That payment may consist of the required use of accrued paid time off, unless such required use is inconsistent with the employer's paid time off policy. Once the accrued paid time off is exhausted, the employer may not deduct from an exempt employee's salary unless the employee performs no services for the entire workweek. Non-exempt employees are only entitled to be paid for any hours worked; again, absent an employer's paid time off policy and/or state or local law providing otherwise (e.g. paid sick leave, PTO or vacation).

## Families First

The United States Department of Labor released new Families First guidelines that you can [review by clicking here](#). This guidance finally explains the small business exemption which is critical for many manufacturers. It is subjective and allows the employer to make the determination that must be limited to one reason. Our partners at Greensfelder, Hemker & Gale pointed out the following details specifically:

### **44. Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?**

- A. If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

**58. When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

- A. An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing paid sick leave and expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined 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.

**59. If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?**

- A. A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:
- employer employs fewer than 50 employees;
  - leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
  - an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

## Cleaning & Sanitation

**Q: If an employee were to be diagnosed with COVID-19, what is your guidance for handling the specific workplace the employee works in? Including any quarantine timeframe and cleaning of the area(s) the employee came in contact with.**

Employers are urged to follow guidelines issued by the Centers for Disease Control. Health experts indicate that the virus may remain airborne for up to 3 hours. It cannot be transmitted on food or packaging products but may remain on hard surfaces for a day. Cleaning companies are recommending thorough cleanings. Health experts have indicated that the COVID-19 virus remains in the human body longer because it imbeds deep in the lungs and may exist for weeks after a person recovers.

**Q: Should a manufacturer quarantine any incoming shipments of packaging, cardboard or raw materials before utilizing within our process?**

Health experts have indicated that food and packaging cannot hold or transmit the virus but it can survive on hard surfaces for a period of time.

**Q: Did Illinois set a standard for cleaning and sanitizing a workplace if a worker guest at a facility is determined to be COVID-19 positive? Has IL set a standard or issued recommendations for workplace cleanliness? Has IL issued a directive for companies if an employee is determined to be positive? Does everyone at the facility have to be seen home under IL rules or can the company make a decision based on the area where the employee performs their work and the common areas that the employees comes into contact with?**

Illinois has not set standards for cleaning and sanitizing the workplace or cleanliness as a result of the virus. Nor is there is a specific standard or rule in the event an employee is positive or may have been exposed. Employers should follow guidelines set by the CDC and public health professionals.