

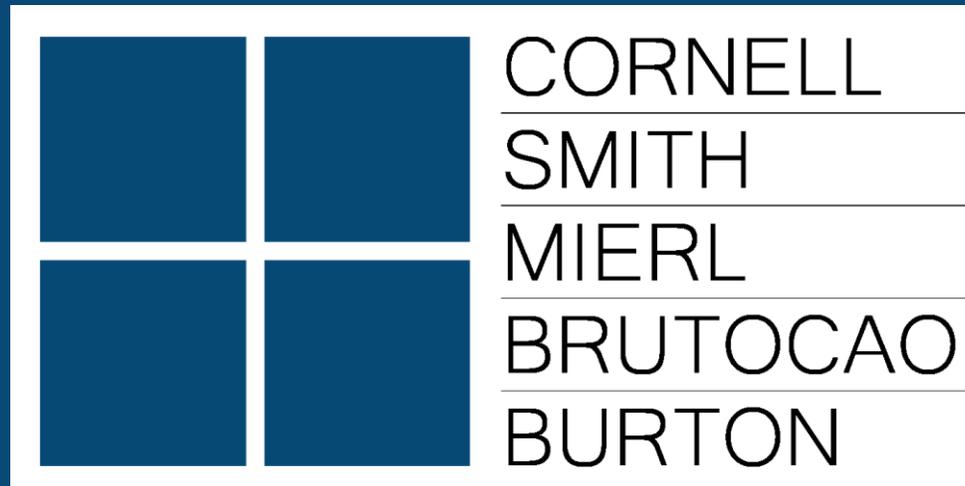


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What's the difference between legal information and legal advice?

Legal information provides public information, such as rules or laws, or can be an explanation of those rules or laws. TLTA provides legal information that is not intended to be legal advice. **Legal advice** is a statement that recommends a course of action or interprets the law based on specific circumstances. For legal advice, please consult with your own attorney.

Employment Law Aspects of COVID-19



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Let's Discuss Next Steps, But First Review What Has Happened in the Dizzying Month of March 2020

On April 1, 2020, the U.S. Department of Labor announced guidance on the emergency benefits offered under the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act, both part of the Families First Coronavirus Response Act (FFCRA).

FFCRA provides American private employers with fewer than 500 employees with tax credits for the cost of providing employees with paid leave taken for specified reasons related to COVID-19. (More on that later)

Generally, the Act provides that employees of **covered employers** are eligible for:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because:
 - employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider)
 - and/or experiencing COVID-19 symptoms and seeking a medical diagnosis
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because:
 - employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider)
 - to care for a child (under 18 years of age) whose school or child-care provider is closed or unavailable for reasons related to COVID-19
 - the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor

Generally, the Act provides that employees of **covered employers** are eligible for:

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work **or telework** due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*

Generally, the Act provides that employees of **covered employers** are eligible for:

Covered Employers: Private employers with fewer than 500 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Employee Threshold. You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, the District of Columbia, or any Territory or possession of the United States.

Determining 500 Employees:

- include employees on leave; temporary employees who are **jointly** employed by you and another employer irrespective of payroll; and day laborers supplied by a temporary agency. Don't count independent contractors.
- include all above-described employees of a corporation (including its separate establishments or divisions) and if corporations are “**joint employers**” under the FLSA, all common employees must be counted.
- include employees of all entities that meet the “**integrated employer test**” under the FMLA.

Rate of Pay for Expanded FMLA

- The initial 10 days of emergency FMLA leave may be unpaid but the employee may elect to use any accrued vacation leave, personal leave, or medical or sick leave for this period. The employee may also elect to take paid sick leave for the first 10 days.
- Leave after the initial 10-day period should be calculated at not less than two-thirds of the employee's regular rate of pay at the hours the employee would normally be scheduled to work (including overtime hours, but the pay does not need to include a premium for such hours). *Regulations* address part-time employees' hours.

Rate of Pay for Expanded FMLA

The amount is capped at \$200/day or \$12,000 for the 12 weeks that include both paid sick leave and expanded FMLA leave when the employee is on leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Tax Credits. Each quarter, employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid FMLA wages paid by the employer.

Emergency Paid Sick Leave Act

- Requires private employers with fewer than 500 employees to provide two weeks of paid sick leave to employees (regardless of how long the employee has been employed) who are unable to work **or telework** due to a need for leave because –
 1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
 3. The employee is experiencing symptoms of COVID– 19 and seeking a medical diagnosis.

Emergency Paid Sick Leave Act

4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The most important thing you do may be to review the 79 FAQs at this link. Let's review some that may apply:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

2. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

2. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

2. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of paid sick leave under the Emergency Paid Sick Leave Act and expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

3. If I am a private sector employer and have 500 or more employees, do the Acts apply to me?

No. Private sector employers are only required to comply with the Acts if they have fewer than 500 employees.

4. If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

10. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive [2/3 of your regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

17. When am I able to telework under the FFCRA?

You may telework when your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

19. If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

26. If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits.

28. If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

31. As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

During the first two weeks of unpaid expanded family and medical leave, you may not simultaneously take paid sick leave under the EPSLA and preexisting paid leave, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave with your preexisting paid leave, up to your normal earnings. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, however, you may elect—or be required by your employer—to take your remaining expanded family and medical leave at the same time as any existing paid leave that, under your employer's policies, would be available to you in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if you are not ill.

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)?

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.

47. May I use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons?

No. The Emergency Family and Medical Leave Expansion Act applies only when you are on leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. However, you can take paid sick leave under the Emergency Paid Sick Leave Act for numerous other reasons.

60. How do I know if I can receive paid sick leave for a Federal, State, or local quarantine or isolation order related to COVID-19?

For purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause you to be unable to work (or to telework) even though your employer has work that you could perform but for the order. You may not take paid sick leave for this qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order.

61. When am I eligible for paid sick leave to self-quarantine?

You are eligible for paid sick leave if a health care provider directs or advises you to stay home or otherwise quarantine yourself because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

69. Can more than one guardian take paid sick leave or expanded family and medical leave simultaneously to care for my child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

You may take paid sick leave or expanded family and medical leave to care for your child only when you need to, and actually are, caring for your child if you are unable to work or telework as a result of providing care. Generally, you do not need to take such leave if a co-parent, co-guardian, or your usual child care provider is available to provide the care your child needs.

Other Frequently Asked Questions:

What kind of documentation is needed? Documentation supporting an employee's request for EPSL or EFMLA must include an employee's signed statement with: (1) the employee's name; (2) the date(s) the employee is requesting leave; (3) the COVID-19 qualifying reason for leave; and (4) a statement that the employee is unable to work or telework because of the COVID-19 qualifying reason. (All attendees will receive our sample form)

Request For Leave Due To The Coronavirus

We will send a sample form to all attendees covered by the new laws. It looks like this:

REQUEST FOR LEAVE DUE TO THE CORONAVIRUS

To request leave as provided under the Families First Coronavirus Response Act ("FFCRA") complete, sign, and submit this form to the Human Resources Department as early as possible. If necessary, verbal notice will be accepted until a completed form can be provided.

Employee Name (print clearly): _____

Department: _____ Manager: _____

Leave Start Date: _____ Estimated Leave End Date: _____

PART ONE: (Leave to care for a child because of a school closure or unavailability of childcare due to due to COVID-19).

I need to take leave because I am caring for my child whose primary or secondary school or place of care has been closed, or whose childcare provider is unavailable due to COVID-19 precautions. By signing this Request, I represent that no other person will be providing care for the child/children listed below during the period for which I am seeking paid leave.

I wish to request _____ (maximum of 12) weeks of leave under the FFCRA's Emergency Family and Medical Leave Expansion Act ("FMLA+").

Child's Name	Age	Name of School/Child Care Provider

If all the children listed above are at least age 15 or older, include any special circumstances that exist requiring that you provide care.

I have attached documentation supporting my request. (This may include, for example, a notice that the child's school or day care has been closed from a website, newspaper, or an email or note to parents from an official or employee of the school, place of care, or childcare provider.)

PAY DURING LEAVE: The first two weeks of FMLA+ leave will be unpaid unless I elect one of the following options:

During the first two weeks of FMLA+, I request to take FFCRA Emergency Paid Sick Leave.

During the first two weeks of FMLA+, I request to use up to _____ hours (80 hours maximum) of any applicable Company-provided paid leave that I have available, and then take the remainder as [choose one] FFCRA Emergency Paid Sick Leave / unpaid leave.

PART TWO: (Leave for other defined reasons related to COVID-19).

I request _____ hours (maximum of 80) of FFCRA Emergency Paid Sick Leave because:

I am subject to a federal, state, or local quarantine or isolation order related to COVID-19. (If a stay in place or shelter at home order results in closure or reduction in staff, the reason the employee is unable to work is because of the order's impact on the company, not on the individual employee.)

I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Include the health care provider's:

Name: _____
Address: _____
Phone #: _____

I am experiencing symptoms of COVID-19 and seeking a medical diagnosis.

I am caring for an individual who is subject to either number 1 or 2 above. Include the individual's:

Name: _____
Relation to Employee (It doesn't have to be a relative): _____

I am experiencing another substantially similar condition specified by the secretary of health and human services. Include an explanation.

I have attached the following documentation in support of my request:

PART THREE: (Intermittent leave request)

I would like to take the requested FFCRA leave on an intermittent basis, and...

Report to work when not on intermittent leave.

Telework when not on intermittent leave.

While on leave, I would be available to work as follows: (Describe your availability. Here are some examples: I am available to telework 4 hours a day from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. I am available to report to work for my full shift on Tuesdays and Thursdays.)

I swear or affirm that the information contained in this Request for Leave Under the Families First Coronavirus Response Act is accurate and complete to the best of my knowledge.

Employee Signature _____ Date _____

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ 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;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ 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.

▶ 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:

- | | |
|---|---|
| <ol style="list-style-type: none">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); | <ol style="list-style-type: none">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; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

Recent Guidance From Treasury and IRS Regarding Reimbursement:

Complete Coverage

Employers receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability.
- Self-employed individuals receive an equivalent credit.

Fast Funds

Reimbursement will be quick and easy to obtain.

- An immediate dollar-for-dollar tax offset against payroll taxes will be provided.
- Where a refund is owed, the IRS will send the refund as quickly as possible.

Recent Guidance From Treasury and IRS Regarding Reimbursement:

Small Business Protection

Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or child care is unavailable in cases where the viability of the business is threatened.

Easing Compliance

Requirements subject to 30-day non-enforcement period for good faith compliance efforts.

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.

Recent Guidance From Treasury and IRS Regarding Reimbursement:

Prompt Payment for the Cost of Providing Leave

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns ([Form 941](#) series) with the IRS.

Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.

Examples From the IRS:

- If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
- If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Let's See What the EEOC Has to Say at EEOC.gov

The World Health Organization (WHO) has declared COVID-19 to be an international pandemic. The EEOC pandemic publication includes a separate section that answers common employer questions about what to do after a pandemic has been declared. Applying these principles to the COVID-19 pandemic, the following may be useful:

- **How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**
 - During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

EEOC Guidance Continued:

- **When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**
 - Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.
- **Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**
 - Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice

EEOC Guidance Continued:

- **When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?**
 - Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were 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 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.
- **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. This ADA rule applies whether or not the applicant has a disability.

EEOC Guidance Continued:

- **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.
- **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.
- **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.

So What Does OSHA Have to Say?



Guidance on Preparing Workplaces for COVID-19

<https://www.osha.gov/Publications/OSHA3990.pdf>

What Do We Do Now?

- Engage in your own calculus—my discussion assumes no CBA or contrary state/local regulations
- Unless you can't make payroll, you have time to consider options
- Start with “volunteers” to give up hours or shifts or others who do not wish to work
- Get your senior leadership team involved and review department to department, position to position
- You may first want to look at seasonal or part-time workers
- You may choose a reduction in hours across the board
- Note the salary basis: \$35,568 or \$684/week

What Do We Do Now?

- You may choose temporarily to reduce the pay of hourly workers to some amount near minimum wage after giving them notice
- If a position cannot be performed at all or if the volume of work is extremely low, you are probably doing the employees a favor by laying them off in current environment
- Unemployment compensation benefits will never be more generous—up to 39 weeks and until July 31, an additional \$600 per week
- Understand the differences in nomenclature: What is a furlough? How does it differ from a reduction in force or lay-off?

Furlough

In most states, furloughing employees

- Lowers payroll to continue key operations
- Right sizes the number of hours needed
- Keeps employees engaged
- Potential positive press and goodwill
- Keeps employees eligible for unemployment comp benefits
- May keep healthcare benefits intact
- Significantly reduces payroll

Furlough

- In most states, should not trigger an automatic payment of accrued PTO
- Does not trigger Federal WARN Act unless laid off for six months
- Gives employees hope of a recall
- Positions you to resume operations post-crisis
- Somehow sounds better, although there may be little real distinction from termination or job eliminations
- Likely preserves employee eligibility for any governmental leave subsidies

Furlough versus Lay-Off

But how is that different from a lay-off?

- Not much different at all
- Most would agree a lay-off ensures availability for unemployment compensation benefit
- Triggers WARN
- May trigger payment of accrued PTO
- You can have a RIF with recall rights or expectations if you want
- Now is not the time to clean house
- Managers should be principled

Payroll Protection Program FAQs from TREASURY WEBSITE:

How long will this program last?

Although the program is open until June 30, 2020, we encourage you to apply as quickly as you can because there is a funding cap and lenders need time to process your loan.

PPP FAQs Treasury Website:

How many loans can I take out under this program?

Only one.

PPP FAQs Treasury Website:

What can I use these loans for?

You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020;
- Utilities, for which service began before February 15, 2020.

PPP FAQs Treasury Website:

What counts as payroll costs?

Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation;
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

PPP FAQs Treasury Website:

Does the PPP cover paid sick leave?

Yes, the PPP covers payroll costs, which include employee benefits such as costs for parental, family, medical, or sick leave. However, it is worth noting that the CARES Act expressly excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA).

PPP FAQs Treasury Website:

How large can my loan be?

Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a \$10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.

PPP FAQs Treasury Website:

How much of my loan will be forgiven?

You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. You will also owe money if you do not maintain your staff and payroll.

PPP FAQs Treasury Website:

- **Number of Staff:** Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- **Level of Payroll:** Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- **Re-Hiring:** You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

Questions?



Thank You!



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