



FAQs for Employers on the 2019 Novel Coronavirus

Paid Sick Leave and Paid Family Leave

Q. If an employee is caring for a child with 2/3 paid extended FMLA, do they then qualify for Paid Leave and the extended FMLA?

A. Yes.

Q. We recently had an employee "call in sick" for a day. However, when we asked him about his symptoms, he stated that he really wasn't sick but just tired from his other job. What would be the most appropriate way to handle a situation like this?

A. If an employee calls in sick for a non-COVID-19 related reason or really for any non-illness, then you can treat this absence like an unexcused absence under your attendance policy and apply your regular policies and procedures. We do not believe this reason would qualify for any protected or paid leave.

Q. Do Paid Sick Leave benefits only cover the first two weeks?

A. The pay is for up to 80 hours capped. So, if an employee typically works 40 hours per week, then yes, the paid leave would be 2 weeks. But, if you had an employee who typically worked 50 hours per week, the paid leave would be for the first week at 50 hours, and then only for 30 hours the second week.

Q. If an employee is taking care of a child due to the closure of schools or child-care provider, can the employee take a couple hours of Paid Sick Leave and/or Paid Family Leave each day or does it have to be in full day increments?

A. Leave to care for a child may be taken in partial day increments.

Q. Is the Paid Family Leave benefit only for caring for a child whose school or daycare is closed due to COVID-19? Or does it apply if the school was closed for a stay-in-place order and was not related to a positive COVID-19 case?

A. So long as the school is closed because of COVID-19, regardless of whether there is an actual positive case, then the Paid Sick Leave and Paid Family Leave applies.

Q. The schools in IL were closed due to the Governor's stay-in-place order. Does that fall under being closed because of COVID-19 and would they get Paid Family Leave?

A. Yes, the DOL's guidance explains that when a school is closed due to a COVID-19 reason, which we understand to include any stay in place orders given those orders were issued because of COVID-19, then the employee can receive Paid Sick Leave and Paid Family Leave.

Q. Is there a minimum employment requirement for Paid Sick Leave Benefits?

A. No, Paid Sick Leave applies to all employees regardless of how long they have worked for the employer.

Q. Who pays temporary employees under HR 6201? The temp company or the company that they are reporting to?

A. The employer who has the employee on the payroll is the entity that pays the Paid Sick and Paid Family Leave benefits.

Q. As an employer with 500+ employees, how should we handle a situation where our employees live with a spouse who is immune suppressed and doesn't want to come to work for fear of "catching" something?

A. If you have an employee who wishes to self-isolate out of fear of contracting the virus, you can apply your regular leave of absence policies and allow the employee to take leave (paid or unpaid) but this individual would not qualify for any protected leave for this situation.

Q. If an employee has a spouse at home caring for children regularly, can the employee claim that they need to be home as well and receive Paid Family Leave?

A. Based on the DOL's guidance to date, there is minimal documentation that the employee needs to provide to demonstrate that a school or child care facility has been closed due to a COVID-19, thus, so long as an employee can provide that basis for the need for the leave, our recommendation is that you provide Paid Family Leave even if there is another individual in home who can provide child care.

Q. For the new ESPL, do employers have to pay the shift differential on top of the base pay per employee's permanent shift status?

A. If the employee's schedule varies from week to week, then the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee. Otherwise, if the full-time employee's schedule is set for the 80 hours of Paid Sick Leave, then you would include all pay that would normally be included in a week's schedule, including overtime, commissions, and other rates of pay. We recommend you review the DOL's FAQs on calculating an employee's rate of pay for purposes of Paid Sick Leave and in particular, Questions 5 and 6.

Q. How do you apply for the exemption waiver?

A. The DOL has issued guidance and advised that 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.

Q. Can you take Paid Sick Leave or Paid Family Leave intermittently?

A. Paid Family Leave, which is limited to care for a child whose school or daycare has closed due to COVID-19, can be taken intermittently whether the employee is teleworking or still at their physical work site. However, under the Paid Sick Leave benefits, for all reasons outside of care for a child due to school or daycare closure related to COVID-19, intermittent leave can only be taken if the employee is teleworking.

FMLA

Q. Does emergency FMLA have to be tracked separately for someone like the IRS? Otherwise, why are they separated?

A. We do recommend that you track the leave separately in order to have the documentation to support your tax relief for the wages paid under these laws.

Q. What is the maximum benefit to employees for 10 paid weeks? Is it \$10,000 maximum per employee?

A. Maximum \$200 per day for the 10 weeks. No, that rate is only for Paid Sick Leave - max 80 hours.

Q. Can extended FMLA be taken intermittently?

A. Yes, leave to care for a child under the paid leave section of the federal Families First Coronavirus Response Act (FFCRA) may be taken intermittently.

Reduced Working Schedules and Salaries

Q. Can salaried employees get pay deducted to 2/3 for one day a week or do they need their full salary if they worked 4 full days?

A. Yes, you are able to reduce an exempt employee's salary for a reduced work week so long as you pay them at least the minimum weekly salary under federal law which is \$684 per week.

Q. Can we change an exempt employee's payroll amount with a reduced salary?

A. Yes, so long as you do not reduce an exempt employee's weekly salary below the federal minimum which is \$684 per week.

Employees with Symptoms or Exposure

Q. If a babysitter has symptoms can we have the employer require the babysitter stay at home?

A. If an employee comes in close contact with someone that is experiencing symptoms of COVID-19, then you can require the employee to stay at home. However, we are not clear whether you can require the employee to instruct the babysitter to stay home, although that would be good practice on the part of the employee.

Q. What are your thoughts on requiring sick employees to obtain a return to work note from their physician? We had an employee call out with a fever, but they felt better in two days. We told them since fever is a COVID-19 symptom, they would need to get a physician's release. Since they were asymptomatic, they couldn't get an appointment. We didn't want to play doctor and assume they were not contagious and allow them back to work without a note, but they couldn't get a note.

A. You are required to ask for a doctor's note but as a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a 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 the pandemic virus. You may want the employee to certify in writing that he or she has been fever free for 72 hours without fever reducing medicine.

Q. In terms of OSHA's Risk Pyramid, what is the definition of "ongoing community transmission"?

A. There is not a single, accepted definition for the term, or one specifically advanced by CDC or OSHA, but from the guidance we have seen, here is our best effort to define the term. First, it does NOT require a particular number of confirmed cases in the area; well, not a particular number larger than one. Rather, it focuses more to do with the method of transmission. Specifically, community transmission means infections within a population that are not imported from another virus-hit area. Put simply, for example, community transition in Chicago would mean a person who gets COVID-19 despite having not been to another affected outbreak area, e.g. New York, Seattle, Northern Italy, China, etc. In short, signals of ongoing community transmission may include detection of confirmed cases of COVID-19 with no epidemiologic link to travelers or known cases, or more than three generations of transmission.

Temperature Checks for Employees

Q. Can an employer take an employee's temperature when they show up for work every day?

A. Yes, you can, however, employers should be aware that some people with influenza, including the 2009 virus or COVID-19, do not have a fever. As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

(See https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm and https://www.eeoc.gov/facts/pandemic_flu.html)

The CDC has provided the following practice tips for instituting temperature checks at the workplace:

- Employees should be encouraged to maintain a six-foot distance, if queuing for temperature checks.
- Use an infrared thermometer, non-contact digital laser (available on amazon yesterday) to check employee temperatures (do not maintain temperature records).
- There is no requirement that person taking the temperature has to be a health professional.
- If the employee's temperature is elevated (100.4 F may be a good marker), employer should send him or her home.
- The employee administering the temperatures checks should be given gloves and a respirator/face shield for voluntary use along with plenty of hand sanitizer.
- Disinfectant from EPA list should be available in case somebody sneezes on the thermometer.
- Kleenex and a garbage receptacle should be at the temperature check stations.
- As for the respiratory portion, a set of questions might be the best option.

Q. Is there a recommendation on the best instrument to use for taking employees temperatures?

A. We recommend that you use an infrared thermometer, non-contact digital laser to check employee temperatures.

Shelter-in Place and Quarantines

Q. Is our shelter-in-place a quarantine? Do quarantines get called by the Department of Public Health?

A. No, it is our opinion that the state orders requiring residents to shelter-in-place are not the equivalent to a quarantine for purposes of the FFCRA.