



PROGRAM MATERIALS

Program #30135

May 11, 2020

Getting Back to Work: What Employers Need to Know as Employees Return to Work

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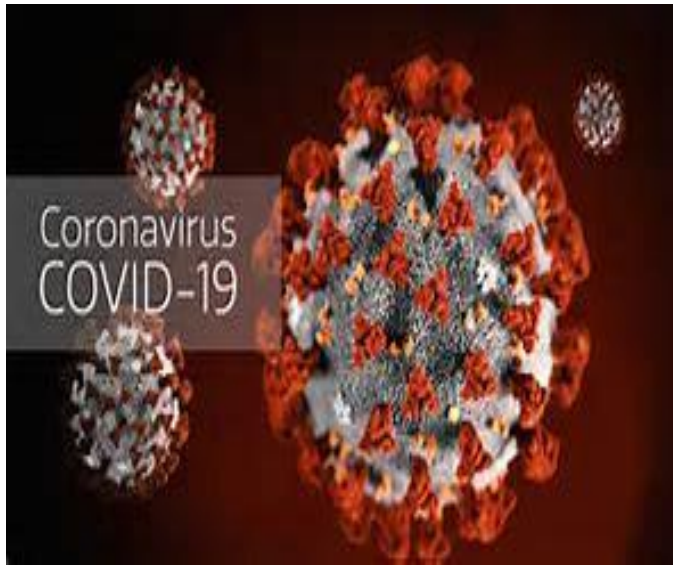
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Returning to Work in the Shadow of COVID-19: Resources and Suggested Approaches for Employers

ABSTRACT

As the United States reopens for business, employers are grappling with an unprecedented task of providing a safe work environment during a pandemic. In this paper we identify several sources of guidance and discuss some of the more commonly repeated suggestions found in the guidance.

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The year 2020 started off like most years, filled with great hope and optimism. Little did most of us know that a lower respiratory infection caused by a single member of a large family of single-stranded RNA viruses known as coronavirus would spread around the world and change everything for the foreseeable future. From its first known cases in mid-December, 2019 in Wuhan China until May 1, 2020, the novel Coronavirus disease 2019 (“COVID-19”) has spread to every country resulting in 3,278,546 global confirmed cases, 234,020 deaths.¹ Among those numbers, the United States had 1,031,659 total cases, 60,057 deaths in all 50 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.²

Across the United States, the spread of COVID-19 has resulted in the necessity of shutting down large venues, public transportation, sporting events, schools, and all virtually all businesses that were not essential to the public welfare. These restrictions occurred regionally on an emergency basis and were intended to prevent and slow the spread of COVID-19. Despite the lack of a vaccine, widespread testing, and with some states having yet to have a sustained period of declining new infections, at least 20 states have started to ease restriction and have allowed for the reopening of some non-essential businesses. This situation has employers, and employees worried about how to get back to work safely and within legal requirements.

In this article, we examine the brief history of COVID-19 and the resulting business closures. We also examine current efforts to reopen businesses and identify several sources of guidance for employers looking to safely reopen. We further examine some of the special considerations and issues some employers may face and conclude by identifying the most recommended and repeated plans of action issued by federal, state, and local governments and agencies.

I. COVID-19 Pandemic: A brief timeline of events:

According to the World Health Organization (“WHO”), on December 31, 2019, the Wuhan Municipal Health Commission in China reported the first cases of COVID-19. On January 30, 2020, World Health Organization (“WHO”) declared that COVID-19 constituted a Public Health Emergency of International Concern (“PHEIC”). By March 11, 2020, due to perceived inaction by governments worldwide and the alarming international spread and severity of COVID-19, the WHO declared a global pandemic.³ By that time, the number of COVID-19 cases outside of China

¹ *COVID-19 Case Tracker*, J. HOPKINS U. & MED. CORONAVIRUS RES. CTR., <https://coronavirus.jhu.edu/> (last visited May 1, 2020).

² *Coronavirus Disease 2019 (COVID-19), Cases of Coronavirus Disease (COVID-19) in the U.S.*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 1, 2020).

³ WHO Timeline-COVID-19, WORLD HEALTH ORG. (updated Apr. 27, 2020), www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19; see also, *Coronavirus Disease 2019 (COVID-19), CDC’s Response: Situation Summary*, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Apr. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

increased 13 times and the number of countries involved had tripled with more than 118,000 cases in 114 countries and over 4,000 deaths.⁴ By March 24, 2020, the WHO announced that the United States had the potential to become the epicenter of the pandemic.⁵ Two days later, the United States led the world with 81,321 confirmed cases.⁶ By April 13, 2020, the United States surpassed Italy and led the world with nearly 22,000 deaths attributed to COVID-19.⁷

Although the entire scope of COVID-19's health effects are not entirely known at this time, the consensus is that the disease spreads rapidly and has a relatively high mortality rate among adults. COVID-19 is a severe respiratory illness that spreads person-to-person primarily through respiratory droplets when an infected person coughs, sneezes, or speaks.⁸ COVID-19 can live in the air for at least 3 hours and on some surfaces as long as 3 days.⁹ As such, it can be spread through contact with an infected surface or object, and then by touching your mouth, nose, or eyes.¹⁰ Initial studies conducted by the CDC found fatality rates for COVID-19 infected people aged 85 and older ranged between 10% to 27%. Of those adults aged 65 to 84, 3% to 11% died. Severe illness leading to hospitalization, including ICU admissions and death, can occur in adults of any age with COVID-19.¹¹

A. To prevent the spread of COVID-19, state and local governments start to require non-essential businesses to close.

As a result of the WHO's March 11, 2020 global pandemic declaration, on March 16, 2020, the Centers for Disease Control ("CDC") and office of President Donald J. Trump ("President Trump") issued the [President's Coronavirus Guidelines for America](#) ("President's Guidelines"). The President's Guidelines were to be in effect for fifteen (15) days. On March 29, 2020, President Trump extended the effective term of the President's Guidelines until April 30, 2020. The President's Guidelines request, among other things, that sick individuals or those individuals with underlying medical conditions that make them vulnerable to coronavirus should stay at home.

⁴ Marco Cascella Et Al., FEATURES, ELEVATION AND TREATMENT CORONAVIRUS (COVID-19), at 3 (last updated Apr. 6, 2020), <https://www.ncbi.nlm.nih.gov/books/NBK554776/>.

⁵ Judge Jenkins, *Amended Order of County Judge Clay Jenkins: Safer at Home Order*, DAL. CTY. (Apr. 23, 2020), <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/042320-DallasCountyOrder.pdf>.

⁶ *The U.S. now leads the World in confirmed Coronavirus cases*, NEW YORK TIMES, March 26, 2020, <https://www.nytimes.com/2020/03/26/world/coronavirus-news.html> (last visited May 1, 2020).

⁷ Linda Givertash and Lidia Sirna, *U.S. leads global coronavirus death toll as cases surpass 550,000*, NBC NEWS, <https://www.nbcnews.com/news/world/u-s-leads-global-coronavirus-death-toll-cases-surpass-550-n1182396> (last visited May 1, 2020).

⁸ *What You Should Know about COVID-19 to Protect Yourself and Others*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last visited Apr. 26, 2020).

⁹ Neelje van Doremalen, Ph.D., et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, NEW ENGL. J. OF MED. (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2004973> (last visited Apr. 26, 2020).

¹⁰ *Supra* note 6.

¹¹ Stephanie Bialek et al., *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)—United States, February 12—March 16, 2020*, CTR. FOR DISEASE CONTROL AND PREVENTION: MORBIDITY AND MORTALITY WEEKLY REPORT (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm> (last visited Apr. 26, 2020).

Likewise, these guidelines instructed individuals to follow the guidance of state and local authorities. Finally, in an effort to slow the spread of COVID-19, the President’s Guidelines outlined social distancing, personal hygiene, travel restrictions and work restrictions for workers that were not in a “critical infrastructure industry.”¹² The CDC and the White House would later replace these guidelines with a focus on reopening America.

Texas and other states also recognized COVID-19’s threat to public health. Texas Governor, Greg Abbott, issued a disaster proclamation on March 13, 2020.¹³ On March 19, 2020, Governor Abbott, issued [Executive Order GA-08](#).¹⁴ The order effectively closed all but “Essential services” to the public and implemented the CDC’s Guidelines concerning social distancing. On March 31, 2020, Governor Abbott issued [Executive Order GA-14](#). This Executive Order superseded Executive Order GA-08 and, among other things, extended restrictions on social gatherings and the business closure of non-essential services until April 30, 2020.

Local governments also issued restrictions on social gatherings and have enforced their own restrictions that have shut down non-essential services. For example, Dallas and Harris Counties both issued stay at home orders that, among other things, closed all non-essential businesses. On March 12, 2020, Dallas County Judge Clay Jenkins issued the “Safer at Home Order.” On April 6, 2020, Judge Jenkins extended the March 12, 2020 Safer at Home Order and set it to expire on April 30, 2020. On April 13, 2020, Judge Jenkins again extended the Safer at Home Order and set it to expire on May 15, 2020.¹⁵ On March 24, 2020, Harris County’s Judge Linda Hidalgo issued a “Stay at Home, Work Safe Order.”¹⁶ On April 3, 2020, Judge Hidalgo extended Harris County’s Stay at Home, Work Safe Order to expire on April 30, 2020. Governor Abbott has made it clear, however, that to the extent any local government restrictions conflict with any executive order he issues, those local restrictions are superseded by his orders.¹⁷

B. The states start reopening the economy under the shadow of COVID-19.

Stay at home orders throughout the United States have required non-essential business and schools to close and have put millions of Americans out of work. As of April 23, 2020, the U.S. Department of Labor reported that over the five-week stretch during the COVID-19 inspired shut

¹² The President’s Coronavirus Guidelines for America, *30 days to Slow the Spread*, CTR. FOR DISEASE CONTROL AND PREVENTION, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited Apr. 26, 2020).

¹³ Governor Greg Abbott, Governor Abbott Declares State of Disaster In Texas Due To COVID-19, OFF. OF THE TEX. GOVERNOR (Mar. 13, 2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>. On April 12, 2020, Texas Governor, Greg Abbott, renewed his March 13, 2020 disaster declaration. See Governor Abbott, Governor Abbott Extends Disaster Declaration for COVID-19, OFF. OF THE TEX. GOVERNOR (Apr. 12, 2020), <https://gov.texas.gov/news/post/governor-abbott-extends-disaster-declaration-for-covid-192>.

¹⁴ Tex. Executive Order No. GA-08 (Mar. 19, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-08.pdf>.

¹⁵ *Supra* note 5.

¹⁶ Judge Hidalgo, *Order Extending and Amending Order of County Judge Lina Hidalgo, Stay Home, Work Safe*, HARRIS CTY. (Apr. 3, 2020), <https://www.readyharris.org/Portals/60/documents/Amended-extended-stay-at-home-order.pdf?ver=2020-04-13-182533-687>.

¹⁷ *Supra* note 13.

down, some 26.5 million Americans filed initial jobless claims.¹⁸ For perspective, at the highest levels of the 2008 financial crisis, initial unemployment claims reached 15.3 million.¹⁹ In response to the economic impact of the COVID-19 shut down, Congress enacted three pieces of COVID-19 relief legislation: (1) Coronavirus Preparedness and Response Supplemental Appropriations Act (CPRSA)(March 6, 2020); (2) Families First Coronavirus Response Act (FFCRA)(March 18, 2020); and (3) the Coronavirus Aid, Relief, and Economic Security Act (CARES) (March 27, 2020). These legislative acts, along with measures taken by state and local governments, were intended to mitigate the economic impact and in many ways focus on the relationship between employers and employees in this crisis.

As the stay at home orders have, by some accounts, slowed the spread of COVID-19 and in several hot spots throughout the United States numbers of new cases and deaths have peaked and are in decline, there is an ever-growing public outcry to reopen the economy to non-essential businesses. Seeing both the slowing of the spread of COVID-19 and the public’s desire to return back to work, the White House, in cooperation with the CDC, has recently issued its guidelines titled [Guidelines: Opening Up America Again](#) (“White House Guidelines”). As discussed in more detail below, the White House Guidelines propose a three-phased approach that involves testing and contact tracking, understanding healthcare system capacity, and plans to protect those that are at greatest risk to COVID-19.²⁰ Despite the issuance of these guidelines, the Federal Government is largely deferring to state governments to determine when and how each state is going to safely reopen their own economy. While some states are entering into interstate pacts to open up interdependent regions in a step-by-step approach, other states are implementing their own plans. Here is a [link](#) to where all 50 states stand on reopening.²¹

Texas, like many other states, started in mid-April 2020 making its own plans concerning when and how to reopen. Faced with more than one million Texans having filed unemployment claims during the COVID-19 disaster by mid-April, 2020, Governor Abbott was motivated to act.²² Based on the premise that “Texas must protect lives while restoring livelihoods” and that “both...can be achieved with the expert advice of medical professionals and business leaders”, the State of Texas began focusing on reopening the Texas economy.²³ On April 17, 2020, Governor Abbott issued [Executive Order GA-16](#) in which he outlined the first step for the strategic reopening of the Texas and, per federal guidelines and those guidelines issued by the Texas Department of

¹⁸ Lance Lambert, *Real Unemployment Rate Soars Past 20%—and the U.S. Has Now lost 26.5 Million Jobs*, FORTUNE (Apr. 23, 2020), <https://fortune.com/2020/04/23/us-unemployment-rate-numbers-claims-this-week-total-job-losses-april-23-2020-benefits-claims/>.

¹⁹ *See id.*

²⁰ Guidelines: Opening Up America Again, THE WHITE HOUSE & CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.whitehouse.gov/openingamerica/> (last visited Apr. 26, 2020).

²¹ Alaa Elassar, *Here is where all 50 states stand on reopening*, CNN, (updated April 29, 2020), https://www.cnn.com/interactive/2020/us/states-reopen-coronavirus-trnd/?utm_source=bambu&utm_medium=social&utm_campaign=advocacy&blaid=516204 (last visited May 1, 2020).

²² *See* Tex. Executive Order GA-17 (Apr. 17, 2020), https://gov.texas.gov/uploads/files/press/EO-GA-17_Open_Texas_Strike_Force_COVID-19_IMAGE_04-17-2020.pdf (last visited May 1, 2020).

²³ *See id.*

State Health Services (DSHS), reopened retail pickup and delivery services and permitted teachers to return to school to perform administrative tasks and conduct remote video instruction.²⁴ That same day, he issued [Executive Order GA-17](#) in which he established the Governor’s Strike Force to Open Texas (“Strike Force”). The Strike Force is made up of medical professionals and public and private leaders and was tasked with advising Governor Abbott on safely and strategically restarting work, school, entertainment and culture in Texas.²⁵

Governor Abbott’s Executive Order GA-16 identified a list of “Reopened services” that were permitted to reopen to the public. The Reopened services include, starting April 24, 2020, “retail services that are not ‘essential services,’ but may be provided through pickup, delivery by mail, or delivery to the customer’s doorstep....”²⁶ This order also provided that businesses should follow the CDC Guidelines “by practicing good hygiene, environmental cleanliness, and sanitation, implementing social distancing, and working from home if possible.”²⁷ Executive Order GA-16 superseded any conflicting orders issued by local governments and was to remain in effect until April 30, 2020. Consistent with Governor Abbott’s public statements that by April 27, 2020 he would announce a plan to further reopen Texas,²⁸ on that day he issued [Executive Order GA-18](#).

Governor Abbott’s Executive Order GA-18 extended until May 15, 2020 the requirement to minimize social gatherings except where necessary to obtain Essential or Reopened services.²⁹ Effective May 1, 2020, Executive Order GA-18 reopened in-store retail services, dine-in restaurants, movie theater’s shopping malls and museums and libraries, but limited them to “25% of the total listed occupancy.”³⁰ For those counties with five (5) or fewer COVID-19 cases that are in compliance with and have filed the requisite Texas Department of Health and Safety forms, their in-store retail services, dine-in restaurants, movie theater’s shopping malls and museums and libraries may operate up to 50 percent of the total listed occupancy.³¹ Executive Order GA-18 did not reopen bars, gyms, public swimming pools, interactive amusement venues (bowling alleys), massage establishments, tattoo studios, piercing studios, or cosmetology salons.³² Assuming the Strike Force concludes that it is advisable and the states sees “two weeks of data to confirm no

²⁴ See Tex. Executive Order GA-16 (Apr. 17, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-16.pdf>

²⁵ See Tex. Executive Order GA-17 (Apr. 17, 2020), https://gov.texas.gov/uploads/files/press/EO-GA-17_Open_Texas_Strike_Force_COVID-19_IMAGE_04-17-2020.pdf (last visited May 1, 2020).

²⁶ See *id.* Notably, the April 23, 2020 Amended Safer at Home Order issued by County Judge Clay Jenkins incorporated the same definition of “Reopened Services” included in Governor Abbott’s April 17, 2020 Executive Order GA-16. Compare *id.*, with *supra* note 5.

²⁷ See *supra* note 19.

²⁸ *Coronavirus in Texas: Gov. Abbott’s Next Executive Order to Overrule Dallas Co. Stay-At-Home Extension*, 21 CBS DFW (Apr. 21, 2020), www.dfw.cbslocal.com/2020/04/21/coronavirus-in-texas-gov-abbotts-next-executive-order-to-overrule-dallas-co-stay-at-home-extension/.

²⁹ See Tex. Executive Order GA-18 (Apr. 27, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-18.pdf> (last visited May 1, 2020).

³⁰ See *id.*

³¹ See *id.*

³² See *id.*

flare up of COVID-19”, Governor Abbott anticipates opening those venues sometime around May 18, 2020.³³

II. Reopening Non-essential businesses: Employer’s guide:

As state governors issue orders that permit non-essential businesses to open their doors to the public again, business owners face a dilemma. Because there is no vaccine for COVID-19 and testing is currently far from widespread, businesses are having to choose whether to reopen and risk potentially exposing their employees and customers to the virus, or stay closed and continue to suffer the loss of income and potentially allow their competitors get ahead. For those businesses that choose to reopen as soon as their state allows, they should understand some of the risks associated with reopening and take measures to mitigate that risk.

Employers are obligated to provide a safe workplace for their employees.³⁴ Failure to consider and take measures to mitigate the risks associated with reopening in the shadow of COVID-19 could result in employees being unnecessarily exposed. Likewise, on-the-job exposure may result in lawsuits and potentially judgments against some employers. The lack of a well-executed COVID-19 return-to-work plan could potentially expose employers to claims for worker’s compensation, personal injury, premises liability, violations of federal law, and negligence. Likewise, employers could also face regulatory penalties and/or actions from the Occupational Safety and Health Administration (“OSHA”), Equal Employment Opportunity Commission (“EEOC”) and other industry specific regulatory agencies.

A. Employers should first develop a plan: finding guidance to outline an approach that works best for your business.

To prepare for a safe return to work, business owners and/or managers should develop a plan of action. To develop this plan, businesses should start by gathering and reviewing guidance from applicable federal, state, and local governments as well as any applicable industry-specific guidelines. Thankfully, there is no shortage of sources for such guidance as most federal agencies, state and local governments, and established industries have issued guidelines concerning reopening non-essential businesses. Here, we identify and discuss various sources of guidance and where they are located.

i. Federal Guidance: A top down approach to getting back to work.

Several federal agencies monitor the spread and impact of COVID-19 on the American people and economy. To balance both the safety of the public and the health of the economy, several agencies have issued guidance on how to slow and prevent the spread of COVID-19. The backbone of almost all guidance associated with how individuals and businesses should respond

³³ Stacy Fernandez, “Texas restaurants, retailers and other businesses can reopen Friday. Here’s the rules they have to follow,” TEXAS TRIBUNE, April 28, 2020, <https://www.texastribune.org/2020/04/28/texas-reopening-restaurants-greg-abbott/> (last visited May 3, 2020).

³⁴ Occupational Safety and Health Act of 1970, §5(a)(1), 29 U.S.C.A. § 654(a)(1).

to COVID-19 comes from or refers to the CDC’s guidelines.³⁵ For specific industries, travel, and self-protection from COVID-19, the CDC has prepared a series of [guidance documents](#). By May 1, 2020, the CDC had published more than 100 guidance documents and reports.³⁶ As the CDC learns more from its studies of the COVID-19 epidemic, it regularly updates its guidance. Among the more helpful general guidelines that apply to most non-healthcare workplace settings is the CDC’s [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#). This seven (7) page document provides helpful information applicable to almost any non-healthcare workplace and has numerous links to industry and agency specific COVID-19 guidelines for employers and employees.

In concert with the CDC, the White House-issued Guidelines specifically focus on the reopening process and suggest that states or regions should only open after meeting specific requirements for each phase.³⁷ Progression from phase to phase depends on (1) whether the state or region has had a sustained two-week reduction of cases concerning COVID-19 or influenza-like illness; (2) the state or region’s hospital capacity; and (3) the state or region’s ability to provide testing of at-risk healthcare workers. The governor of each state has discretion to adopt or implement the White House Guidelines. For those states that do adopt them, they are charged with setting up a system of testing and contact tracing for positive tests, measuring hospital capacity, and establishing plans for their state to protect critical industries and workers, educate the population and monitor the success of the state’s efforts.³⁸ For each phase, the White House Guidelines also provide guidance to individuals, employers, and specific categories of employers such as schools, gyms, arenas, and senior care facilities.³⁹

In addition to the CDC and the White House, federal agencies that have traditionally regulated qualified employers have issued guidance also in connection with preparing and maintaining a workplace that will slow and/or prevent the spread of COVID-19. The most notable federal agencies are the Department of Labor, the Occupational Safety and Health Administration (“OSHA”) and the Equal Employment Opportunity Commission (“EEOC”). The Department of Labor’s (“DOL”) [COVID-19 page](#) entitled “COVID-19 and the American Workplace,” provides a wealth of links for employers to review.⁴⁰ Among the links on the DOL’s cite are: Fact Sheets, Questions and Answers, Posters, Field Assistance Bulletins, and Webinars. These resources specifically cover the Families First Coronavirus Response Act’s (FFCRA) employee paid leave

³⁵ See, e.g., Coronavirus Disease 2019, *Businesses: Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, at 2, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

³⁶ Coronavirus 2019 (COVID-19), *Guidance Documents*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance-list.html?Sort=Date%3A%3Adesc> (last visited May, 1, 2020).

³⁷ Guidelines: Opening Up America Again, THE WHITE HOUSE & CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.whitehouse.gov/openingamerica/> (last visited Apr. 26, 2020).

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ United States Department of Labor, Wage and Hour Division, *Covid-19 and the American Workplace*, <https://www.dol.gov/agencies/whd/pandemic> (last visited May 1, 2020).

rights,⁴¹ and employer paid leave requirements⁴² as well as how COVID-19 affects the Fair Labor Standards Act (FLSA)⁴³ and the Family Medical Leave Act (FMLA).⁴⁴

OSHA actively regulates employer safety and has provided employers and employees with a [webpage](#) dedicated to COVID-19 guidance, regulations, and links to other resources. A key document for businesses to review when developing their safe-workplace strategy is OSHA's [Guidance on Preparing Workplaces for COVID-19](#).⁴⁵ Notably, the CDC's Interim Guidance directs employers to examine OSHA's COVID-19 guidance page to provide additional guidance to employers.⁴⁶ Like the CDC, OSHA is staying abreast of noted industry breakouts and COVID-19 infections. For example, in response to recent COVID-19 outbreaks in the meat packing industry, on April 26, 2020, OSHA and the CDC issued [joint guidance](#) to meat and poultry processing workers and employers. OSHA has also issued guidance concerning reporting of COVID-19 cases at work,⁴⁷ how existing OSHA standards apply to protect against COVID-19,⁴⁸ and countless publications providing guidance to numerous industries.⁴⁹

The EEOC has issued at least two notable publications to assist employers grappling with how to address specific employment scenarios raised in a pandemic like COVID-19. The EEOC published [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](#) during the prior H1N1 outbreak, but updated this publication on March 19, 2020 to address information concerning COVID-19.⁵⁰ The EEOC has also provided technical assistance and answers to frequently-raised questions from employers in its publication [What you Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#). The EEOC is regularly updating this publication and due to the evolving COVID-19 situation, has recommended

⁴¹ United States Department of Labor, Wage and Hour Division, *Families First Coronavirus Response Act's (FFCRA) Employee Paid Leave Rights*, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (last visited May 1, 2020).

⁴² See United States Department of Labor, Wage and Hour Division, *Families First Coronavirus Response Act's (FFCRA) Employer Paid Leave Requirements*, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave> (last visited May 1, 2020).

⁴³ See United States Department of Labor, Wage and Hour Division, *COVID-19 and the Fair Labor Standards Act Questions and Answers*, <https://www.dol.gov/agencies/whd/flsa/pandemic> (last visited May 1, 2020).

⁴⁴ See United States Department of Labor, Wage and Hour Division, *COVID-19 and the Family and Medical Leave Act Questions and Answers*, <https://www.dol.gov/agencies/whd/fmla/pandemic> (last visited May 1, 2020).

⁴⁵ Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

⁴⁶ Coronavirus Disease 2019, *Businesses: Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, at 2, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

⁴⁷ Amanda Edens, Occupational Health and Safety Administration, *Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)*, Apr. 10, 2020, <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19> (last visited May 1, 2020).

⁴⁸ Occupational Health and Safety Administration *Safety and Health Topics: COVID-19 Standards*, <https://www.osha.gov/SLTC/covid-19/standards.html> (last visited May 1, 2020).

⁴⁹ Occupational Health and Safety Administration, *Safety and Health Topics: COVID-19*, <https://www.osha.gov/SLTC/covid-19/> (last visited May 3, 2020).

⁵⁰ See United States Equal Opportunity Commission, *Pandemic Preparedness in the Workplace and The Americans with Disabilities Act*, at 7 https://www.eeoc.gov/laws/guidance/upload/pandemic_flu.pdf (last visited May 4, 2020).

that “employers should continue to follow the most current information on maintaining workplace safety.”⁵¹

ii. State and Local Government Guidance: Where the rubber meets the road.

Employers should also examine guidance from the state and local governments in which they are located. The National Governor’s Association (“NGA”) has created a [web page](#) that includes a [COVID-19 State and Territory Actions Tracker](#), a [state-by-state resource page](#), and links to federal, state and non-governmental organization’s guidance to responding to COVID-19.⁵² Based on the number of COVID-19 cases and status of testing in their state, each state’s governor, department of health or safety, or occupational health and safety agency has provided guidance for reopening their economy. As part of plan development, and keeping up with regulations and guidance as the situation develops in their respective state, employers should regularly visit these sites and if possible, sign up for updates if the sites make such an option available.

Executive orders issued by each state’s respective governor are a good start to developing a sense of when and how various businesses are going to reopen. By way of example, the State of Texas publishes all of [Governor Abbott’s Executive Orders](#) for 2020 online. And while most, if not all, of the executive orders issued by each of the state governors will supersede any conflicting orders issued by county and municipal officials, employers should also turn to county and city-issued orders for guidance on when and how to reopen.

State agencies that routinely govern and address health, safety or employment issues are also a wealth of information. The Texas Workforce Commission (“TWC”), for example, has created the [Employer’s COVID-19 Information](#) page. This page includes, among other resources, employers’ frequently asked questions, links to the Texas Department of State Health Services (“DSHS”) and allows employers to sign up to receive TWC’s COVID-19 updates.⁵³ The DSHS is a part of Governor Abbot’s Strike Force and each of his Executive Orders concerning reopening Texas rely upon and direct others to follow, the DSHS’s guidelines. DSHS has a [web page](#) specifically devoted to COVID-19.⁵⁴ While this web page provides a wealth of information and links to frequently asked questions, statistical information, testing information, and guidance from federal agencies like the CDC, employers will find its link to the DSHS’s [Opening the State of Texas](#) page very helpful.⁵⁵ Included on this page is the DSHS’s Minimum Standard Health

⁵¹ *What you Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMP’T COMM’N (updated Apr. 23, 2020), https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

⁵² National Governors’ Association, *Coronavirus: What You Need to Know*, (last updated April 30, 2020), <https://www.nga.org/coronavirus/> (last visited May 1, 2020).

⁵³ Texas Workforce Commission, *COVID-19 Resources Employers*, <https://www.twc.texas.gov/news/covid-19-resources-employers> (last visited May 1, 2020).

⁵⁴ Texas Department of State Health Services, *Coronavirus Disease 2019 (COVID-19) Home Page*, (last updated Apr. 29, 2020), <https://dshs.texas.gov/coronavirus/> (last visited May 1, 2020).

⁵⁵ Texas Department of State Health Services, *Opening the State of Texas*, <https://dshs.texas.gov/coronavirus/opentexas.aspx> (last visited May 1, 2020).

Protocols for COVID-19 (“Minimum Health Protocols”). The DSHS’s Minimum Health Protocols provide guidance for individuals, employers and all of the businesses that Governor Abbott has classified as “Reopened Services” in Executive Orders GA-16 and GA-18.⁵⁶ Because all of Governor Abbott’s Executive Orders concerning reopening have stated that businesses should follow these Minimum Health Protocols, the White House Guidance, and any guidance issued by the CDC, employers in Texas should consider and if possible incorporate these into their reopening plan.

Because COVID-19 spreads by (among other things) close contact, those individuals living in highly populated counties may have a greater risk of exposure than those individuals living in less densely populated counties. Given that each County will have unique population demographics and living conditions, employers should also examine guidance issued by its county’s health department or official. By way of example, the Dallas County Department of Health and Human Services has a Coronavirus [webpage](#) that provides statistical updates about the number of confirmed cases and deaths from COVID-19.⁵⁷ The page also includes links to public health services disease reporting, health advisors and other guidance, Dallas County COVID-19 Summaries and County Judge Clay Jenkins’ Orders concerning COVID-19.⁵⁸ The Harris County Department of public health also has a [webpage](#) that provides statistical information and guidance to the residents of Harris County.⁵⁹ The page provides links to some limited industry specific guidance, but does allow for individuals to send an email to COVIDoutreach@phs.hctx.net to request digital copies or virtual presentations designed to educate individuals on prevention and what to do if you believe you are infected. Likewise, the page has numerous videos, prevention information, and links to numerous federal, and state agencies for additional guidance concerning COVID-19.

- iii. When developing your plan, do not forget to look for industry specific guidance.

Numerous nongovernmental and quasi-governmental entities take part in regulating or managing numerous professions and industries. If your industry is regulated by a specific agency, be sure to obtain any COVID-19 reopening guidance from that agency. The U.S. Food and Drug Administration, for example, regulates food stores and restaurants and has provided a best practices page for these specific industries.⁶⁰ Likewise, if your business is part of an association, be sure to obtain guidance and/or best practices from that particular association as it is most likely to be the best source for guidance on industry specific problems. There are numerous industry

⁵⁶ See *id.*

⁵⁷Dallas County Health and Human Services, 2019 Novel Coronavirus (SARS-CoV-2/COVID-19), (last updated Apr. 20, 2020), <https://www.dallascounty.org/departments/dchhs/2019-novel-coronavirus.php> (last visited May 1, 2020).

⁵⁸ See *id.*

⁵⁹Harris County Department of Public Health, 2019 Novel Coronavirus, <http://publichealth.harriscountytexas.gov/Resources/2019-Novels-Coronavirus> (last visited May 1, 2020).

⁶⁰United States Food and Drug Administration, *Best Practices for Retail Food Stores, Restaurants, and Food Pick-up Delivery Services, During the COVID-19 Pandemic*, <https://www.fda.gov/food/food-safety-during-emergencies/best-practices-retail-food-stores-restaurants-and-food-pick-up-delivery-services-during-covid-19> (last visited, May 1, 2020).

specific associations and counsels that are offering industry specific guidance for reopening. Associations such as the [American Trucking Association](#), [National Association of Realtors](#), [National Restaurant Association](#), and [Texas Medical Association](#) are but a tiny sample of business associations providing industry specific guidance on how to return to work during the COVID-19 pandemic.

B. Special Issues and Considerations for Planning/Execution of your return to work plan:

While preparing and executing back-to-work plans, employers will still have to follow all the well-established requirements of Title VII (prohibiting discrimination, harassment and retaliation on the basis of race, color, sex, religion, and national origin); the Americans with Disabilities Act (“ADA”), protecting employees who have disabilities; the Age Discrimination in Employment Act (“ADEA”), protecting employees in the 40 and over age category; the Family and Medical Leave Act (“FMLA”), providing for 12 weeks of unpaid leave for qualifying employees; and all other laws and regulations that normally protect employees on the federal, state, and local levels. Added to these requirements are the very recently promulgated rights set forth in the Families First Coronavirus Response Act (“FFCRA”), which generally provides for paid leave for employees who may be, for example, sick with COVID-19 or caring for someone who is ill, or having to care for children who are home due to school or daycare closures. No return-to-work plan could be complete without an understanding and integration of FFCRA requirements. Further, it is possible that any such plan may raise ADA concerns, possible accommodation issues, and employee privacy questions. Thus, understanding how various governmental agencies view these issues, given these various long-established laws and regulations, is critical.

Similarly, employers should consider OSHA’s answers to questions that other employers have raised⁶¹ and its stance on when an employer has an obligation to report a COVID-19 case and how to properly do so.⁶² Because many return to work plans include on-site temperature taking and other medical examinations, employers should be aware of how the EEOC is treating these medical examinations and the information obtained from them. In this section, we identify and discuss some of the special considerations that some employers have already raised, and you should be aware of considering the new COVID-19 environment.

- i. Qualified employers should incorporate the FFCRA’s requirements into their COVID-19 return-to-work plans.*

The FFCRA, which was signed into law on March 18, 2020, applies to employers with **less than 500 employees**⁶³ and generally provides employees with paid sick leave to the extent and

⁶¹ Occupational Health and Safety Administration, *Safety and Health Topics: COVID-19 Standards*, <https://www.osha.gov/SLTC/covid-19/standards.html> (last visited May 1, 2020).

⁶² Occupational Health and Safety Administration, *1904.29 Forms, Recording and Reporting Occupational Injuries and Illness, Record Keeping Forms and Reporting Criteria*, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.29> (last visited May 5, 2020).

⁶³ Employers with less than 50 employees may qualify for an exemption from the requirement to provide additional leave due to school closings or childcare unavailability if the leave requirements jeopardize the viability of the business

employee is unable to work or telework for a qualifying reason. It provides up to 80 hours of emergency paid sick leave for reasons related to COVID-19 (“Emergency Sick Leave”) and an additional 10 weeks of expanded family and medical leave to care for a child who must stay at home because of school or day care closures, or because the child's caregiver is unavailable as a result of COVID-19 (“Emergency Family Medical Leave”). Reopening businesses may experience situations wherein the employee qualifies for FFCRA leave and should know how to proceed when employees make requests for such leave.

A) The FFCRA provides for two kinds of leave related to COVID-19.

To implement the FFCRA, on April 6, 2020, the DOL published a temporary rule (the “FFCRA Regulations”).⁶⁴ The Regulations are available [here](#). In addition to the FFCRA Regulations, the DOL has issued the "Families First Coronavirus Response Act: Questions and Answers" ("FFCRA Q&A")⁶⁵ available [here](#); and the IRS has issued its "COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs"⁶⁶ available [here](#). Employers are required to post [notices](#) concerning the FFCRA’s rights and the DOL has provided [guidance](#) concerning proper use of the notice.

The FFCRA is effective only from April 1, 2020 through December 31, 2020.⁶⁷ Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

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);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or

as an ongoing concern. For guidance concerning what a small business must establish to obtain this exemption, the part of the FFCRA discussing Section 826.40(b) of the Act outlines how to proceed. See FFCRA, 29 C.F.R. § 826.40(b).

⁶⁴Wage and Hour Division, Department of Labor, PAID LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT, FEDERAL REGISTER, <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act#sectno-reference-826.23%20> (last visited May 3, 2020).

⁶⁵ Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁶⁶ Internal Revenue Service, "COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs," https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#how_to_claim (last visited May 3, 2020).

⁶⁷ Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Questions 78-79, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.⁶⁸

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.⁶⁹

In sum, there are generally **two kinds** of leave under the FFCRA: **(1)** paid sick leave when an employee is sick due to COVID-19 (or quarantined for a suspected infection) or he/she is caring for someone who is sick; or **(2)** paid time off to take care of a child whose school or daycare is closed. Depending on the kind of leave (see below), there is either two weeks paid time off available to qualifying employees (essentially the sick or quarantined time off), or there is “expanded” and paid FMLA time (up to 12 weeks) available to care for children who are not at school/daycare due to COVID-19 closures. During the effective time of the FFCRA, this leave, whether sick leave or leave to care for a school child, for example, may be taken only once, no matter how many employers the employee may work for until December 31, 2020.⁷⁰ Also, the FFCRA expands the FMLA leave in the sense that it provides for an *additional reason* to obtain FMLA leave. The grounds for FMLA leave created by the FFCRA was not included in the FMLA. The FFCRA also requires some pay that is not included in the FMLA.

B) The time an employee can have FFCRA leave is limited.

Importantly, the FFCRA does not expand the number of weeks of FMLA leave available to an employee-only 12 weeks of leave, no matter the FMLA reason, are available during the employer-applicable 12-month period. Unlike other accrued leave, employers are not required to pay out any FFCRA leave upon an employee's termination.⁷¹ Since new employees may have used some, but not all, of their FFCRA leave, when hiring a new employee, an employer should track how much FFCRA leave the employee has already used.

The DOL has [summarized](#) the maximum amount of FFCRA leave time available to an employee into three general categories:

- Two weeks of paid sick leave (80 hours maximum) at the employee’s regular rate of pay for an employee quarantined due to a confirmed diagnosis of COVID-19 and/or who experienced COVID-19 symptoms.
- Two weeks of paid sick leave (80 hours maximum) at 2/3 the employee’s regular rate of pay for an employee unable to work because of a bona fide need to care for an individual subject to quarantine; or an employee who must care for children,

⁶⁸ Department of Labor, Wage and Labor Division, *Family First Coronavirus Response Act: Employee Paid Leave Rights*, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (last visited May 3, 2020).

⁶⁹See *id.*

⁷⁰ FFCRA Regulations, 29 C.F.R. § 826.160(f).

⁷¹ See *id.* at § 826.160(d).

under 18, whose school or child care provider is not open or available due to COVID-19.

- An additional 10 weeks of paid expanded family and medical leave at 2/3 the employee's regular rate of pay for an employee unable to work due to a bona fide need for leave to care for a child whose school or child care provider is not open or available for reasons related to COVID-19, provided that the employee worked for the company for at least 30 calendar days before the leave began.⁷²

Part-time workers are eligible for leave payments in the amount of their normal work schedule.⁷³

C) Under FFCRA, intermittent leave is permitted.

Like FMLA leave, FFCRA leave may be taken intermittently under certain conditions generally involving the employee's lack of exposure to COVID-19 (i.e., teleworking or childcare because school or childcare is unavailable).⁷⁴ Significantly, for other FFCRA qualifying reasons involving potential exposure to COVID-19, once an employee starts taking qualifying leave, the employee must take the leave all at once until the reason for the leave no longer exists.⁷⁵

To take qualifying intermittent leave, the employer and employee must agree the employee may take intermittent leave.⁷⁶ This is different from FMLA. Additionally, the leave must be for a reason that would not expose the other employees to COVID-19. Intermittent leave is always available if teleworking is available.⁷⁷ But it is not available if the employee is required to be at the worksite, and the leave is taken for one of the qualifying reasons involving potential exposure to COVID-19, like the employee being diagnosed with, seeking treatment for, or being quarantined because of COVID-19; or the employee taking care of someone else diagnosed with or quarantined because of COVID-19.⁷⁸ Conversely, intermittent leave from the worksite is available only if

⁷² Department of Labor, Wage and Labor Division, *Family First Coronavirus Response Act: Employee Paid Leave Rights*, <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (last visited May 3, 2020).

⁷³ *See id.* A part-time worker is normally scheduled to work less than 40 hours each workweek. *Id.* A full-time worker is normally scheduled to work at least 40 hours each workweek. *Id.* at §826.21(a).

⁷⁴ FFCRA Regulations, 29 C.F.R. § 826.50; *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Question 20, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁷⁵ FFCRA Regulations, 29 C.F.R. § 826.50(b)(2); *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Question 21, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁷⁶ FFCRA Regulations, 29 C.F.R. § 826.50(a); *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Questions 20 & 22, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁷⁷ FFCRA Regulations, 29 C.F.R. § 826.50(c); *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Question 20, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁷⁸ FFCRA Regulations, 29 C.F.R. § 826.50(b)(2); *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Question 21, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

needed because school or childcare is unavailable due to COVID-19.⁷⁹ The purpose is to minimize exposure of other employees to COVID-19.

D) FFCRA leave requests must be documented.

Unlike the FMLA, employers are not required to respond to employee leave requests with specific notices of eligibility, rights and responsibilities.⁸⁰ Employees are, however, still required to request the leave as soon as practicable after the first workday (or part of a workday) missed.⁸¹ Even though oral notice may be sufficient, employers may require employees to comply with the employer's usual and customary procedures for requesting leave.⁸² In the process, employers are required to document the information received, and must retain this documentation for four years, regardless of whether the leave is granted or denied.⁸³ Consequently, where employees provide only oral statements to support their FFCRA leave requests, employers should create documentation.⁸⁴

A requesting employee must also provide the employer with documentation to support the use of the requested leave.⁸⁵ This documentation must contain (1) the employee's name, (2) the date(s) for which leave is requested, (3) the qualifying reason for the leave, and (4) an oral or written statement that the employee is unable to work because of the qualifying reason for the leave.⁸⁶

Additional information is also required, which may include (depending on the reason for the leave): (1) the name of the government entity issuing the quarantine or isolation order applicable to the employee or individual cared for by the employee; (2) the name of the health care provider advising the employee or individual cared for by the employee to self-quarantine; and (3) the name of the child being cared for, the name of the child's school, place of care, or child care provider that has closed or become unavailable, with a representation that no other suitable person is available to care for the child during the leave.⁸⁷

E) FFCRA leave is not always available.

Importantly, if the employer has no work available to perform, then the employee is not entitled to take FFCRA leave from work.⁸⁸ Consequently, if the company closes or even furloughs

⁷⁹ FFCRA Regulations, 29 C.F.R. § 826.50(b)(1); *see also* Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Questions 20 & 21, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

⁸⁰ *See* FMLA Regulations, 29 C.F.R. § 825.300 (Employer notice requirements under FMLA).

⁸¹ FFCRA Regulations, 29 C.F.R. § 826.90(a).

⁸² *Id.* at § 826.90(c).

⁸³ *Id.* at § 826.140(a).

⁸⁴ *Id.* at § 826.100.

⁸⁵ *Id.*

⁸⁶ *Id.* at § 826.100(a).

⁸⁷ *Id.* at § 826.100(b-e).

⁸⁸ Wage and Hour Division, Department of Labor, "Families First Coronavirus Response Act: Questions and Answers", Questions 23-27, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (last visited May 3, 2020).

employees, then the affected employees are not entitled to FFCRA leave.⁸⁹ This applies even if the company closes because of a quarantine or isolation order.⁹⁰ Conversely, if telework is available, then an employee is also not entitled to FFCRA leave while performing telework. However, as outlined above, the employer and employee may agree to intermittent leave to the extent the employee is not able to telework for a qualifying reason.

F) Employees returning from FFCRA leave have rights.

Similar to the FMLA, employees returning to work from FFCRA leave are generally entitled to return to the same or similar job they were performing before the leave.⁹¹ However, the employee is not necessarily protected from employment actions that would have affected the employee anyway, like a layoff.⁹² The employer may also deny job restoration to a "key" employee in limited circumstances similar to the FMLA.⁹³

Finally, also similar to the FMLA, an employer is prohibited from interfering with an employee's leave, and from retaliating against an employee for exercising leave.⁹⁴ Failure to comply with the FFCRA may likewise subject the employer to enforcement, except there is a private right of action *only* if the employee is enforcing the Expanded Family Leave and the employer is otherwise subject to the FMLA.⁹⁵ Otherwise, the Emergency Sick Leave is investigated and enforced by the Secretary of Labor, so an employee may file a complaint with the DOL, and the remedies are provided by the Fair Labor Standards Act (FLSA).⁹⁶

- ii.* For all but healthcare, emergency response, and correctional facilities, OSHA has limited employers' "reporting" and "recording" requirements for employees that contract COVID-19.

As most communities are still considered to have active COVID-19 infections, employees returning to work may have had different levels of COVID-19 exposure or may become exposed to COVID-19 before or after work. To reduce the spread of COVID-19 to the workplace, some employers may decide it is best to incorporate screening via temperature reading or via actual COVID-19 testing. In that process, employers may discover employees with active COVID-19 infections. As various state and local governments implement COVID-19 testing, employees may also learn through those programs that they are infected and notify their employer. In either instance, once the employer learns of an active COVID-19 infection, employers may feel compelled to report such cases to OSHA.

⁸⁹ *See id.*

⁹⁰ *See id.*, at Questions, 23-25, 27, & 60.

⁹¹ FFCRA Regulations, 29 C.F.R. § 826.130; *see also* FMLA Regulations, 29 C.F.R. §§ 825.214-15.

⁹² FFCRA Regulations, 29 C.F.R. § 826.130(b).

⁹³ *Id.* at § 826.130(b)(2); *see also* FMLA Regulations, 29 C.F.R. § 825.217.

⁹⁴ FFCRA Regulations, 29 C.F.R. § 826.151(a) (citing FMLA, 29 U.S.C. § 2615).

⁹⁵ FFCRA Regulations, 29 C.F.R. § 826.151(b) (citing FMLA, 29 U.S.C. § 2617)

⁹⁶ FFCRA Regulations, 29 C.F.R. §§ 826.152-53; *see also* FLSA, 29 U.S.C. §§ 206, 216-17.

The employer’s determination that an incident is work related is an essential requirement for reporting workplace injuries to OSHA. OSHA’s April 10, 2020 guidance concerning COVID-19, however, states that until further notice, “OSHA will not enforce 29 CFR § 1904 to require other employers to make the same work-relatedness determinations...”⁹⁷ OSHA’s suspension does not apply to employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting, and law enforcement services), and correctional institutions, and comes with two exceptions:

1. There is objective evidence that a COVID-19 case may be work related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
2. The evidence was reasonably available to the employer. Examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees’ health and safety in the ordinary course of managing its business and employees.⁹⁸

OSHA rationalized the suspended enforcement, stating that rather than having workplaces make difficult work-relatedness decisions in circumstances wherein there is community transmission, OSHA was focused on how to best allow its enforcement policies to help employers to focus their response efforts on implementing good hygiene practices in their workplaces and otherwise mitigate COVID-19’s effects.⁹⁹ The bottom line is, unless employers have objective evidence that COVID-19 was contracted while the employee was engaged in work-related duties, then the illness is not recordable as a workplace illness.¹⁰⁰

The question of whether a COVID-19 diagnosis is “recordable” as a workplace illness or “reportable” if the employee is admitted in-patient to a hospital for treatment requires the employer to discern whether the employee’s contraction was work-related. In this regard, OSHA states there must be objective evidence identifying the source of the virus as being work-related. As an example, OSHA notes that if a cluster of employees who work in close proximity to one another all contract the virus around the same time then the employer may be required to record the illness, absent some alternative explanation.

It should be noted that working in the same environment is insufficient to meet this threshold. OSHA has set forth several exceptions where an illness will not be considered work-related even though it was contracted in the work environment.¹⁰¹ Included in these exceptions is 1904.5(b)(2)(iv) which states that an illness contracted from consuming food at lunch onsite is not recordable unless the employer provides the food or the food is contaminated by a workplace

⁹⁷United States Department of Labor, Occupational Health and Safety Administration, *Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)*, Apr. 10, 2020, <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19> (last visited May 5, 2020).

⁹⁸ *See id.*

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ 29 CFR 1904(b)(2).

contaminant such as lead.¹⁰² Let's say a group of employees who don't work near each other all contract the virus after eating lunch in the break room with an employee who was later diagnosed as being infected with the virus. Arguably, the illness of employees who contract COVID-19 while sitting with an infected employee on a lunch break is no more work-related than contracting an illness through consuming food prepared by another employee while on a lunch break. Unless employers have objective evidence that the virus was contracted while the employee was engaged in work-related duties then the illness is not recordable.

Per OSHA's rule on determining "work-relatedness," the employer is required to evaluate the employee's duties and environment to determine if an event in the work environment contributed to the employee's contraction of the virus. OSHA has interpreted its rule on point as follows:

A case is presumed work-related if, and only if, an event or exposure in the work environment is a discernible cause of the injury or illness or of a significant aggravation to a pre-existing condition. Because the employee's condition arose outside of the work environment and there was no discernable event or exposure that led to the condition, the presumption of work-relationship does not apply.

If it is not obvious whether the precipitating event occurred in the work environment or elsewhere, the employer is to evaluate the employee's work duties and environment and make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness or of a significant aggravation of a pre-existing condition.¹⁰³

In most isolated cases, a connection to the work environment may be impossible to "discern" therefore, unless the employer can ascertain through objective evidence that the employee contracted the virus through workplace exposure to another employee or business contact who was also diagnosed with the virus, there is no meaningful way to discern the employee's illness is work-related.

If the contraction of the virus by an employee is not recordable because there is no objective evidence that it "work-related" then there is no requirement that the hospitalization of an employee for treatment related to the illness be reported to OSHA. In addition, reporting the hospitalization of the employee for treatment is only required if it occurs within 24 hours of the contraction of the virus. 1904.39(b)(6). Thus, even if the illness is determined through objective evidence to be work-related, an employee's in-patient hospitalization for treatment is only reportable if it occurs within 24 hours of the employee contracting the illness.

- iii.* For COVID-19, the EEOC has relaxed its opposition to employers conducting on-site testing and/or screening.

¹⁰² 29 CFR 1904.5(b)(2)(iv).

¹⁰³ See 29 CFR 1904.5(b)(3).

The EEOC's recent guidance recognizes that employers may need to conduct on-site temperature readings for employees and others coming into the workplace.¹⁰⁴ While the EEOC guidance classifies these temperature readings to be onsite testing, it expressly acknowledges that such testing is permissible.¹⁰⁵ The EEOC advises, however, that such testing is to be performed with confidentiality in mind and that any records related to such testing are to be treated with the same confidentiality as a medical record and are to be kept securely and separately from each employees employment file.¹⁰⁶ This announcement is consistent with guidance from OSHA and numerous other sources and is good news for employers who seek to offer a safe workplace for employees.

In addition to conducting on-site temperature readings, the EEOC guidance recognized as recently as April 23, 2020 that employers could conduct on-site COVID-19 testing.¹⁰⁷ The EEOC determined that COVID-19 testing, if done properly, should be consistent with the Americans with Disabilities Act (ADA) because such mandatory medical tests are “job-related and consistent with business necessity.”¹⁰⁸ Thus, it appears that in light of the COVID-19 caused emergency, the key focus is “business necessity.” As with temperature taking, employers taking this much more invasive test must also treat it as any other health or medical inquiry and it must perform the test confidentially and make it available to all across the board, without discrimination as to certain people or groups, which universal application is a hallmark of EEOC protection.¹⁰⁹ To ensure accuracy in test taking, the EEOC suggested that employers review guidance from the U.S. Food and Drug Administration as well as the CDC or other public health authorities concerning what is considered safe and accurate testing.¹¹⁰ Because the situation is ever changing, the EEOC also further cautioned that knowledge of symptoms may change as more data becomes available in regard to COVID-19 and that it would continue to update guidance as employers made inquiries.¹¹¹

C. Executing the Plan: Most commonly recommended strategies and approaches from Federal, state, and local governments and agencies:

With a patchwork of guidance from various sources, it is easy for employers to feel overwhelmed. A careful review of the guidance reveals, however, that aside from some of the special considerations raised by new laws, new guidance on existing laws, and industry specific situations, a lot of the guidance is repetitive. Having examined a large volume of the federal, state and local guidelines, recommendations, and orders reopening the economy, we have compiled

¹⁰⁴ *What you Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMP'T COMM'N (updated Apr. 23, 2020), Sections A, A.3, & A.6, https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

¹⁰⁵ *See id.*, at A.3.

¹⁰⁶ *See id.*, at B & B.1-B.2.

¹⁰⁷ *See id.*, at A.6.

¹⁰⁸ *See id.*

¹⁰⁹ *What you Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMP'T COMM'N (updated Apr. 23, 2020), Section A.6, https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

¹¹⁰ *See id.*

¹¹¹ *See id.* at Introduction.

some of the most common recommendations that apply to non-healthcare businesses. We have also presented them in a step-by-step format.

i. **STEP ONE: Employer Awareness and Continued Monitoring.**

To provide a safe work environment when reopening, employers must develop and implement appropriate policies (a pandemic plan) in accordance with Federal State, and local regulations and guidance, and informed by industry best practices,¹¹² regarding social distancing and protective equipment, temperature checks, sanitation, use and disinfection of common and high-traffic areas, and business travel.¹¹³ The cornerstone of developing a pandemic plan is "based on traditional infection prevention and industrial hygiene practices."¹¹⁴ The employer's plan should be tailored to the employer's specific circumstances and should focus on how to: 1. Reduce transmission among employees; 2. Maintain healthy business operations; and 3. Maintain a healthy work environment.¹¹⁵ Most guidance recommends that employers implement methods of abatement and prevention based on the conditions in their community and workplace.

A) Determine the level of risk your workplace poses to the spread of COVID-19.

A responsible team that is familiar with human resources practices and legal issues specific to the employer's industry should develop and execute the return to work plan. With an eye towards avoiding possible transmission of COVID-19 among employees, employers should first determine which risk exposure level best describes their workplace. OSHA, for example, breaks workplaces in to four categories:

- Very High: Healthcare workers treating potentially infected patients using procedures that might expose them to directly to the patients breathing; laboratory employees working with specimens from infected patients.
- High: Healthcare delivery and support staff entering the rooms of infected patients; medical transport workers transporting potentially infected patients.
- Medium: Employees in high-population-density work environments; workers who have regular contact with the general public or travelers from international destinations.

¹¹²Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, pgs. 3 & 7-8, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

¹¹³ Guidelines: Opening Up America Again, THE WHITE HOUSE & CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.whitehouse.gov/openingamerica/> (last visited Apr. 26, 2020).

¹¹⁴Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, pg. 12, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

¹¹⁵ Coronavirus Disease 2019, *Businesses: Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, at 2, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

- Low: Employees with minimal occupational contact with the general public or other co-workers.¹¹⁶

Certain abatement measures that might be appropriate for an employer in a high-risk exposure work environment such as a hospital or medical clinic might not be appropriate for an employer in a lower risk category such as a small administrative office.¹¹⁷ Once an employer has identified its risk exposure level, it should then examine guidance that is commiserate with its risk level.¹¹⁸ Industry specific guidance as well as OSHA's specific recommendations using the elements of the General Duty Clause appear to provide the best road map for preparing effective risk mitigation.

B) Next, determine the most at-risk locations and at-risk employees and consider measures to mitigate the risks.

In addition to identifying the level of risk your workplace generally poses, team members should identify the most probable locations for where and how employees might be exposed to COVID-19.¹¹⁹ Common areas, elevators, stairwells, doors, waiting areas, conference rooms, and lunch rooms are likely among the most high-risk areas for transmission of COVID-19. In addition to identifying these high-transmission risk areas, awareness of which employees are most vulnerable to a higher risk of serious illness, such as older adults and those with chronic medical conditions is also important. Remedial actions should not take aim at any group of people, remember that everyone is at risk of contracting COVID-19.¹²⁰ Having identified these risks, the employer should take mitigation measures. Measures taken to mitigate the most at-risk locations should be applied throughout the workplace.

In addition to considering the proper measures to mitigate risks associated with high-transmission areas and the most high-risk employees, employers would be wise to examine, and where applicable, implement methods of abatement suggested by OSHA that fall into the following categories, ranked in order of preference:

- **Engineering Controls:** isolate employees from the hazard through physical or mechanical controls such as air ventilation, physical barriers, re-configured workspaces.

¹¹⁶ Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, pgs. 18-20, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

¹¹⁷ *See id.*

¹¹⁸ *See id.* at pg. 18.

¹¹⁹ Coronavirus Disease 2019, *Businesses: Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, at 2, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

¹²⁰ Stephanie Bialek et al., *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)—United States, February 12—March 16, 2020*, CTR. FOR DISEASE CONTROL AND PREVENTION: MORBIDITY AND MORTALITY WEEKLY REPORT (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm> (last visited Apr. 26, 2020).

- Administrative Controls: Changes in work policies or procedures that require action on the part of the employer or employee such as staggering shifts, encouraging sick employees to stay home, eliminating non-essential travel.
- Safe Work Practices: A type of administrative control that focuses on procedures for safe and proper work practices such as no-touch trash cans, disposable towels to clean work surfaces, signs reminding employees to wash hands, and hand sanitizer stations.
- Personal Protective Equipment (PPE): PPE is often required to address workplace hazards, but it is seen by OSHA as a last resort in protecting employees from those hazards. Gloves, goggles, masks, face shields, and/or respiratory protection may be required depending on the specific workplace conditions. An employer is required by 29 CFR 1910.132 to assess the hazards that are present, or likely to be present, in its workplace and provide its employees the appropriate PPE for those hazards.¹²¹

As discussed in more detail below, employers should approach each of these methods of abatement based on the level of risk involved in their work setting and community.

C) **Assess the essential functions at the workplace and consider how to operate if there is a spike in absenteeism or an essential employee falls ill.**

Employers should also consider the risks associated with the healthy functioning of the business. Identify those key players and outside factors or influences on your business. Be prepared to make changes to business practices if any of these are put into jeopardy. Cross-train employees and implement flexible and telework policies to protect key employees. Suggested changes include considering alternative suppliers, focuses on existing customers, or even temporary suspension of some of the operations. Identify alternative supply chains and recognize and anticipate possible unavailability due to supply chain shortages. Reach out to other businesses like yours and discuss and share best practices and do not forget to consult local chambers of commerce, and associations to learn how others are handling shortages or issues.

Members of this team should continue to monitor any changing conditions at work as well as any federal, state, local or industry specific guidance or regulations that influence, modify, or change the plan. Monitoring work conditions and the execution of mitigation strategies will be essential. Developing a routine that involves the mitigation strategies will ease some of the burden associated with monitoring. Early monitoring, and education (as we address next), is recommended to ensuring the success of your mitigation strategy.

- ii. **STEP TWO:** Employers should educate employees about COVID-19 and the Employer’s policies designed to prevent the spread of COVID-19.

¹²¹ Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, pgs. 11-16, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

Educating and instructing employees about the change in policies and procedures is essential. Employers should actively monitor state and local health officials as well as governing authorities and ensure that the information is provided to employees. As states start to open non-essential businesses, restrictions concerning the number of patrons, social distancing and use of personal protective equipment may be required and may result in penalties for employers that fail to follow these policies.

Employers should consider communicating the known methods of transmittal and symptoms of COVID-19 via email, intranet, and posting CDC posters in common areas.¹²² Employers should also encourage sick employees, or those treating sick family members, to stay home. If an employee reports in sick with COVID-19 symptoms, the employer should provide the employee with a method of reporting the situation and the CDC-recommended steps (or steps provide by a local health department) on what they should do if they develop symptoms. The employer should also advise the employee that he or she should not return to work until they have met the CDC-recommended isolation precautions in consultation with the employee's healthcare providers and state and local health departments.¹²³

Most guidance recommends that employers also educate employees on how to prevent the spread of COVID-19. Such educational materials should concern proper hand washing, the use of hand sanitizer, disinfecting surfaces, and to avoid touching his or her eyes, nose, and mouth with unwashed hands.¹²⁴ Employers can provide educational materials from the CDC and elsewhere concerning coughing and sneezing etiquette, as well as avoiding the use of other employee's phones, desks, keyboards, mouse, or other work tools and equipment and how to clean and disinfect them. Employers should also educate employees on social distancing, avoiding large gatherings or crowds, and provide guidance from local or state health officials regarding the proper use of gloves, face masks, or other personal protective equipment.

Employees will have questions concerning sick leave, when to come into work, what to wear to work and what to expect when they come to work. Employers should let their employees know about any policy or physical changes to the work environment and how employees are affected by these policies or changes. The use of email, intranet, and placement of posters prepared by the Department of Labor, EEOC, CDC, OSHA or state and local health officials that provide guidance and instruction are an easy and effective way to ensure that the information is made available to employees. As conditions change, employers should regularly update employees on developments that impact work safety.

- iii. **STEP THREE:** Make changes to the work environment to reduce the risk of spreading COVID-19.

¹²² Coronavirus Disease 2019, *Businesses: Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, at 2, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

¹²³ *See id.*, at 2 & 7.

¹²⁴ *See id.*, at 2.

Consider making changes to the work environment that are conducive to following the most common and successful methods of reducing the spread of COVID-19. Where possible, allowing those employees that can or are at high risk of exposure to work from home is recommended. The use of video resources where possible is highly encouraged. Eliminating unnecessary travel should also be a consideration. For those jobs that cannot be performed at home, employers should consider social distancing requirements and modify desk spacing, stagger work schedules, limit use of common areas, and physical barriers where employees are at greater risk of being within six feet of one another.

Changes to the work environment may not only be in the form of physical changes. Most guidance, and some developments in federal law, call for employers to have more flexibility concerning sick leave and supportive policies and practices. Ensuring that sick leave policies are flexible and consistent with public health guidance as well as the law is common in most guidance. Ensuring that employees are aware of and understand these policy changes and in most instances, their legal rights under any new or modified applicable sick leave law, assists with making sure that employees are comfortable staying home when they or a family member with whom they reside are sick.

- iv.* **STEP FOUR:** Implement detection and prevention measures depending on the level of risk for those employees coming in to work.

One of the many aspects of COVID-19 that makes it extremely contagious is that a person can be infectious without exhibiting any symptoms at all.¹²⁵ Nevertheless, some people exhibit symptoms while they are infectious. Among those commonly identified symptoms are an elevated body temperature, dry cough, and shortness of breath. Authorities have also recognized additional symptoms, such as new loss of smell or taste, as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.¹²⁶ Part of any employer's detection plan could include the identification of any employees that have these symptoms. The development of policies aimed at self-detection, and on-site detection and isolation and removal of sick employees is consistent with OSHA guidelines.¹²⁷

A) Employers should consider implementing a screening process.

Employer screening can start with employers requiring employees to stay at home if they do not meet certain requirements. Employers could require employees to answer questions before returning to work each day such as: (1) Do you have symptoms of fever, cough (excluding chronic cough due to known medical reason), shortness of breath, sore throat, or diarrhea (excluding

¹²⁵ *What You Should Know about COVID-19 to Protect Yourself and Others*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last visited Apr. 26, 2020).

¹²⁶ *See id.*, at §A.2.

¹²⁷ Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, pgs. 11-16, <https://www.osha.gov/Publications/OSHA3990.pdf> (last visited May 1, 2020).

diarrhea due to a known medical reason)?; (2) Have you had close contact in the last 14 days with an individual diagnosed with COVID-19?; (3) Have you traveled internationally or outside of the state in the last 14 days? Employers should follow CDC and state, or local health guidelines when choosing which questions to ask and how to instruct employees in response to “Yes” answers to any set of chosen screening questions. Depending on the risk level, it may be appropriate for an employer to refuse to allow an employee to come to work if the employee refuses to answer screening questions aimed at determining COVID-19 exposure.

Body temperature checks, another method of screening before entering the workplace, are a common recommendation among back-to-work guidance. It is important to note that such temperature checks are considered by OSHA, the EEOC and others to be medical examinations.¹²⁸ To ensure that temperature checks or other medical testing is compliant, however, employers should ensure that any testing is compliant with advice from the CDC and public health authorities for that type of workplace at that time.¹²⁹ The individual tasked with taking body temperatures should not be asked to evaluate subjective criteria for purposes of diagnosing the illness. Instead, the individual tasked with this assignment should simply be required to rely on the objective criteria provided by the thermometer to determine whether the employee’s temperature exceeds a certain temperature.¹³⁰ **Typically, this threshold temperature for a fever is identified as 100.4 degrees.**¹³¹

Based on various sources of industry and state guidance, the following are additional considerations to be addressed in implementing the screening of employee according to body temperature:

- Make sure the employee(s) charged with taking the temperature is trained for that task (i.e., how to read and disinfect the thermometer between employees)
- Properly protect the employee taking the temperature of employees from contracting the illness himself by equipping him with the necessary personal protective equipment (e.g., face shield, gown, gloves, mask, etc.)
- Make sure each employee’s temperature information is kept confidential just the same as with any other medical records.
- If an employee refuses to let his temperature be taken, then employer may consider sending the employee home without pay.
- Keep employees six feet apart while they are standing in line to have their temperatures taken.

¹²⁸ See *id.*, at § B, *et seq.*

¹²⁹ See *id.*, at §G “Return to Work.”

¹³⁰ See *id.*

¹³¹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTER FOR DISEASE CONTROL, “*Check and Record Every Day-Handout*,” at 7, https://www.cdc.gov/coronavirus/2019-ncov/downloads/COVID-19_CAREKit_ENG.pdf (last visited May 4, 2020).

- Use infrared digital thermometers instead of oral thermometers.
- Limit inquiries about conditions to symptoms of COVID 19 and do not inquire into other unrelated conditions.
- Pay employees for the time they spend standing in line to avoid possible FLSA liability.

Employers are required to treat this information confidentially.¹³² Nevertheless, employers may disclose the name of the employee to a public health agency if it learns an employee has COVID-19.¹³³ And while it is possible for some employers to conduct on-site testing, it is likely more realistic that employers should encourage their employees to seek testing on their own.

B) Employers may encourage employee hygiene and provide protective measures for use in the workplace.

Employers may make efforts to prevent the spread of COVID-19 at the workplace by establishing policies and practices aimed at better workplace hygiene. Policies limiting or staggering the use of common rooms, elevators and restrooms should center around social distancing guidelines. Employers may also consider requiring the use of, or in some instances providing, personal protective equipment (i.e., masks, gloves, face shields). Employers should consider educating employees on the proper usage, storage, and cleaning of personal protective equipment.

From a structural standpoint, having self-opening doors, and trash cans in high-traffic areas could result in less contact with objects on which the virus can live and spread to others. Employers may also consider the strategic placement of hand sanitizer stations or provide employees with hand sanitizer for their workspace. Maintaining regular housekeeping sanitizing practices for those workspaces used daily is encouraged. Regular housekeeping measures could be incorporated by employees both when they arrive and when they leave at the end of the workday. Contracted maintenance could act as an additional measure to come in and clean the workplace with methods and safe products designed to kill viruses, germs, and bacteria.

C) Employers should consider how to isolate or remove individuals at work that appear to have COVID-19 symptoms.

Employers should also have a plan in place on what to do in the event an employer detects an employee with an elevated temperature, a dry cough, or a sickly appearance, during the

¹³² *What you Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMP'T COMM'N (updated Apr. 23, 2020), https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

¹³³ *See id.*

workday. Most guidance suggests, depending on the employers' risk type, the employer take steps to remove or isolate the employee and determine who has been in contact with that employee while at work. Depending on the nature of the situation, the sick employee may be sent home or require an ambulance take them to the hospital. Those employees that were in contact with the sick employee should be notified of the possible exposure and asked to work from home or, depending on the situation, place them on leave for a period of 14 days or for a period of time prescribed by the CDC or local health official.

Exhibit 1: Helpful Links to Guidance Sources:

*General Guidelines:

Federal Government:

- Centers for Disease Control:
 - [President’s Guidelines](#)
 - [CDC Guidance for Businesses](#)
 - [What to do if you are sick](#)
- Department of Labor (“DOL”): [COVID-19 page](#)
 - Families First Coronavirus Response Act (FFCRA): [Summary](#)
 - Fair Labor Standards Act (FLSA): [COVID-Summary](#)
 - Family and Medical Leave Act (FMLA): [COVID-Summary](#)
- Occupational Safety and Health Administration (“OSHA”): [COVID-19 Page](#):
 - [Guidance on Preparing workplaces for COVID-19](#);
 - Interim Guidance for Inspections;
 - Relaxed Enforcement during COVID-19;
- Equal Employment Opportunity Commission: [COVID-19 Page](#)
 - [Pandemic Preparedness in the Workplace and the ADA](#);
 - April 9, 2020 & April 17, 2020 Guidance Re: [COVID and the ADA, Rehabilitation Act, and Other EEO Laws](#)

State Government (Texas):

* Governor Abbott:

[April 17, 2020 Executive Order -](#)

[April 12, 2020 Executive Order](#) – Extends March 13, 2020 Order—
“Disaster Declaration”

[March 30, 2020 Executive Order](#) – “Stay in Place”

[March 19, 2020 Executive Orders Summary](#): 4 Orders issued

[March 13, 2020 Executive Order](#)- “Disaster Declaration”

* Texas Workforce Commission:

* [Employer’s COVID-19 Information](#)

*Texas Department of Insurance:

* [COVID-19 Resource page](#)

* Texas Department of State Health Services:

[COVID-19 Resource Page](#)

April 20, 2020: [Guidance for Employers, Employees and Customers for Reopened Retail Services](#)

Local Government:

*[Dallas](#) Orders/Guidelines:

April 18, 2020: [Amended Stay Home Order](#)

Stay At Home Order [Extended to May 15, 2020](#)

*Houston Orders/ Guidelines:

March 24, 2020: [Harris County Stay at Home Order](#)

Industry Specific Guidelines:

- **Examples: Critical Workers:**
 - Licensed:
 - [Texas Medical Association](#): Covid-19 page
 - Unlicensed:
 - [National Association of Manufacturers](#): COVID-19 page

International Studies:

- [Cambridge Study](#): (more than 200 ways to reduce risk of spread)

Interim Guidance for Child Care Programs

The reopening of child care programs is crucial to helping parents and guardians return to work. Many States have closed schools for the academic year and, with summer quickly approaching, an increasing number of working parents may need to rely on these programs. CDC's [Interim Guidance for Administrators of US K-12 Schools and Child Care Programs](#) and supplemental [Guidance for Child Care Programs that Remain Open](#) provide recommendations for operating child care programs in low, moderate, and significant mitigation communities. In communities that are deemed significant mitigation areas by State and local authorities, child care programs should be closed. However, child care programs can choose to remain open to serve children of [essential workers](#), such as healthcare workers. All decisions about following these recommendations should be made locally, in collaboration with local health officials who can help determine levels of COVID-19 community transmission and the capacities of the local public health system and healthcare systems.

(Re) Opening

- **In all Phases:**
 - Establish and continue communication with local and State authorities to determine current mitigation levels in your community.
 - [Protect](#) and support staff, children, and their family members who are at [higher risk](#) for severe illness.
 - Provide staff from higher transmission areas (earlier Phase areas) telework and other options as feasible to eliminate travel to childcare programs in lower transmission (later Phase) areas and vice versa.
 - Follow CDC's supplemental [Guidance for Child Care Programs that Remain Open](#).
 - Ensure that any other community groups or organizations that use the child care facilities also follow this guidance: [Guidance for Child Care Programs that Remain Open](#).
- **Phase 1:** Restrict to children of [essential workers](#) in areas needing **significant mitigation**.
- **Phase 2:** Expand to all children with **enhanced** social distancing measures.
- **Phase 3:** Remain open for all children with social distancing measures.

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Teach and reinforce [washing hands](#) and covering coughs and sneezes among children and staff.
- Teach and reinforce use of [cloth face coverings](#) among all staff. Face coverings are most essential at times when social distancing is not possible. Staff should be frequently reminded not to touch the face covering and to [wash their hands](#) frequently. Information should be provided to all staff on [proper use, removal, and washing of cloth face coverings](#).
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), and tissues.
- Post signs on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).

Intensify cleaning, disinfection, and ventilation (Phases 1-3)

- [Clean, sanitize, and disinfect](#) frequently touched surfaces (for example, playground equipment, door handles, sink handles, drinking fountains) multiple times per day. and shared objects between use.
- Avoid use of items (for example, soft or plush toys) that are not easily cleaned, sanitized, or disinfected.
- Ensure [safe and correct application](#) of disinfectants and keep products away from children.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, and other methods. Do not open windows and doors if doing so poses a safety or health risk (for example, allowing pollens in or exacerbating asthma symptoms) to children using the facility.
- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing

- **Phase 1 and 2**
 - Ensure that classes include the same group of children each day, and that the same child care providers remain with the same group each day.
 - Restrict mixing between groups

- Cancel all field trips, inter-group events, and extracurricular activities (Phase 1)
- Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (Phase 2; Note: restricting attendance from those in Phase 1 areas).
- Restrict nonessential visitors, volunteers, and activities involving other groups at the same time.
- Space out seating and bedding (head-to-toe positioning) to six feet apart if possible.
- Close communal use spaces, such as game rooms or dining halls, if possible; if this is not possible, stagger use and disinfect in between uses.
- If a cafeteria or group dining room is typically used, serve meals in classrooms instead. Put each child's meal on a plate, to limit the use of shared serving utensils.
- Stagger arrival and drop-off times or put in place other protocols to limit direct contact with parents as much as possible.
- **Phase 3**
 - Consider keeping classes together to include the same group of children each day, and consider keeping the same child care providers with the same group each day.
 - Allow minimal mixing between groups. Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (Phase 1 or 2 areas).
 - Continue to space out seating and bedding (head-to-toe positioning) to six feet apart, if possible.
 - Consider keeping communal use spaces closed, such as game rooms, playgrounds, or dining halls, if possible; if this is not possible, stagger use and disinfect in between uses.
 - Consider continuing to plate each child's meal, to limit the use of shared serving utensils.
 - Consider limiting nonessential visitors, volunteers, and activities involving other groups. Restrict attendance of those from higher transmission areas (Phase 1 or 2 areas).
 - Consider staggering arrival and drop-off times or put in place other protocols to limit direct contact with parents as much as possible.

Limit sharing (Phases 1-3)

- Keep each child's belongings separated and in individually labeled storage containers, cubbies, or areas or taken home each day and cleaned.
- Ensure adequate supplies to minimize sharing of high touch materials to the extent possible (art supplies, equipment etc. assigned to a single camper) or limit use of supplies and equipment by one group of children at a time and clean and disinfect between use.
- If food is offered at any event, have pre-packaged boxes or bags for each attendee instead of a buffet or family-style meal. Avoid sharing of foods and utensils.
- Avoid sharing electronic devices, toys, books, other games, and learning aids.
- Prevent risk of transmitting COVID-19 by avoiding immediate contact (such as shaking or holding hands, hugging, or kissing), as well as by mediated contact.

Train all staff (Phases 1-3)

- Train all staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure social distancing is maintained.

Monitoring and Preparing

Check for signs and symptoms (Phases 1-3)

- Screen children upon arrival, if possible. Establish routine, daily health checks on arrival, such as temperature screening of both staff and children. Options for daily health check screenings for children are provided in CDC's supplemental [Guidance for Child Care Programs that Remain Open](#) and in CDC's [General Business FAQs](#) for screening staff.
- Implement health checks (e.g. [temperature checks and symptom screening](#)) screenings safely, and respectfully, and with measures in place to ensure confidentiality as well as in accordance with any applicable privacy laws or regulations. Confidentiality should be maintained.
- Employers and child care directors may use examples of screening methods in CDC's supplemental [Guidance for Child Care Programs that Remain Open](#) as a guide.
- Encourage staff to stay home if they are sick and encourage parents to keep sick children home.

Plan for when a staff member, child, or visitor becomes sick (Phases 1-3)

- Identify an area to separate anyone who exhibits COVID-like symptoms during hours of operation, and ensure that children are not left without adult supervision.
- Establish procedures for safely transporting anyone sick home or to a healthcare facility, as appropriate.
- Notify local health officials, staff, and families immediately of any possible case of COVID-19 while maintaining confidentiality as required by the Americans with Disabilities Act (ADA).
- Close off areas used by any sick person and do not use them until they have been cleaned. Wait 24 hours before you [clean or disinfect to reduce risk to individuals cleaning](#). If it is not possible to wait 24 hours, wait as long as possible. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children
- Advise sick staff members not to return until they have met CDC [criteria to discontinue home isolation](#).
- Inform anyone exposed to a person diagnosed with COVID-19 to stay home and self-monitor for symptoms, and to follow [CDC guidance](#) if symptoms develop.

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave policies and practices, if feasible.
- Monitor absenteeism to identify any trends in employee or child absences due to illness. This might indicate spread of COVID-19 or other illness. Have a roster of trained back-up staff in order to maintain sufficient staffing levels.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Employees should know who this person is and how to contact them.
- Create a communication system for staff and families for self-reporting of [symptoms and notification of exposures and closures](#).

Closing

Phases 1-3

- It is very important to check State and local health department notices daily about spread of COVID-19 in the area and adjust operations accordingly.
- Where a community is deemed a significant mitigation community, child care programs should close, except for those caring for the children of essential workers, such as the children of health care workers.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, programs may consider closing for a few days for cleaning and disinfection.

Interim Guidance for Schools and Day Camps

As communities consider reopening centers for learning, such as K-12 schools and summer day camps, CDC offers the following recommendations to keep communities safe while resuming peer-to-peer learning and providing crucial support for parents and guardians returning to work. These recommendations depend on community monitoring to prevent COVID-19 from spreading. Communities with low levels of COVID-19 spread and those with confidence that the incidence of infection is genuinely low (e.g. communities that remain in low transmission or that have entered Phase two or three) may put in place the practices described below as part of a phased reopening. All decisions about following these recommendations should be made in collaboration with local health officials and other State and local authorities who can help assess the current level of mitigation needed based on levels of COVID-19 community transmission and the capacities of the local public health and healthcare systems, among other relevant factors.

(Re) Opening

- **In all Phases:**
 - Establish and continue communication with local and State authorities to determine current mitigation levels in your community.
 - Protect and support staff and students who are at [higher risk for severe illness](#), such as providing options for telework and virtual learning.
 - Follow CDC's Guidance for [Schools and Childcare Programs](#).
 - Provide teachers and staff from higher transmission areas (earlier Phase areas) telework and other options as feasible to eliminate travel to schools and camps in lower transmission (later Phase) areas and vice versa.
 - Ensure external community organizations that use the facilities also follow this guidance.
- **Phase 1:** Schools that are currently closed, remain closed. E-learning or distance learning opportunities should be provided for all students. Ensure provision of student services such as school meal programs. Camps restrict to children of essential workers and for children who live in the local geographic area only.
- **Phase 2:** Remain open with **enhanced** social distancing measures and for children who live in the local geographic area only.
- **Phase 3:** Remain open with distancing measures. Restrict attendance to those from limited transmission areas (other Phase 3 areas) only.

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Teach and reinforce [washing hands](#) and covering coughs and sneezes among children and staff.
- Teach and reinforce use of [cloth face coverings](#) among all staff. Face coverings are most essential in times when physical distancing is not possible. Staff should be frequently reminded not to touch the face covering and to [wash their hands](#) frequently. Information should be provided to all staff on [proper use, removal, and washing of cloth face coverings](#).
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), tissues, and no-touch trash cans.
- Post signs on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).

Intensify cleaning, disinfection, and ventilation (Phases 1-3)

- [Clean and disinfect](#) frequently touched surfaces within the school and on school buses at least daily (for example, playground equipment, door handles, sink handles, drinking fountains) and shared objects (for example, toys, games, art supplies) between uses.
- To clean and disinfect school buses see guidance for [bus transit operators](#).
- Ensure [safe and correct application](#) of disinfectants and keep products away from children.
- Ensure ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods. Do not open windows and doors if they pose a safety or health risk (e.g., allowing pollens in or exacerbating asthma symptoms) risk to children using the facility.
- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing

- **Phase 1 and 2**
 - Ensure that student and staff groupings are as static as possible by having the same group of children stay with the same staff (all day for young children, and as much as possible for older children).
 - Restrict mixing between groups
 - Cancel all field trips, inter-group events, and extracurricular activities (Phase 1)
 - Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (Phase 2; Note: restricting attendance from those in Phase 1 areas).
 - Restrict nonessential visitors, volunteers, and activities involving other groups at the same time
 - Space seating/desks to at least six feet apart.
 - Close communal use spaces such as dining halls and playgrounds if possible; otherwise stagger use and disinfect in between use.
 - If a cafeteria or group dining room is typically used, serve meals in classrooms instead. Serve individually plated meals and hold activities in separate classrooms. Stagger arrival and drop-off times or locations, or put in place other protocols to limit direct contact with parents as much as possible.
 - Create social distance between children on school buses where possible.
- **Phase 3**
 - Consider keeping classes together to include the same group of children each day, and consider keeping the same child care providers with the same group each day.
 - Allow minimal mixing between groups. Limit gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas (Phase 1 or 2 areas).
 - Continue to space out seating and bedding (head-to-toe positioning) to six feet apart, if possible.
 - Consider keeping communal use spaces closed, such as game rooms or dining halls, if possible; if this is not possible, stagger use and disinfect in between uses.
 - Consider continuing to plate each child's meal, to limit the use of shared serving utensils.
 - Consider limiting nonessential visitors, volunteers, and activities involving other groups. Restrict attendance of those from higher transmission areas (Phase 1 or 2 areas).
 - Consider staggering arrival and drop-off times or locations, or put in place other protocols to limit direct contact with parents as much as possible. Continue to stagger arrival and drop-off times and plan to continue limiting direct contact with parents as much as possible

Limit sharing (Phases 1-3)

- Keep each child's belongings separated from others' and in individually labeled containers, cubbies, or areas.
- Ensure adequate supplies to minimize sharing of high touch materials to the extent possible (art supplies, equipment etc. assigned to a single camper) or limit use of supplies and equipment by one group of children at a time and clean and disinfect between use.
- If food is offered at any event, have pre-packaged boxes or bags for each attendee instead of a buffet or family-style meal. Avoid sharing of foods and utensils.
- Avoid sharing electronic devices, toys, books, and other games or learning aids.

Train all staff (Phases 1-3)

- Train all teachers and staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure that social distancing is maintained.

Monitoring and Preparing

Check for signs and symptoms (Phases 1-3)

- Implement screenings safely, respectfully, as well as in accordance with any applicable privacy laws or regulations. Confidentiality should be maintained.
- School and camp administrators may use examples of screening methods in CDC's supplemental [Guidance for Child Care Programs that Remain Open](#) as a guide for screening children and CDC's [General Business FAQs](#) for screening staff.
- Encourage staff to stay home if they are sick and encourage parents to keep sick children home.
- Encourage staff or children who are sick to stay at home.

Plan for when a staff, child, or visitor becomes sick (Phases 1-3)

- Work with school administrators, nurses, and other healthcare providers to identify an isolation room or area to separate anyone who exhibits COVID-like symptoms. School nurses and other healthcare providers should use [Standard and Transmission-Based Precautions](#) when caring for sick people. See: [What Healthcare Personnel Should Know About Caring for Patients with Confirmed or Possible COVID-19 Infection](#).
- Establish procedures for safely transporting anyone sick home or to a healthcare facility.
- Notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#).
- Close off areas used by a sick person and do not use before cleaning and disinfection. Wait 24 hours before you [clean and disinfect](#). If it is not possible to wait 24 hours is, wait as long as possible. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.
- Advise sick staff members not to return until they have met CDC [criteria to discontinue home isolation](#).
- Inform those exposed to a person with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance](#) if symptoms develop. Provide options for virtual learning.

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave policies and practices, if feasible.
- Monitor absenteeism and have a roster of trained back-up staff.
- Monitor health clinic traffic. School nurses and other healthcare providers play an important role in monitoring health clinic traffic and the types of illnesses and symptoms among students.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Employees should know who this person is and how to contact them.
- Create a communication systems for staff and families for self-reporting of [symptoms and notification of exposures and closures](#).

Closing

Phases 1-3

- Check [State](#) and [local](#) health department notices daily about transmission in the area and adjust operations accordingly
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, programs may consider closing for a short time (1-2 days) for cleaning and disinfection.

Interim Guidance for Communities of Faith

CDC offers the following recommendations to help communities of faith continue their mission while keeping their staff and congregations safe. This guidance is not intended to infringe on First Amendment rights as provided in the US Constitution. As all Americans are now aware, gatherings present a special risk for increasing spread of COVID-19 during this Public Health Emergency. The federal government may not prescribe standards for interactions of faith communities in houses of worship and no faith community should be asked to adopt any mitigation strategies that are more stringent than the mitigation strategies asked of similarly situated entities or activities in accordance with the Religious Freedom and Restoration Act (RFRA). CDC offers these suggestions that faith communities may consider and accept or reject, consistent with their own faith traditions, in the course of preparing their own plans to prevent the spread of COVID-19. In communities deemed by CDC's guidance to be significant mitigation areas, the risk to the larger community of continuing or resuming in-person gatherings should be taken into account and virtual options strongly considered. All decisions about following CDC's recommendations should be made in collaboration with [local health officials](#) and other State and local authorities who can help assess the current level of mitigation needed based levels of COVID-19 community transmission and the capacities of the local public health and healthcare systems. CDC offers the following suggestions for consideration to the extent consistent with each community's faith tradition:

(Re) Opening

- **In all Phases:**
 - Establish and continue communication with local and State authorities to determine current mitigation levels in your community.
 - Protect staff and congregants who are at [higher risk for severe illness](#) encouraging use of options to participate virtually, if possible.
 - Continue to provide congregants with spiritual and emotional care and counseling on a flexible or virtual basis, or refer them to other available resources.
 - Encourage other entities using the facilities to also follow this guidance.
 - If the facility offers child care or educational programming for children and youth, follow CDC guidance for such programs.
- **Phase 1:** Limit gatherings to those that can be held virtually (by remote viewing) for [vulnerable populations](#) and consider video streaming or drive-in options for services. Limit the size of in person gatherings in accordance with the guidance and directives of state and local authorities, and maintain social distancing.
- **Phase 2:** Consider continuing to hold gatherings virtually (by remote viewing) for [vulnerable populations](#) and video streaming or drive-in options for services. Limit the size of in person gatherings in accordance with the guidance and directives of state and local authorities, and maintain social distancing.
- **Phase 3:** Limit gatherings to those that can maintain social distancing and consider video streaming or drive-in options for [vulnerable populations](#).

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Encourage use of a [cloth face covering](#) at all gatherings and when in the building by everyone except children aged less than 2 years old. Not using a cloth face covering may also be appropriate at times for some individuals who have trouble breathing or need assistance to remove their mask.
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), tissues, and no-touch trash cans.
- Consider posting signs on how to [stop the spread](#) of COVID-19 and [promote everyday protective measures](#), such as [washing hands](#) and covering coughs and sneezes and [properly wearing a face covering](#).

Intensify cleaning, disinfection, and ventilation (Phases 1-3)

- [Clean and disinfect](#) frequently touched surfaces at least daily and shared objects between use.
- Avoid use of items that are not easily cleaned, sanitized, or disinfected.
- Ensure [safe and correct application](#) of disinfectants and keep them away from children.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, etc. Do not open windows and doors if they pose a safety risk to children using the facility.

- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Promote social distancing (Phases 1-3)

- Limit the size of gatherings in accordance with the guidance and directives of state and local authorities and in accordance with RFRA.
- Consider video streaming or drive-in options for services.
- If appropriate and possible, add additional services to weekly schedules to maintain social distancing at each service, ensuring that clergy, staff, and volunteers at the services ensure social distancing to lessen their risk.
- Consider holding services and gatherings in a large, well-ventilated area or outdoors, as circumstances and faith traditions allow.
- Space out seating for attendees who do not live in the same household to at least six feet apart when possible; consider limiting seating to alternate rows.
- Consider whether other gatherings may need to have attendance limited or be held virtually if social distancing is difficult, such as funerals, weddings, religious education classes, youth events, support groups and any other programming.
- Avoid or consider suspending use of a choir or musical ensemble during religious services or other programming, if appropriate within the faith tradition. Consider having a soloist or strictly limiting the number of choir members and keep at least six feet between individuals.
- Consider having clergy hold virtual visits (by phone or online) instead of in homes or at the hospital except for certain compassionate care situations, such as end of life.

Limit community sharing of worship materials and other items (Phases 1-3)

- Consider temporarily [limiting the sharing of frequently touched objects](#), such as worship aids, prayer books, hymnals, religious texts and other bulletins, books or other items passed or shared among congregants, and encourage congregants to bring their own, if possible, photocopying, or projecting prayers, songs, and texts using electronic means.
- Modify the methods used to receive financial contributions. Consider a stationary collection box, the mail, or electronic methods of collecting regular financial contributions instead of shared collection trays or baskets.
- Consider mitigating the risk of transmitting COVID-19 posed by close physical contact among members of the faith community during religious rituals as well as mediated contact through frequently touched objects, consistent with the community's faith traditions and in consultation with local health officials as needed.
- If food is offered at any event, have pre-packaged boxes or bags for each attendee whenever possible, instead of a buffet or family-style meal.
- Avoid food offerings when it is being shared from common dishes.

Train all staff (Phases 1-3)

- Train all clergy and staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure that [social distancing](#) is maintained.

Monitoring and Preparing

Check for [signs and symptoms](#) (Phases 1-3)

- Encourage staff or congregants who are sick to stay at home.

Plan for when a staff member or congregant becomes sick (Phases 1-3)

- Identify an area to separate anyone who exhibits COVID-like symptoms during hours of operation, and ensure that children are not left without adult supervision.
- Establish procedures for safely transporting anyone who becomes sick at the facility to their home or a healthcare facility.
- Notify local health officials if a person diagnosed with COVID-19 has been in the facility and communicate with staff and congregants about potential exposure while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\) or other applicable laws in accordance with religious practices](#).
- Inform those with exposure to a person diagnosed with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance](#) if symptoms develop.

- Close off areas used by the sick person and do not use the area until it after cleaning and disinfection; wait 24 hours to clean and disinfect to reduce risk to individuals cleaning. If it is not possible to wait 24 hours, wait as long as possible before cleaning and disinfecting. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.
- Advise sick staff and congregants not to return to the facility until they have met CDC's [criteria to discontinue home isolation](#).

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave and related flexible policies and practices for staff (e.g., allow work from home, if feasible).
- Monitor absenteeism and create a roster of trained back-up staff. Designate a staff person to be responsible for responding to COVID-19 concerns. Employees should know who this person is and how to contact them.
- Communicate clearly with staff and congregants about actions being taken to protect their health.

Closing

Phases 1-3

- Check [state](#) and [local](#) health department notices daily about transmission in the community and adjust operations accordingly.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, it is strongly suggested to close, then properly clean and disinfect the area and the building where the individual was present.

Interim Guidance for Employers with Vulnerable Workers

As workplaces consider re-opening it is particularly important to keep in mind that some workers are at [higher risk for severe illness from COVID-19](#). These vulnerable workers include individuals over age 65 and those with underlying medical conditions. Such underlying conditions include, but are not limited to, chronic lung disease, moderate to severe asthma, hypertension, severe heart conditions, weakened immunity, severe obesity, diabetes, liver disease, and chronic kidney disease that requires dialysis. Vulnerable workers should be encouraged to self-identify, and employers should avoid making unnecessary medical inquiries. Employers should take particular care to reduce vulnerable workers' risk of exposure to COVID-19, while making sure to be compliant with relevant ADA and ADEA regulations. First and foremost this means following [CDC's](#) and the [Occupational Safety and Health Administration \(OSHA\)](#) guidance for reducing workplace exposure for all employees. All decisions about following these recommendations should be made in collaboration with [local health officials](#) and other State and local authorities who can help assess the current level of mitigation needed based on levels of COVID-19 community transmission and the capacities of the local public health and healthcare systems. In addition, the guidance offered below applies to workplaces generally; specific industries may require more stringent safety precautions. Finally, there may be essential workplaces in which the recommended mitigation strategies are not feasible.

(Re)Opening

- **In all Phases:**
 - Establish and continue communication with State and local authorities to determine current mitigation levels in your community.
 - Protect employees at [higher risk](#) for severe illness by supporting and encouraging options to telework.
 - Consider offering [vulnerable workers](#) duties that minimize their contact with customers and other employees (e.g., restocking shelves rather than working as a cashier), if agreed to by the worker.
 - Ensure that any other entities sharing the same work space also follow this guidance.
 - Provide employees from higher transmission areas (earlier Phase areas) telework and other options as feasible to eliminate travel to workplaces in lower transmission (later Phase) areas and vice versa.
- **Phase 1:** Reopen only if business can ensure **strict** social distancing, proper cleaning and disinfecting requirements, and protection of their workers and customers; vulnerable workers are recommended to shelter in place.
- **Phase 2:** Reopen only if business can ensure moderate social distancing, proper cleaning and disinfecting requirements, and protection of their workers and customers; vulnerable workers are recommended to shelter in place.
- **Phase 3:** Reopen only if business can ensure limited social distancing, proper cleaning and disinfecting requirements, and protection of their workers and customers.

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Enforce [hand washing](#), covering coughs and sneezes, and using [cloth face coverings](#) when around others where feasible; however, certain industries may require face shields.
- Ensure that adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol, tissues, and no-touch trash cans.
- Post signs on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).

Intensify cleaning, disinfection and ventilation (Phases 1-3)

- Clean, sanitize, and disinfect frequently touched surfaces at least daily and shared objects between use.
- Avoid use or sharing of items that are not easily cleaned, sanitized, or disinfected.
- Ensure safe and correct application of disinfectants.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods. Do not open windows and doors if doing so poses a safety risk to individuals and employees using the workspace.
- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing (Phases 1-3)

- Limit service to drive-throughs, curbside take out, or delivery options, if possible (Phase 1).

- Consider installing physical barriers, such as sneeze guards and partitions, and changing workspace layouts to ensure all individuals remain at least six feet apart.
- Close communal spaces, such as break rooms, if possible (Phase 1) or stagger use and clean and disinfect in between uses (Phases 2 & 3).
- Encourage telework for as many employees as possible.
- Consider rotating or staggering shifts to limit the number of employees in the workplace at the same time
- Replace in-person meetings with video- or tele-conference calls whenever possible.
- Cancel all group events, gatherings, or meetings of more than 10 people (Phase 1), of more than 50 people (Phase 2), and any events where social distancing of at least 6 feet cannot be maintained between participants (all Phases)
- Restrict (Phase 1) or consider limiting (Phase 2) any nonessential visitors, volunteers, and activities involving external groups or organizations.
- Limit any sharing of foods, tools, equipment, or supplies.

Limit travel and modify commuting practices (Phases 1-3)

- Cancel all non-essential travel (Phase 1) and consider resuming non-essential travel in accordance with state and local regulations and guidance (Phases 2 & 3)
- Ask employees who use public transportation to consider using teleworking to promote social distancing
- Train all managers and staff in the above safety actions. Consider conducting the training virtually, or if in-person, ensure that social distancing is maintained.

Monitoring and Preparing

Checking for signs and symptoms (Phases 1-3)

- Consider conducting routine, daily health checks (e.g., temperature and symptom screening) of all employees.
- If implementing health checks, conduct them safely and respectfully, and in accordance with any applicable privacy laws and regulations. Confidentiality should be respected. Employers may use examples of screening methods in CDC's [General Business FAQs](#) as a guide.
- and in accordance with any applicable privacy laws and regulations. Confidentiality should be respected.
- Encourage employees who are sick to stay at home.

Plan for when an employee becomes sick (Phases 1-3)

- Employees with symptoms (fever, cough, or shortness of breath) at work should immediately be separated and sent home.
- Establish procedures for safely transporting anyone sick to their home or to a healthcare facility.
- Notify local health officials, staff, and customers (if possible) immediately of a possible case while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\): other information on civil rights protections for workers related to COVID-19 is available here.](#)
- Close off areas used by the sick person until after cleaning and disinfection Wait 24 hours to clean and disinfect. If it is not possible to wait 24 hours, wait as long as possible before cleaning and disinfecting. Ensure safe and correct application of disinfectants and keep disinfectant products away from children.
- Inform those who have had close contact with a person with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance](#) if symptoms develop.

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave and other flexible policies and practices, such as telework, if feasible.
- Monitor absenteeism of employees and create a roster of trained back-up staff.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Employees should know who this person is and how to contact them.
- Create and test communication systems for employees for self-reporting and notification of exposures and closures.

Closing

Phases 1-3

- Check State and local health department notices daily about transmission in the area and adjust operations accordingly.
- Be prepared to close for a few days if there is a case of COVID-19 in the workplace or for longer if cases increase in the local area.

Interim Guidance for Restaurants and Bars

This guidance provides considerations for businesses in the food service industry (e.g., restaurants and bars) on ways to maintain healthy business operations and a safe and healthy work environment for employees, while reducing the risk of COVID-19 spread for both employees and customers. Employers should follow applicable [Occupational Safety and Health Administration \(OSHA\)](#) and [CDC](#) guidance for businesses to plan and respond to COVID-19. All decisions about implementing these recommendations should be made in collaboration with local health officials and other State and local authorities who can help assess the current level of mitigation needed based on levels of COVID-19 community transmission and the capacities of the local public health and healthcare systems.

(Re)Opening

- **In all Phases:**
 - Establish and continue communication with State and local authorities to determine current mitigation levels in your community.
 - Consider assigning [vulnerable workers](#) duties that minimize their contact with customers and other employees (e.g., managing inventory rather than working as a cashier, managing administrative needs through telework).
 - Provide employees from higher transmission areas (earlier Phase areas) telework and other options as feasible to eliminate travel to workplaces in lower transmission (later Phase) areas and vice versa.
- **Phase 1:** Bars remain closed and restaurant service should remain limited to drive-through, curbside take out, or delivery with **strict** social distancing.
- **Phase 2:** Bars may open with limited capacity; restaurants may open dining rooms with limited seating capacity that allows for social distancing.
- **Phase 3:** Bars may open with increased standing room occupancy that allows for social distancing; restaurants may operate while maintaining social distancing.

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Enforce [hand washing](#), covering coughs and sneezes, and use of a [cloth face covering](#) by employees when near other employees and customers.
- Ensure adequate supplies to support healthy hygiene practices for both employees and customers including soap, hand sanitizer with at least 60 percent alcohol (perhaps on every table, if supplies allow), and tissues. Post signs on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).

Intensify cleaning, disinfection and ventilation (Phases 1-3)

- [Clean and disinfect](#) frequently touched surfaces (for example, door handles, work stations, cash registers) at least daily and shared objects (for example, payment terminals, tables, countertops/bars, receipt trays, condiment holders) between use. Use [products that meet EPA's criteria for use against SARS-CoV-2](#) and that are appropriate for the surface. Prior to wiping the surface, allow the disinfectant to sit for the necessary contact time recommended by the manufacturer. Train staff on proper cleaning procedures to ensure safe and correct application of disinfectants.
- Make available individual disinfectant wipes in bathrooms, and post reminders not to flush these wipes but to dispose of them in the trash.
- Wash, rinse, and sanitize food contact surfaces, food preparation surfaces, and beverage equipment after use.
- Avoid using or sharing items such as menus, condiments, and any other food. Instead, use disposable or digital menus, single serving condiments, and no-touch trash cans and doors.
- Use touchless payment options as much as possible, when available. Ask customers and employees to exchange cash or card payments by placing on a receipt tray or on the counter rather than by hand. Wipe any pens, counters, or hard surfaces between use or customer.
- Use disposable food service items (utensils, dishes). If disposable items are not feasible, ensure that all non-disposable food service items are handled with gloves and washed with dish soap and hot water or in a dishwasher. Employees should [wash their hands](#) after removing their gloves or after directly handling used food service items
- Use gloves when removing garbage bags or handling and disposing of trash and [wash hands afterwards](#)
- Avoid using food and beverage implements brought in by customers.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, other methods. Do not open windows and doors if doing so poses a safety risk to employees, children, or customers.

- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing

Phase 1

- Limit service to drive-through, delivery, or curbside pick-up options only.
- Provide physical guides, such as tape on floors or sidewalks and to ensure that customers remain at least six feet apart in lines or ask customers to wait in their cars or away from the establishment while waiting to pick up food. Post signs to inform customers of food pickup protocols.
- Consider installing physical barriers, such as sneeze guards and partitions at cash registers, or other food pickup areas where maintaining physical distance of six feet is difficult.
- Restrict the number of employees in shared spaces, including kitchens, break rooms, and offices to maintain at least a six-foot distance between people.
- Rotate or stagger shifts to limit the number of employees in the workplace at the same time.

Phase 2

- Provide drive-through, delivery, or curbside pick-up options and prioritize outdoor seating as much as possible.
- Reduce occupancy and limit the size of parties dining in together to sizes that ensure that all customer parties remain at least six feet apart (e.g., all tables and bar stools six feet apart, marking tables/stools that are not for use) in order to protect staff and other guests.
- Provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that customers remain at least six feet apart in lines or waiting for seating.
- Ask customers to wait in their cars or away from the establishment while waiting to be seated. If possible, use phone app technology to alert patrons when their table is ready to avoid touching and use of “buzzers.”
- Consider options for dine-in customers to order ahead of time to limit the amount of time spent in the establishment
- Avoid offering any self-serve food or drink options, such as buffets, salad bars, and drink stations.
- Install physical barriers, such as sneeze guards and partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.
- Limit the number of employees in shared spaces, including kitchens, break rooms, and offices to maintain at least a six-foot distance between people.

Phase 3

- Provide drive-through, delivery, or curbside pick-up options and prioritize outdoor seating as much as possible.
- Consider reducing occupancy and limiting the size of parties dining in together to sizes that ensure that all customer parties remain at least six feet apart (e.g., all tables and bar stools six feet apart, marking tables/stools that are not for use) in order to protect staff and other guests.
- Provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that customers remain at least six feet apart in lines or waiting for seating.
- If possible, use phone app technology to alert patrons when their table is ready to avoid touching and use of “buzzers.”
- Consider options for dine-in customers to order ahead of time to limit the amount of time spent in the establishment.
- Avoid offering any self-serve food or drink options, such as buffets, salad bars, and drink stations.
- Install physical barriers, such as sneeze guards and partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.

Train all staff (Phases 1-3)

- Train all employees in the above safety actions while maintaining [social distancing](#) and [use of face coverings](#) during training.

Monitoring and Preparing

Checking for [signs and symptoms](#) (Phases 1-3)

- Consider conducting daily health checks (e.g., [temperature and symptom screening](#)) of employees.
- If implementing health checks, conduct them safely and respectfully, and in accordance with any applicable privacy laws and regulations. Confidentiality should be respected. Employers may use examples of screening methods in CDC's [General Business FAQs](#) as a guide.
- Encourage staff who are sick to stay at home

Plan for when an employee becomes sick (Phases 1-3)

- Employees with [symptoms](#) of COVID-19 (fever, cough, or shortness of breath) at work should immediately be sent home.
- Inform those who have had [close contact](#) with a person diagnosed with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance if symptoms develop](#).
- Establish procedures for safely transporting anyone sick to their home or to a healthcare facility.
- Notify local health officials, staff, and customers (if possible) immediately of any possible case of COVID-19 while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\) or other applicable laws](#).
- Close off areas used by a sick person and do not re-enter them until after cleaning and disinfection. . Wait 24 hours before [cleaning and disinfecting](#). If it is not possible to wait 24 hours, wait as long as possible. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.
- Advise sick staff members not to return until they have met CDC's [criteria to discontinue home isolation](#).

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave and other flexible policies and practices, if feasible.
- Monitor absenteeism of employees and create a roster of trained back-up staff. Designate a staff person to be responsible for responding to COVID-19 concerns. Employees and customers should know who this person is and how to contact them.
- Create and test communications for employees and customers for self-reporting of symptoms and notification of [exposures and closures](#).

Closing

Phases 1-3

- Check State and local health department notices about transmission in the area daily and adjust operations accordingly.
- Be prepared to close for a few days if there is a case of COVID-19 in the establishment and for longer if cases increase in the local area.

Interim Guidance for Mass Transit Administrators

Mass transit is critical for many Americans to commute to and from work and to access essential goods and services. This guidance provides considerations for mass transit administrators to maintain healthy business operations and a safe and healthy work environment for employees, while reducing the risk of COVID-19 spread for both employees and passengers. Administrators should follow applicable guidance from the [CDC](#) and [Occupational Safety and Health Administration \(OSHA\)](#) for reducing workplace exposure. All decisions about following these recommendations should be made in collaboration with local health officials and other State and local authorities who can help assess the current level of mitigation needed based on levels of COVID-19 community transmission and the capacities of the local public health and healthcare systems.

Resuming Full Service

- **In all Phases:**
 - Restrict routes between areas experiencing different levels of transmission (between areas in different Phases).
 - Provide employees from higher transmission areas (earlier Phase areas) telework and other options as feasible to eliminate travel to workplaces in lower transmission (later Phase) areas and vice versa.
 - Establish and continue communication with State and local health officials [to determine current mitigation levels in the communities served](#). Decisions about how and when to resume full service should be based on these levels.
 - Follow CDC's guidance on what [bus transit operators](#), [rail transit operators](#), [transit maintenance workers](#), and [transit station workers](#) need to know about COVID-19.
 - Consider assigning [vulnerable workers duties that minimize their contact with](#) passengers and other employees
 - Conduct worksite hazard assessments to identify COVID-19 prevention strategies, such as appropriate use of cloth face coverings or personal protective equipment (PPE), and follow the prevention strategies.
- **Phase 1:** Restrict ridership to [essential critical infrastructure workers](#) in areas needing significant mitigation and maintain **strict** social distancing as much as possible.
- **Phase 2:** Maintain social distancing between transit riders and employees as much as possible.
- **Phase 3:** Encourage social distancing as much as possible.

Safety Actions

Promote [healthy hygiene practices](#) (Phases 1-3)

- Enforce [everyday preventive actions](#) such as [hand washing](#), covering coughs and sneezes, and use of a [cloth face covering](#) by employees when around others, as safety permits. Provide employees with appropriate equipment as necessary and as available. Communicate with the public about the importance of hygiene, covering coughs and sneezes, and using cloth face coverings while using mass transportations, including posting signs in transit stations and vehicles on how to [stop the spread](#) of COVID-19, [properly wash hands](#), [promote everyday protective measures](#), and [properly wear a face covering](#).
- Ensure adequate supplies to support [healthy hygiene behaviors for](#) transit operators, employees, and passengers in stations, including soap, hand sanitizer with at least 60 percent alcohol, tissues, and no-touch trash cans.

Intensify [cleaning, disinfection](#) and ventilation (Phases 1-3)

- [Clean, sanitize, and disinfect](#) frequently touched surfaces (for example, kiosks, digital interfaces such as touchscreens and fingerprint scanners, ticket machines, turnstiles, handrails, restroom surfaces, elevator buttons) at least daily.
- [Clean, sanitize, and disinfect](#) the operator area between operator shifts.
- Use touchless payment and no-touch trash cans and doors as much as possible, when available. Ask customers and employees to exchange cash or credit cards by placing in a receipt tray or on the counter rather than by hand and wipe any pens, counters, or hard surfaces between each use or customer.
- Avoid using or sharing items that are not easily cleaned, sanitized, or disinfected, such as disposable transit maps.
- Ensure safe and correct application of disinfectants.
- Use gloves when removing garbage bags or handling and disposing of trash and [wash hands afterwards](#).
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods. Do not open windows and doors if they pose a safety risk to passengers or employees, or other vulnerable individuals.
- [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

Ensure social distancing

- **Phase 1 and Phase 2**
 - Institute measures to physically separate or create distance of at least six feet between all occupants. This may include:
 - Asking bus passengers to enter and exit the bus through rear doors, while allowing exceptions for persons with disabilities.
 - Closing every other row of seats.
 - Reducing maximum occupancy of buses and individual subway and train cars and increasing service on crowded routes as appropriate.
 - Provide physical guides to ensure that customers remain at least six feet apart while on vehicles and at transit stations and stops. For example, floor decals, colored tape, or signs to indicate where passengers should not sit or stand can be used to guide passengers.
 - Install physical barriers, such as sneeze guards and partitions at staffed kiosks and on transit vehicles to the extent practicable.
 - Close communal spaces, such as break rooms, if possible; otherwise, stagger use and clean and disinfect in between uses.
- **Phase 3**
 - Consider or continue instituting measures to physically separate or create distance between occupants.
 - Provide physical guides to help customers maintain physical distance while on vehicles and at transit stations and stops. For example, floor decals, colored tape, or signs to indicate where passengers should not sit or stand can be used to guide passengers.
 - Install or maintain physical barriers, such as sneeze guards and partitions at staffed kiosks and on transit vehicles to the extent practicable.

Train employees (Phases 1-3)

- Train all employees in the above safety actions while maintaining social distancing during training.

Monitoring and Preparing

Checking for signs and symptoms (Phases 1-3)

- Consider conducting daily health checks (e.g., temperature screening) of all employees.
- If implementing health checks, conduct them safely and respectfully and in accordance with any applicable privacy laws and regulations. Confidentiality should be respected. Employers may use examples of screening methods in CDC's [General Business FAQs](#) as a guide.
- Encourage staff who are sick to stay at home.

Plan for when an employee becomes sick (Phases 1-3)

- Employees with symptoms of COVID-19 (fever, cough, or shortness of breath) at work should immediately be sent home.
- Inform those who have had close contact with a person diagnosed with COVID-19 to stay home and self-monitor for symptoms, and follow [CDC guidance](#) if symptoms develop.
- Establish procedures for safely transporting anyone who is sick to their home or to a healthcare facility.
- Notify local health officials, staff, and customers (if possible) immediately of any possible case of COVID-19 while maintaining confidentiality as required by the [ADA](#).
- Close off areas used by a sick person and do not use until after cleaning and disinfection. Wait 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait as long as possible. Ensure safe and correct application of disinfectants and keep disinfectant products away from children. Affected vehicles can be used immediately after cleaning and disinfection.
- Advise sick staff members not to return until they have met CDC's criteria to discontinue home isolation.
- Implement safety practices for critical infrastructure workers who may have had exposure to a person with suspected or confirmed COVID-19.

Maintain healthy operations (Phases 1-3)

- Implement flexible sick leave and other flexible policies and practices, if feasible.

- Monitor absenteeism of employees and create a roster of trained back-up staff.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Employees and customers should know who this person is and how to contact them.
- Create and test communication systems for employees and customers for self-reporting of [symptoms and notification of exposures and closures](#).

Reducing Service

Phases 1-3

- Check State and local health department notices daily about transmission level and mitigation level in the local area and adjust operations accordingly.
- Be prepared to reduce services if the community mitigation level increases in the local area.
- Continue communication with staff and the public about decision making.



Coronavirus Disease 2019 (COVID-19)

Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

Plan, Prepare and Respond to Coronavirus Disease 2019

Older adults and people who have severe underlying chronic medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.

[Find more information here.](#)

Summary of Changes to the Guidance:


Below are changes as of March 21, 2020

- Updated cleaning and disinfection guidance
- Updated best practices for conducting social distancing
- Updated strategies and recommendations that can be implemented now to respond to COVID-19

CDC Industry Guidance

- [Resources for Airlines](#)
- [Resources for the Ship Industry](#)

OSHA/HHS Guidance

- [Guidance on Preparing Workplaces for COVID-19](#) 



Purpose




This interim guidance is based on what is currently known [about the coronavirus disease 2019 \(COVID-19\)](#). COVID-19 is a respiratory illness that can spread from person to person. The outbreak first started in China, but the virus continues to spread internationally and in [the United States](#). The Centers for Disease Control and Prevention (CDC) will update this interim guidance as additional information becomes available.

The following interim guidance may help prevent workplace exposures to COVID-19, in non-healthcare settings. (CDC has provided separate guidance for [healthcare settings](#).) This guidance also provides planning considerations for community spread of COVID-19.

To prevent stigma and discrimination in the workplace, use only the guidance described below to determine risk of COVID-19 infection. Do not make determinations of risk based on race or country of origin and be sure to maintain confidentiality of people with confirmed coronavirus infection. There is much more to learn about the transmissibility, severity, and other features of COVID-19 and investigations are ongoing. Updates are available on [CDC's web page](#).

Preparing Workplaces for a COVID-19 Outbreak

Businesses and employers can prevent and [slow the spread of COVID-19](#). Employers should plan to respond in a flexible way to varying levels of disease transmission in the community and be prepared to refine their business response plans as needed. According to the Occupational Safety and Health Administration (OSHA), most American workers will likely experience low (caution) or medium exposure risk levels at their job or place of employment (see [OSHA guidance for employers](#)   for more information about job risk classifications).

Businesses are strongly encouraged to coordinate with [state](#)  and [local](#)  health officials so timely and accurate information can guide appropriate responses. Local conditions will influence the decisions that public health officials make regarding community-level strategies. CDC has [guidance for mitigation strategies](#)  according to the level of community transmission or impact of COVID-19.

All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in their workplace. This may include activities in one or more of the following areas:




- a. reduce transmission among employees,
- b. maintain healthy business operations, and
- c. maintain a healthy work environment.

Reduce Transmission Among Employees

Actively encourage sick employees to stay home:

- Employees who have [symptoms](#) (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home.
- Sick employees should follow [CDC-recommended steps](#). Employees should not return to work until the criteria to [discontinue home isolation](#) are met, in consultation with healthcare providers and state and local health departments.
- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow [CDC recommended precautions](#).

Identify where and how workers might be exposed to COVID-19 at work:

- See [OSHA COVID-19](#)  webpage for more information on how to protect workers from potential exposures and [guidance for employers](#)  , including steps to take for jobs according to exposure risk.
- Be aware that some employees may be at [higher risk for serious illness](#), such as [older adults](#) and those with chronic medical conditions. Consider minimizing face-to-face contact between these employees or assign work tasks that allow them to maintain a distance of six feet from other workers, customers and visitors, or to telework if possible.

Separate sick employees:

- Employees who appear to have [symptoms](#) (i.e., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day should immediately be separated from other employees, customers, and visitors and sent home.

- If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). The employer should instruct fellow employees about how to proceed based on the CDC [Public Health Recommendations for Community-Related Exposure](#).

Educate employees about how they can reduce the spread of COVID-19:

- Employees can [take steps to protect themselves](#) at work and at home. Older people and people with serious chronic medical conditions are at [higher risk for complications](#).
- Follow the policies and procedures of your employer related to illness, cleaning and disinfecting, and work meetings and travel.
- Stay home if you are sick, except to get medical care. Learn [what to do if you are sick](#).
- Inform your supervisor if you have a sick family member at home with COVID-19. Learn what to do [if someone in your house is sick](#).
- Wash your hands often with soap and water for at least 20 seconds. Use hand sanitizer with at least 60% alcohol if soap and water are not available.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow. Throw used tissues in the trash and immediately wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer containing at least 60% alcohol. Learn more about [coughing and sneezing](#) etiquette on the CDC website.
- Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection. To disinfect, use [products that meet EPA's criteria for use against SARS-CoV-2](#) [↗](#), the cause of COVID-19, and are appropriate for the surface.
- Avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.
- Practice social distancing by avoiding [large gatherings](#) and maintaining distance (approximately 6 feet or 2 meters) from others when possible.

Maintain Healthy Business Operations

Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace.

Implement flexible sick leave and supportive policies and practices.

- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies.
- Maintain flexible policies that permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures. Additional flexibilities might include giving advances on future sick leave and allowing employees to donate sick leave to each other.
- Employers that do not currently offer sick leave to some or all of their employees may want to draft non-punitive "emergency sick leave" policies.

- Employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or to return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.
- Review human resources policies to make sure that policies and practices are consistent with public health recommendations and are consistent with existing state and federal workplace laws (for more information on employer responsibilities, visit the [Department of Labor's](#) and the [Equal Employment Opportunity Commission's](#) websites).
- Connect employees to employee assistance program (EAP) resources (if available) and community resources as needed. Employees may need additional social, behavioral, and other services, for example, to cope with the death of a loved one.

Assess your essential functions and the reliance that others and the community have on your services or products.

- Be prepared to change your business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize existing customers, or temporarily suspend some of your operations if needed).
- Identify alternate supply chains for critical goods and services. Some goods and services may be in higher demand or unavailable.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Talk with business partners about your response plans. Share best practices with other businesses in your communities (especially those in your supply chain), chambers of commerce, and associations to improve community response efforts.

Determine how you will operate if absenteeism spikes from increases in sick employees, those who stay home to care for sick family members, and those who must stay home to watch their children if dismissed from [childcare programs and K-12 schools](#).

- Plan to monitor and respond to absenteeism at the workplace.
- Implement plans to continue your essential business functions in case you experience higher than usual absenteeism.
- Prepare to institute flexible workplace and leave policies.
- Cross-train employees to perform essential functions so the workplace can operate even if key employees are absent.

Consider establishing policies and practices for social distancing. Social distancing should be implemented if recommended by state and local health authorities. Social distancing means avoiding [large gatherings](#) and maintaining distance (approximately 6 feet or 2 meters) from others when possible (e.g., breakrooms and cafeterias). Strategies that business could use include:

- Implementing flexible worksites (e.g., telework)
- Implementing flexible work hours (e.g., staggered shifts)
- Increasing physical space between employees at the worksite
- Increasing physical space between employees and customers (e.g., drive through, partitions)

- Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events)
- Downsizing operations
- Delivering services remotely (e.g. phone, video, or web)
- Delivering products through curbside pick-up or delivery

Employers with more than one business location are encouraged to provide local managers with the authority to take appropriate actions outlined in their COVID-19 response plan based on local conditions.

Maintain a healthy work environment



Consider improving the engineering controls using the building ventilation system. This may include some or all of the following activities:


- Increase ventilation rates.
- Increase the percentage of outdoor air that circulates into the system.

Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors:

- Provide tissues and no-touch disposal receptacles.
- Provide soap and water in the workplace. If soap and water are not readily available, use alcohol-based hand sanitizer that is at least 60% alcohol. If hands are visibly dirty, soap and water should be chosen over hand sanitizer. Ensure that adequate supplies are maintained.
- Place hand sanitizers in multiple locations to encourage hand hygiene.
- Place posters that encourage [hand hygiene](#) to [help stop the spread](#) at the entrance to your workplace and in other workplace areas where they are likely to be seen.
- Discourage handshaking – encourage the use of other noncontact methods of greeting.
- Direct employees to visit the [coughing and sneezing etiquette](#) and [clean hands webpage](#) for more information.

Perform routine environmental cleaning and disinfection:

- Routinely clean and disinfect all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails, and doorknobs.
 - If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
 - For disinfection, most common EPA-registered household disinfectants should be effective. A list of products that are EPA-approved for use against the virus that causes COVID-19 is available [here](#)   . Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.

- Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks, other work tools and equipment) can be wiped down by employees before each use. To disinfect, use [products that meet EPA's criteria for use against SARS-Cov-2](#) , the cause of COVID-19, and are appropriate for the surface.

Perform enhanced cleaning and disinfection after persons suspected/confirmed to have COVID-19 have been in the facility:

- If a sick employee is suspected or confirmed to have COVID-19, follow the [CDC cleaning and disinfection recommendations](#).

Advise employees before traveling to take additional preparations:

- Check the [CDC's Traveler's Health Notices](#) for the latest guidance and recommendations for each country to which you will travel. Specific travel information for travelers going to and returning from countries with travel advisories, and information for aircrew, can be found on the [CDC website](#).
- Advise employees to [check themselves for symptoms](#) of COVID-19 (i.e., fever, cough, or shortness of breath) before starting travel and notify their supervisor and stay home if they are sick.
- Ensure employees who become sick while traveling or on temporary assignment understand that they should notify their supervisor and promptly call a healthcare provider for advice if needed.
- If outside the United States, sick employees should follow company policy for obtaining medical care or contact a healthcare provider or overseas medical assistance company to assist them with finding an appropriate healthcare provider in that country. A U.S. consular officer can help locate healthcare services. However, U.S. embassies, consulates, and military facilities do not have the legal authority, capability, and resources to evacuate or give medicines, vaccines, or medical care to private U.S. citizens overseas.


Take care when attending [meetings and gatherings](#):

- Carefully consider whether travel is necessary.
- Consider using videoconferencing or teleconferencing when possible for work-related meetings and gatherings.
- Consider canceling, adjusting, or postponing large work-related meetings or gatherings that can only occur in-person.
- When videoconferencing or teleconferencing is not possible, hold meetings in open, well-ventilated spaces.




Resources for more information:

CDC Guidance

- [COVID-19 Website](#)
- [What You Need to Know About COVID-19](#) 
- [What to Do If You Are Sick With COVID-19](#) 
- [What Workers and Employers Can Do to Manage Workplace Fatigue during COVID-19](#)
- [Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 \(COVID-19\) Exposure in Travel-associated or Community Settings](#)

- [Health Alert Network](#)
- [Travelers' Health Website](#)
- [National Institute for Occupational Safety and Health's Small Business International Travel Resource Travel Planner](#) 
- [Coronavirus Disease 2019 Recommendations for Ships](#)
- [Coronavirus Disease 2019 Recommendations for Airlines and Airline crew](#)
- [Persons at Higher Risk of Severe Illness](#)
- [Employees: How to Cope with Job Stress and Build Resilience During the COVID-19 Pandemic](#)

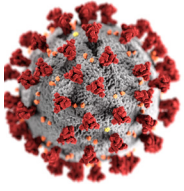
Other Federal Agencies and Partners

- [OSHA COVID-19 Website](#) 
- [OSHA Guidance for Preparing Workplaces for COVID-19](#)  

Page last reviewed: May 5, 2020

Content source: National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases

What you should know about COVID-19 to protect yourself and others



Know about COVID-19

- Coronavirus (COVID-19) is an illness caused by a virus that can spread from person to person.
- The virus that causes COVID-19 is a new coronavirus that has spread throughout the world.
- COVID-19 symptoms can range from mild (or no symptoms) to severe illness.



Practice social distancing

- Buy groceries and medicine, go to the doctor, and complete banking activities online when possible.
- If you must go in person, stay at least 6 feet away from others and disinfect items you must touch.
- Get deliveries and takeout, and limit in-person contact as much as possible.



Know how COVID-19 is spread

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.



Prevent the spread of COVID-19 if you are sick

- Stay home if you are sick, except to get medical care.
- Avoid public transportation, ride-sharing, or taxis.
- Separate yourself from other people and pets in your home.
- There is no specific treatment for COVID-19, but you can seek medical care to help relieve your symptoms.
- If you need medical attention, call ahead.



Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.
- Clean and disinfect frequently touched surfaces.
- Wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol.



Know your risk for severe illness

- Everyone is at risk of getting COVID-19.
- Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe illness.





Guidance on Preparing Workplaces for COVID-19



Occupational Safety and Health Act of 1970

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health.”

This guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The Occupational Safety and Health Act requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act’s General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

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Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

OSHA 3990-03 2020



U.S. Department of Labor

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Introduction

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the SARS-CoV-2 virus. It has spread from China to many other countries around the world, including the United States. Depending on the severity of COVID-19's international impacts, outbreak conditions—including those rising to the level of a pandemic—can affect all aspects of daily life, including travel, trade, tourism, food supplies, and financial markets.

To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers, and the public, it is important for all employers to plan now for COVID-19. For employers who have already planned for influenza pandemics, planning for COVID-19 may involve updating plans to address the specific exposure risks, sources of exposure, routes of transmission, and other unique characteristics of SARS-CoV-2 (i.e., compared to pandemic influenza viruses). Employers who have not prepared for pandemic events should prepare themselves and their workers as far in advance as possible of potentially worsening outbreak conditions. Lack of continuity planning can result in a cascade of failures as employers attempt to address challenges of COVID-19 with insufficient resources and workers who might not be adequately trained for jobs they may have to perform under pandemic conditions.

The Occupational Safety and Health Administration (OSHA) developed this COVID-19 planning guidance based on traditional infection prevention and industrial hygiene practices. It focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

This guidance is intended for planning purposes. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.

The U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) provides the latest information about COVID-19 and the global outbreak: www.cdc.gov/coronavirus/2019-ncov.

The OSHA COVID-19 webpage offers information specifically for workers and employers: www.osha.gov/covid-19.

This guidance is advisory in nature and informational in content. It is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA standards or the *Occupational Safety and Health Act* (OSH Act). Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved State Plan. In addition, the OSH Act's General Duty Clause, [Section 5\(a\)\(1\)](#), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. OSHA-approved State Plans may have standards, regulations and enforcement policies that are different from, but at least as effective as, OSHA's. Check with your [State Plan](#), as applicable, for more information.

About COVID-19

Symptoms of COVID-19

Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as *asymptomatic cases*, have experienced no symptoms at all.

According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure.

How COVID-19 Spreads

Although the first human cases of COVID-19 likely resulted from exposure to infected animals, infected people can spread SARS-CoV-2 to other people.

The virus is thought to spread mainly from person-to-person, including:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

It may be possible that a person can get COVID-19 by touching a surface or object that has SARS-CoV-2 on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads.

People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads.

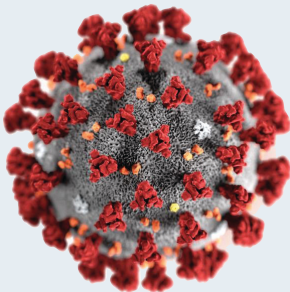
Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur.

The CDC website provides the latest information about COVID-19 transmission: www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

How a COVID-19 Outbreak Could Affect Workplaces

Similar to influenza viruses, SARS-CoV-2, the virus that causes COVID-19, has the potential to cause extensive outbreaks. Under conditions associated with widespread person-to-person spread, multiple areas of the United States and other countries may see impacts at the same time. In the absence of a vaccine, an outbreak may also be an extended event. As a result, workplaces may experience:

- **Absenteeism.** Workers could be absent because they are sick; are caregivers for sick family members; are caregivers for children if schools or day care centers are closed; have at-risk people at home, such as immunocompromised family members; or are afraid to come to work because of fear of possible exposure.
- **Change in patterns of commerce.** Consumer demand for items related to infection prevention (e.g., respirators) is likely to increase significantly, while consumer interest in other goods may decline. Consumers may also change shopping patterns because of a COVID-19 outbreak. Consumers may try to shop at off-peak hours to reduce contact with other people, show increased interest in home delivery services, or prefer other options, such as drive-through service, to reduce person-to-person contact.
- **Interrupted supply/delivery.** Shipments of items from geographic areas severely affected by COVID-19 may be delayed or cancelled with or without notification.



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by the 2019 Novel Coronavirus (2019-nCoV). Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically. This virus was identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China.

Photo: CDC / Alissa Eckert & Dan Higgins

Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2

This section describes basic steps that every employer can take to reduce the risk of worker exposure to SARS-CoV-2, the virus that causes COVID-19, in their workplace. Later sections of this guidance—including those focusing on jobs classified as having low, medium, high, and very high exposure risks—provide specific recommendations for employers and workers within specific risk categories.

Develop an Infectious Disease Preparedness and Response Plan

If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

Stay abreast of guidance from federal, state, local, tribal, and/or territorial health agencies, and consider how to incorporate those recommendations and resources into workplace-specific plans.

Plans should consider and address the level(s) of risk associated with various worksites and job tasks workers perform at those sites. Such considerations may include:

- Where, how, and to what sources of SARS-CoV-2 might workers be exposed, including:
 - The general public, customers, and coworkers; and
 - Sick individuals or those at particularly high risk of infection (e.g., international travelers who have visited locations with widespread sustained (ongoing) COVID-19 transmission, healthcare workers who have had unprotected exposures to people known to have, or suspected of having, COVID-19).
- Non-occupational risk factors at home and in community settings.

- Workers' individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).
- Controls necessary to address those risks.

Follow federal and state, local, tribal, and/or territorial (SLTT) recommendations regarding development of contingency plans for situations that may arise as a result of outbreaks, such as:

- Increased rates of worker absenteeism.
- The need for social distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing measures.
- Options for conducting essential operations with a reduced workforce, including cross-training workers across different jobs in order to continue operations or deliver surge services.
- Interrupted supply chains or delayed deliveries.

Plans should also consider and address the other steps that employers can take to reduce the risk of worker exposure to SARS-CoV-2 in their workplace, described in the sections below.

Prepare to Implement Basic Infection Prevention Measures

For most employers, protecting workers will depend on emphasizing basic infection prevention measures. As appropriate, all employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough [hand washing](#), including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to [stay home if they are sick](#).
- Encourage [respiratory etiquette](#), including covering coughs and sneezes.

- Provide customers and the public with tissues and trash receptacles.
- Employers should explore whether they can establish [policies and practices](#), such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others if state and local health authorities recommend the use of social distancing strategies.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE).

Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate

- Prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite.
- Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
- Employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19.

- Where appropriate, employers should develop policies and procedures for immediately isolating people who have **signs and/or symptoms** of COVID-19, and train workers to implement them. Move potentially infectious people to a location away from workers, customers, and other visitors. Although most worksites do not have specific isolation rooms, designated areas with closable doors may serve as isolation rooms until potentially sick people can be removed from the worksite.
- Take steps to limit spread of the respiratory secretions of a person who may have COVID-19. Provide a face mask, if feasible and available, and ask the person to wear it, if tolerated. Note: A face mask (also called a surgical mask, procedure mask, or other similar terms) on a patient or other sick person should not be confused with PPE for a worker; the mask acts to contain potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth).
- If possible, isolate people suspected of having COVID-19 separately from those with confirmed cases of the virus to prevent further transmission—particularly in worksites where medical screening, triage, or healthcare activities occur, using either permanent (e.g., wall/different room) or temporary barrier (e.g., plastic sheeting).
- Restrict the number of personnel entering isolation areas.
- Protect workers in close contact with (i.e., within 6 feet of) a sick person or who have prolonged/repeated contact with such persons by using additional engineering and administrative controls, safe work practices, and PPE. Workers whose activities involve close or prolonged/repeated contact with sick people are addressed further in later sections covering workplaces classified at medium and very high or high exposure risk.

Develop, Implement, and Communicate about Workplace Flexibilities and Protections

- Actively encourage sick employees to stay home.
- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- Maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.
- Recognize that workers with ill family members may need to stay home to care for them. See CDC's Interim Guidance for Preventing the Spread of COVID-19 in Homes and Residential Communities: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html.
- Be aware of workers' concerns about pay, leave, safety, health, and other issues that may arise during infectious disease outbreaks. Provide adequate, usable, and appropriate training, education, and informational material about business-essential job functions and worker health and safety, including proper hygiene practices and the use of any workplace controls (including PPE). Informed workers who feel safe at work are less likely to be unnecessarily absent.

- Work with insurance companies (e.g., those providing employee health benefits) and state and local health agencies to provide information to workers and customers about medical care in the event of a COVID-19 outbreak.

Implement Workplace Controls

Occupational safety and health professionals use a framework called the “hierarchy of controls” to select ways of controlling workplace hazards. In other words, the best way to control a hazard is to systematically remove it from the workplace, rather than relying on workers to reduce their exposure. During a COVID-19 outbreak, when it may not be possible to eliminate the hazard, the most effective protection measures are (listed from most effective to least effective): engineering controls, administrative controls, safe work practices (a type of administrative control), and PPE. There are advantages and disadvantages to each type of control measure when considering the ease of implementation, effectiveness, and cost. In most cases, a combination of control measures will be necessary to protect workers from exposure to SARS-CoV-2.

In addition to the types of workplace controls discussed below, CDC guidance for businesses provides employers and workers with recommended SARS-CoV-2 infection prevention strategies to implement in workplaces: www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html.

Engineering Controls

Engineering controls involve isolating employees from work-related hazards. In workplaces where they are appropriate, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Engineering controls for SARS-CoV-2 include:

- Installing high-efficiency air filters.
- Increasing ventilation rates in the work environment.
- Installing physical barriers, such as clear plastic sneeze guards.

- Installing a drive-through window for customer service.
- Specialized negative pressure ventilation in some settings, such as for aerosol generating procedures (e.g., airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).

Administrative Controls

Administrative controls require action by the worker or employer. Typically, administrative controls are changes in work policy or procedures to reduce or minimize exposure to a hazard.

Examples of administrative controls for SARS-CoV-2 include:

- Encouraging sick workers to stay at home.
- Minimizing contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications and implementing telework if feasible.
- Establishing alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week.
- Discontinuing nonessential travel to locations with ongoing COVID-19 outbreaks. Regularly check CDC travel warning levels at: www.cdc.gov/coronavirus/2019-ncov/travelers.
- Developing emergency communications plans, including a forum for answering workers' concerns and internet-based communications, if feasible.
- Providing workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette and care of PPE).
- Training workers who need to use protecting clothing and equipment how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers.

Safe Work Practices

Safe work practices are types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices for SARS-CoV-2 include:

- Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs. Workers should always wash hands when they are visibly soiled and after removing any PPE.
- Post handwashing signs in restrooms.

Personal Protective Equipment (PPE)

While engineering and administrative controls are considered more effective in minimizing exposure to SARS-CoV-2, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies.

Examples of PPE include: gloves, goggles, face shields, face masks, and respiratory protection, when appropriate. During an outbreak of an infectious disease, such as COVID-19, recommendations for PPE specific to occupations or job tasks may change depending on geographic location, updated risk assessments for workers, and information on PPE effectiveness in preventing the spread of COVID-19. Employers should check the [OSHA](#) and [CDC](#) websites regularly for updates about recommended PPE.

All types of PPE must be:

- Selected based upon the hazard to the worker.
- Properly fitted and periodically refitted, as applicable (e.g., respirators).

- Consistently and properly worn when required.
- Regularly inspected, maintained, and replaced, as necessary.
- Properly removed, cleaned, and stored or disposed of, as applicable, to avoid contamination of self, others, or the environment.

Employers are obligated to provide their workers with PPE needed to keep them safe while performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2 while working and job tasks that may lead to exposure.

Workers, including those who work within 6 feet of patients known to be, or suspected of being, infected with SARS-CoV-2 and those performing aerosol-generating procedures, need to use respirators:

- National Institute for Occupational Safety and Health (NIOSH)-approved, N95 filtering facepiece respirators or better must be used in the context of a comprehensive, written respiratory protection program that includes fit-testing, training, and medical exams. See OSHA's Respiratory Protection standard, 29 CFR 1910.134 at www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- When disposable N95 filtering facepiece respirators are not available, consider using other respirators that provide greater protection and improve worker comfort. Other types of acceptable respirators include: a R/P95, N/R/P99, or N/R/P100 filtering facepiece respirator; an air-purifying elastomeric (e.g., half-face or full-face) respirator with appropriate filters or cartridges; powered air purifying respirator (PAPR) with high-efficiency particulate arrestance (HEPA) filter; or supplied air respirator (SAR). See CDC/NIOSH guidance for optimizing respirator supplies at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Consider using PAPRs or SARs, which are more protective than filtering facepiece respirators, for any work operations or procedures likely to generate aerosols (e.g., cough induction procedures, some dental procedures, invasive specimen collection, blowing out pipettes, shaking or vortexing tubes, filling a syringe, centrifugation).
- Use a surgical N95 respirator when both respiratory protection and resistance to blood and body fluids is needed.
- Face shields may also be worn on top of a respirator to prevent bulk contamination of the respirator. Certain respirator designs with forward protrusions (duckbill style) may be difficult to properly wear under a face shield. Ensure that the face shield does not prevent airflow through the respirator.
- Consider factors such as function, fit, ability to decontaminate, disposal, and cost. OSHA’s Respiratory Protection eTool provides basic information on respirators such as medical requirements, maintenance and care, fit testing, written respiratory protection programs, and voluntary use of respirators, which employers may also find beneficial in training workers at: www.osha.gov/SLTC/etools/respiratory. Also see NIOSH respirator guidance at: www.cdc.gov/niosh/topics/respirators.
- Respirator training should address selection, use (including donning and doffing), proper disposal or disinfection, inspection for damage, maintenance, and the limitations of respiratory protection equipment. Learn more at: www.osha.gov/SLTC/respiratoryprotection.
- The appropriate form of respirator will depend on the type of exposure and on the transmission pattern of COVID-19. See the NIOSH “Respirator Selection Logic” at: www.cdc.gov/niosh/docs/2005-100/default.html or the OSHA “Respiratory Protection eTool” at www.osha.gov/SLTC/etools/respiratory.

Follow Existing OSHA Standards

Existing OSHA standards may apply to protecting workers from exposure to and infection with SARS-CoV-2.

While there is no specific OSHA standard covering SARS-CoV-2 exposure, some OSHA requirements may apply to preventing occupational exposure to SARS-CoV-2. Among the most relevant are:

- OSHA’s Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection. See: www.osha.gov/laws-regs/regulations/standardnumber/1910#1910_Subpart_I.
 - When respirators are necessary to protect workers or where employers require respirator use, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” See: www.osha.gov/laws-regs/oshact/completeoshact.

OSHA’s Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit SARS-CoV-2.

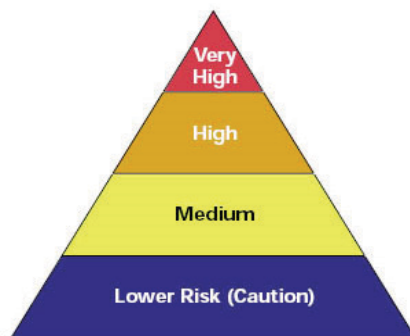
However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard. See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030.

The OSHA COVID-19 webpage provides additional information about OSHA standards and requirements, including requirements in states that operate their own OSHA-approved State Plans, recordkeeping requirements and injury/illness recording criteria, and applications of standards related to sanitation and communication of risks related to hazardous chemicals that may be in common sanitizers and sterilizers. See: www.osha.gov/SLTC/covid-19/standards.html.

Classifying Worker Exposure to SARS-CoV-2

Worker risk of occupational exposure to SARS-CoV-2, the virus that causes COVID-19, during an outbreak may vary from very high to high, medium, or lower (caution) risk. The level of risk depends in part on the industry type, need for contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2, or requirement for repeated or extended contact with persons known to be, or suspected of being, infected with SARS-CoV-2. To help employers determine appropriate precautions, OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk. The Occupational Risk Pyramid shows the four exposure risk levels in the shape of a pyramid to represent probable distribution of risk. Most American workers will likely fall in the lower exposure risk (caution) or medium exposure risk levels.

**Occupational Risk Pyramid
for COVID-19**



Very High Exposure Risk

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures.

Workers in this category include:

- Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).
- Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

High Exposure Risk

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category include:

- Healthcare delivery and support staff (e.g., doctors, nurses, and other hospital staff who must enter patients' rooms) exposed to known or suspected COVID-19 patients. (Note: when such workers perform aerosol-generating procedures, their exposure risk level becomes *very high*.)
- Medical transport workers (e.g., ambulance vehicle operators) moving known or suspected COVID-19 patients in enclosed vehicles.
- Mortuary workers involved in preparing (e.g., for burial or cremation) the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

Medium Exposure Risk

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from international locations with widespread COVID-19 transmission. In areas where there *is* ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, some high-volume retail settings).

Lower Exposure Risk (Caution)

Lower exposure risk (caution) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

Jobs Classified at Lower Exposure Risk (Caution): What to Do to Protect Workers

For workers who do not have frequent contact with the general public, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

Additional engineering controls are not recommended for workers in the lower exposure risk group. Employers should ensure that engineering controls, if any, used to protect workers from other job hazards continue to function as intended.

Administrative Controls

- Monitor public health communications about COVID-19 recommendations and ensure that workers have access to that information. Frequently check the CDC COVID-19 website: www.cdc.gov/coronavirus/2019-ncov.
- Collaborate with workers to designate effective means of communicating important COVID-19 information.

Personal Protective Equipment

Additional PPE is not recommended for workers in the lower exposure risk group. Workers should continue to use the PPE, if any, that they would ordinarily use for other job tasks.

Jobs Classified at Medium Exposure Risk: What to Do to Protect Workers

In workplaces where workers have medium exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Install physical barriers, such as clear plastic sneeze guards, where feasible.

Administrative Controls

- Consider offering face masks to ill employees and customers to contain respiratory secretions until they are able leave the workplace (i.e., for medical evaluation/care or to return home). In the event of a shortage of masks, a reusable face shield that can be decontaminated may be an acceptable method of protecting against droplet transmission. See CDC/NIOSH guidance for optimizing respirator supplies, which discusses the use of surgical masks, at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Keep customers informed about symptoms of COVID-19 and ask sick customers to minimize contact with workers until healthy again, such as by posting signs about COVID-19 in stores where sick customers may visit (e.g., pharmacies) or including COVID-19 information in automated messages sent when prescriptions are ready for pick up.
- Where appropriate, limit customers' and the public's access to the worksite, or restrict access to only certain workplace areas.
- Consider strategies to minimize face-to-face contact (e.g., drive-through windows, phone-based communication, telework).
- Communicate the availability of medical screening or other worker health resources (e.g., on-site nurse; telemedicine services).

Personal Protective Equipment (PPE)

When selecting PPE, consider factors such as function, fit, decontamination ability, disposal, and cost. Sometimes, when PPE will have to be used repeatedly for a long period of time, a more expensive and durable type of PPE may be less expensive overall than disposable PPE.

Each employer should select the combination of PPE that protects workers specific to their workplace.

Workers with medium exposure risk may need to wear some combination of gloves, a gown, a face mask, and/or a face shield or goggles. PPE ensembles for workers in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures workers have on the job.

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures that involve aerosol generation or specimen collection/handling.

In rare situations that would require workers in this risk category to use respirators, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

Jobs Classified at High or Very High Exposure Risk: What to Do to Protect Workers

In workplaces where workers have high or very high exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Ensure appropriate air-handling systems are installed and maintained in healthcare facilities. See “Guidelines for Environmental Infection Control in Healthcare Facilities” for more recommendations on air handling systems at: www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm.
- CDC recommends that patients with known or suspected COVID-19 (i.e., person under investigation) should be placed in an airborne infection isolation room (AIIR), if available.
- Use isolation rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19. For postmortem activities, use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death. See the CDC postmortem guidance at: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html. OSHA also provides guidance for postmortem activities on its COVID-19 webpage: www.osha.gov/covid-19.

- Use special precautions associated with Biosafety Level 3 when handling specimens from known or suspected COVID-19 patients. For more information about biosafety levels, consult the U.S. Department of Health and Human Services (HHS) “Biosafety in Microbiological and Biomedical Laboratories” at www.cdc.gov/biosafety/publications/bmbl5.

Administrative Controls

If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected individuals and for protecting workers.

- Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
- Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
- Consider offering enhanced medical monitoring of workers during COVID-19 outbreaks.
- Provide all workers with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training.
- Ensure that psychological and behavioral support is available to address employee stress.

Safe Work Practices

- Provide emergency responders and other essential personnel who may be exposed while working away from fixed facilities with alcohol-based hand rubs containing at least 60% alcohol for decontamination in the field.

Personal Protective Equipment (PPE)

Most workers at high or very high exposure risk likely need to wear gloves, a gown, a face shield or goggles, and either a face mask or a respirator, depending on their job tasks and exposure risks.

Those who work closely with (either in contact with or within 6 feet of) patients known to be, or suspected of being, infected with SARS-CoV-2, the virus that causes COVID-19, should wear respirators. In these instances, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, also visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

PPE ensembles may vary, especially for workers in laboratories or morgue/mortuary facilities who may need additional protection against blood, body fluids, chemicals, and other materials to which they may be exposed. Additional PPE may include medical/surgical gowns, fluid-resistant coveralls, aprons, or other disposable or reusable protective clothing. Gowns should be large enough to cover the areas requiring protection. OSHA may also provide updated guidance for PPE use on its website: www.osha.gov/covid-19.

NOTE: Workers who dispose of PPE and other infectious waste must also be trained and provided with appropriate PPE.

The CDC webpage “Healthcare-associated Infections” (www.cdc.gov/hai) provides additional information on infection control in healthcare facilities.

Workers Living Abroad or Travelling Internationally

Employers with workers living abroad or traveling on international business should consult the “Business Travelers” section of the OSHA COVID-19 webpage (www.osha.gov/covid-19), which also provides links to the latest:

- CDC travel warnings: www.cdc.gov/coronavirus/2019-ncov/travelers
- U.S. Department of State (DOS) travel advisories: travel.state.gov

Employers should communicate to workers that the DOS cannot provide Americans traveling or living abroad with medications or supplies, even in the event of a COVID-19 outbreak.

As COVID-19 outbreak conditions change, travel into or out of a country may not be possible, safe, or medically advisable. It is also likely that governments will respond to a COVID-19 outbreak by imposing public health measures that restrict domestic and international movement, further limiting the U.S. government's ability to assist Americans in these countries. It is important that employers and workers plan appropriately, as it is possible that these measures will be implemented very quickly in the event of worsening outbreak conditions in certain areas.

More information on COVID-19 planning for workers living and traveling abroad can be found at: www.cdc.gov/travel.

For More Information

Federal, state, and local government agencies are the best source of information in the event of an infectious disease outbreak, such as COVID-19. Staying informed about the latest developments and recommendations is critical, since specific guidance may change based upon evolving outbreak situations.

Below are several recommended websites to access the most current and accurate information:

- Occupational Safety and Health Administration website: www.osha.gov
- Centers for Disease Control and Prevention website: www.cdc.gov
- National Institute for Occupational Safety and Health website: www.cdc.gov/niosh

OSHA Assistance, Services, and Programs

OSHA has a great deal of information to assist employers in complying with their responsibilities under OSHA law. Several OSHA programs and services can help employers identify and correct job hazards, as well as improve their safety and health program.

Establishing a Safety and Health Program

Safety and health programs are systems that can substantially reduce the number and severity of workplace injuries and illnesses, while reducing costs to employers.

Visit www.osha.gov/safetymanagement for more information.

Compliance Assistance Specialists

OSHA compliance assistance specialists can provide information to employers and workers about OSHA standards, short educational programs on specific hazards or OSHA rights and responsibilities, and information on additional compliance assistance resources.

Visit www.osha.gov/complianceassistance/cas or call 1-800-321-OSHA (6742) to contact your local OSHA office.

No-Cost On-Site Safety and Health Consultation Services for Small Business

OSHA's On-Site Consultation Program offers no-cost and confidential advice to small and medium-sized businesses in all states, with priority given to high-hazard worksites. On-Site consultation services are separate from enforcement and do not result in penalties or citations.

For more information or to find the local On-Site Consultation office in your state, visit www.osha.gov/consultation, or call 1-800-321-OSHA (6742).

Under the consultation program, certain exemplary employers may request participation in OSHA's **Safety and Health Achievement Recognition Program (SHARP)**. Worksites that receive SHARP recognition are exempt from programmed inspections during the period that the SHARP certification is valid.

Cooperative Programs

OSHA offers cooperative programs under which businesses, labor groups and other organizations can work cooperatively with OSHA. To find out more about any of the following programs, visit www.osha.gov/cooperativeprograms.

Strategic Partnerships and Alliances

The OSHA Strategic Partnerships (OSP) provide the opportunity for OSHA to partner with employers, workers, professional or trade associations, labor organizations, and/or other interested stakeholders. Through the Alliance Program, OSHA works with groups to develop compliance assistance tools and resources to share with workers and employers, and educate workers and employers about their rights and responsibilities.

Voluntary Protection Programs (VPP)

The VPP recognize employers and workers in the private sector and federal agencies who have implemented effective safety and health programs and maintain injury and illness rates below the national average for their respective industries.

Occupational Safety and Health Training

OSHA partners with 26 OSHA Training Institute Education Centers at 37 locations throughout the United States to deliver courses on OSHA standards and occupational safety and health topics to thousands of students a year. For more information on training courses, visit www.osha.gov/otiec.

OSHA Educational Materials

OSHA has many types of educational materials to assist employers and workers in finding and preventing workplace hazards.

All OSHA publications are free at www.osha.gov/publications and www.osha.gov/ebooks. You can also call 1-800-321-OSHA (6742) to order publications.

Employers and safety and health professionals can sign-up for *QuickTakes*, OSHA's free, twice-monthly online newsletter with the latest news about OSHA initiatives and products to assist in finding and preventing workplace hazards. To sign up, visit www.osha.gov/quicktakes.

OSHA Regional Offices

Region 1

Boston Regional Office
(CT*, ME*, MA, NH, RI, VT*)
JFK Federal Building
25 New Sudbury Street, Room E340
Boston, MA 02203
(617) 565-9860 (617) 565-9827 Fax

Region 2

New York Regional Office
(NJ*, NY*, PR*, VI*)
Federal Building
201 Varick Street, Room 670
New York, NY 10014
(212) 337-2378 (212) 337-2371 Fax

Region 3

Philadelphia Regional Office
(DE, DC, MD*, PA, VA*, WV)
The Curtis Center
170 S. Independence Mall West, Suite 740 West
Philadelphia, PA 19106-3309
(215) 861-4900 (215) 861-4904 Fax

Region 4

Atlanta Regional Office
(AL, FL, GA, KY*, MS, NC*, SC*, TN*)
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303
(678) 237-0400 (678) 237-0447 Fax

Region 5

Chicago Regional Office
(IL*, IN*, MI*, MN*, OH, WI)
John C. Kluczynski Federal Building
230 South Dearborn Street, Room 3244
Chicago, IL 60604
(312) 353-2220 (312) 353-7774 Fax

Region 6

Dallas Regional Office
(AR, LA, NM*, OK, TX)
A. Maceo Smith Federal Building
525 Griffin Street, Room 602
Dallas, TX 75202
(972) 850-4145 (972) 850-4149 Fax

Region 7

Kansas City Regional Office
(IA*, KS, MO, NE)
Two Pershing Square Building
2300 Main Street, Suite 1010
Kansas City, MO 64108-2416
(816) 283-8745 (816) 283-0547 Fax

Region 8

Denver Regional Office
(CO, MT, ND, SD, UT*, WY*)
Cesar Chavez Memorial Building
1244 Speer Boulevard, Suite 551
Denver, CO 80204
(720) 264-6550 (720) 264-6585 Fax

Region 9

San Francisco Regional Office
(AZ*, CA*, HI*, NV*, and American Samoa,
Guam and the Northern Mariana Islands)
San Francisco Federal Building
90 7th Street, Suite 2650
San Francisco, CA 94103
(415) 625-2547 (415) 625-2534 Fax

Region 10

Seattle Regional Office
(AK*, ID, OR*, WA*)
Fifth & Yesler Tower
300 Fifth Avenue, Suite 1280
Seattle, WA 98104
(206) 757-6700 (206) 757-6705 Fax

*These states and territories operate their own OSHA-approved job safety and health plans and cover state and local government employees as well as private sector employees. The Connecticut, Illinois, Maine, New Jersey, New York and Virgin Islands programs cover public employees only. (Private sector workers in these states are covered by Federal OSHA). States with approved programs must have standards that are identical to, or at least as effective as, the Federal OSHA standards.

Note: To get contact information for OSHA area offices, OSHA-approved state plans and OSHA consultation projects, please visit us online at www.osha.gov or call us at 1-800-321-OSHA (6742).

How to Contact OSHA

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

**For assistance, contact us.
We are OSHA. We can help.**





U.S. Department of Labor

For more information:

OSHA[®] **Occupational
Safety and Health
Administration**

www.osha.gov (800) 321-OSHA (6742)



What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on May 5, 2020

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act.
- The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC or state/local public health authorities](#) about steps employers should take regarding COVID-19. **Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.**
- The EEOC has provided guidance (a publication entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#)), consistent with these workplace protections and rules, that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. This pandemic publication, which was written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the

workplace during a pandemic. It has been updated as of March 19, 2020 to address examples and information regarding COVID-19; **the new 2020 information appears in bold.**

- 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:

A. Disability-Related Inquiries and Medical Exams

A.1. 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?

(3/17/20)

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.

A.2. When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as [examples](#), or may it ask about any symptoms identified by public health authorities as associated with COVID-19? *(4/9/20)*

As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask employees to determine whether they would pose a direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

A.3. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic? *(3/17/20)*

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.

A.4. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19? (3/17/20)

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.

A.5. When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty? (3/17/20)

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic 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.

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? (4/23/20)

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a

particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

B. Confidentiality of Medical Information

B.1. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information? (4/9/20)

The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this [confidential information](#). An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

B.2. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results? (4/9/20)

Yes. The employer needs to maintain the confidentiality of this information.

B.3. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19? (4/9/20)

Yes.

B.4. May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19? (4/9/20)

Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

C. Hiring and Onboarding

C.1. If an employer is hiring, may it screen applicants for symptoms of COVID-19?

(3/18/20)

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.

C.2. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam? *(3/18/20)*

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.

C.3. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it? *(3/18/20)*

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

C.4. 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? *(3/18/20)*

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

C.5. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19? *(4/9/20)*

No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a

job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

D. Reasonable Accommodation

In discussing accommodation requests, employers and employees may find it helpful to consult the Job Accommodation Network (JAN) website for types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

D.1. If a job may only be performed at the workplace, are there [reasonable accommodations](#) for individuals with disabilities, absent [undue hardship](#), that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19? (4/9/20)

There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

Low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per [CDC guidance](#) or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

D.2. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, may he now be entitled to a reasonable accommodation (absent undue hardship)? (4/9/20)

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss with the employee how the requested accommodation would assist him and enable him to keep working; explore alternative accommodations that may effectively meet his needs; and request medical documentation if needed.

D.3. In a workplace where all employees are required to telework during this time, should an employer postpone discussing a request from an employee with a disability for an accommodation that will not be needed until he returns to the workplace when mandatory telework ends? (4/9/20)

Not necessarily. An employer may give higher priority to discussing requests for reasonable accommodations that are needed while teleworking, but the employer may begin discussing this request now. The employer may be able to acquire all the information it needs to make a decision. If a reasonable accommodation is granted, the employer also may be able to make some arrangements for the accommodation in advance.

D.4. What if an employee was already receiving a reasonable accommodation prior to the COVID-19 pandemic and now requests an additional or altered accommodation? (4/9/20)

An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship. For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he [uses in the workplace](#). The employer [may discuss](#) with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

D.5. During the pandemic, if an employee requests an accommodation for a medical condition either at home or in the workplace, may an employer still request information to determine if the condition is a disability? (4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee has a "disability" as defined by the ADA

(a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment).

D.6. During the pandemic, may an employer still engage in the interactive process and request information from an employee about why an accommodation is needed?

(4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request [medical documentation](#) to determine whether the employee's disability necessitates an accommodation, either the one he requested or any other. [Possible questions](#) for the employee may include: (1) how the disability creates a limitation, (2) how the requested accommodation will effectively address the limitation, (3) whether another form of accommodation could effectively address the issue, and (4) how a proposed accommodation will enable the employee to continue performing the "essential functions" of his position (that is, the fundamental job duties).

D.7. If there is some urgency to providing an accommodation, or the employer has limited time available to discuss the request during the pandemic, may an employer provide a temporary accommodation? *(4/17/20)*

Yes. Given the pandemic, some employers may choose to forgo or shorten the exchange of information between an employer and employee known as the "interactive process" (discussed in D.5 and D.6., above) and grant the request. In addition, when government restrictions change, or are partially or fully lifted, the need for accommodations may also change. This may result in more requests for short-term accommodations. Employers may wish to adapt the interactive process - and devise end dates for the accommodation - to suit changing circumstances based on public health directives.

Whatever the reason for shortening or adapting the interactive process, an employer may also choose to place an end date on the accommodation (for example, either a specific date such as May 30, or when the employee returns to the workplace part- or full-time due to changes in government restrictions limiting the number of people who may congregate). Employers may also opt to provide a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation. Choosing one of these alternatives may be particularly helpful where the requested accommodation would provide protection that an employee may need because of a pre-existing disability that puts her at greater risk during this pandemic. This [could also apply](#) to employees who have disabilities exacerbated by the pandemic.

Employees may request an extension that an employer must consider, particularly if current government restrictions are extended or new ones adopted.

D.8. May an employer ask employees now if they will need reasonable accommodations in the future when they are permitted to return to the workplace? (4/17/20)

Yes. Employers may ask employees with disabilities to request accommodations that they believe they may need when the workplace re-opens. Employers may begin the "interactive process" - the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed.

D.9. Are the circumstances of the pandemic relevant to whether a requested accommodation can be denied because it poses an undue hardship? (4/17/20)

Yes. An employer does not have to provide a particular reasonable accommodation if it poses an "[undue hardship](#)," which means "significant difficulty or expense." In some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.

D.10. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant difficulty" during the COVID-19 pandemic? (4/17/20)

An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the facts of the particular job and workplace. For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.

D.11. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant expense" during the COVID-19 pandemic? (4/17/20)

Prior to the COVID-19 pandemic, most accommodations did not pose a significant expense when considered against an employer's overall budget and resources (always considering

the budget/resources of the entire entity and not just its components). But, the sudden loss of some or all of an employer's income stream because of this pandemic is a relevant consideration. Also relevant is the amount of discretionary funds available at this time - when considering other expenses - and whether there is an expected date that current restrictions on an employer's operations will be lifted (or new restrictions will be added or substituted). These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic. For example, even under current circumstances, there may be many no-cost or very low-cost accommodations.

D.12. Do the ADA and the Rehabilitation Act apply to applicants or employees who are classified as “[critical infrastructure workers](#)” or “[essential critical workers](#)” by the CDC? (4/23/20)

Yes. These CDC designations, or any other designations of certain employees, do not eliminate coverage under the ADA or the Rehabilitation Act, or any other equal employment opportunity law. Therefore, employers receiving requests for reasonable accommodation under the ADA or the Rehabilitation Act from employees falling in these categories of jobs must accept and process the requests as they would for any other employee. Whether the request is granted will depend on whether the worker is an individual with a disability, and whether there is a reasonable accommodation that can be provided absent undue hardship.

E. Pandemic-Related Harassment Due to National Origin, Race, or Other Protected Characteristics

E.1. What practical tools are available to employers to reduce and address workplace harassment that may arise as a result of the COVID-19 pandemic? (4/9/20)

Employers can help reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their [national origin, race](#), or other prohibited bases.

Practical anti-harassment tools provided by the EEOC for small businesses can be found here:

- Anti-harassment [policy tips](#) for small businesses
- Select Task Force on the Study of Harassment in the Workplace (includes detailed recommendations and tools to aid in designing effective anti-harassment policies; developing training curricula; implementing complaint, reporting, and investigation procedures; creating an organizational culture in which harassment is not tolerated):
 - [report](#);
 - [checklists](#) for employers who want to reduce and address harassment in the workplace; and,
 - [chart](#) of risk factors that lead to harassment and appropriate responses.

E.2. Are there steps an employer should take to address possible harassment and discrimination against coworkers when it re-opens the workplace? (4/17/20)

Yes. An employer may remind all employees that it is against the federal EEO laws to harass or otherwise discriminate against coworkers based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information. It may be particularly helpful for employers to advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination. An employer may also make clear that it will immediately review any allegations of harassment or discrimination and take appropriate action.

F. Furloughs and Layoffs

F.1. Under the EEOC's laws, what waiver responsibilities apply when an employer is conducting layoffs? (4/9/20)

Special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer. More information is available in EEOC's [technical assistance document on severance agreements](#).

G. Return to Work

G.1. As government stay-at-home orders and other restrictions are modified or lifted in your area, how will employers know what steps they can take consistent with the ADA to screen employees for COVID-19 when entering the workplace? (4/17/20)

The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety.

Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time.

For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) of all those entering the workplace. Similarly, the CDC recently posted [information](#) on return by certain types of critical workers.

Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

G.2. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? (4/17/20)

An employer may require employees to wear [protective gear](#) (for example, masks and gloves) and observe [infection control practices](#) (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification

or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

G.3. What does an employee need to do in order to request reasonable accommodation from her employer because she has one of the [medical conditions](#) that CDC says may put her at higher risk for severe illness from COVID-19? (5/5/20)

An employee – or a third party, such as an employee's doctor – must [let the employer know](#) that she needs a change for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in writing. While the employee (or third party) does not need to use the term “reasonable accommodation” or reference the ADA, she may do so.

The employee or her representative should communicate that she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the employer may [ask questions or seek medical documentation](#) to help decide if the individual has a disability and if there is a reasonable accommodation, barring [undue hardship](#), that can be provided.

G.4. The CDC identifies a number of medical conditions that might place individuals at [“higher risk for severe illness”](#) if they get COVID-19. An employer knows that an employee has one of these conditions and is concerned that his health will be jeopardized upon returning to the workplace, but the employee has not requested accommodation. How does the ADA apply to this situation?

First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.

If the employer is concerned about the employee's health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee – or take any other adverse action – *solely* because the employee has a disability that the CDC identifies as potentially placing him at “higher risk for severe illness” if he gets COVID-19. Under the ADA, such action is not allowed unless the employee's disability poses a “direct threat” to his health that cannot be eliminated or reduced by reasonable accommodation.

The ADA direct threat requirement is a high standard. As an affirmative defense, direct threat requires an employer to show that the individual has a disability that poses a “significant risk of substantial harm” to his own health under [29 C.F.R. section 1630.2\(r\)](#). A direct threat

assessment cannot be based solely on the condition being on the CDC's list; the determination must be an individualized assessment based on a reasonable medical judgment about this employee's disability – not the disability in general – using the most current medical knowledge and/or on the best available objective evidence. The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant.

Even if an employer determines that an employee's disability poses a direct threat to his own health, the employer still cannot exclude the employee from the workplace – or take any other adverse action – unless there is no way to provide a reasonable accommodation (absent undue hardship). The ADA regulations require an employer to consider whether there are reasonable accommodations that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions. This can involve an interactive process with the employee. If there are not accommodations that permit this, then an employer must consider accommodations such as telework, leave, or reassignment (perhaps to a different job in a place where it may be safer for the employee to work or that permits telework). An employer may only bar an employee from the workplace if, after going through all these steps, the facts support the conclusion that the employee poses a significant risk of substantial harm to himself that cannot be reduced or eliminated by reasonable accommodation.

G.5. What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self? (5/5/20)

[Accommodations](#) may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace. Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others. Another possible reasonable accommodation may be elimination or substitution of particular “marginal” functions (less critical or incidental job duties as

distinguished from the “essential” functions of a particular position). In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

These are only a few ideas. Identifying an effective accommodation depends, among other things, on an employee’s job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network (www.askjan.org) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.

Appendix 6: Dept. of Labor FFCRA Q&A- May 8 2020



Wage and Hour Division

Families First Coronavirus Response Act: Questions and Answers

As provided under the legislation, the U.S. Department of Labor will be issuing implementing regulations. Additionally, as warranted, the Department will continue to provide compliance assistance to employers and employees on their responsibilities and rights under the FFCRA.

Definitions

“Paid sick leave” – means paid leave under the Emergency Paid Sick Leave Act.

“Expanded family and medical leave” – means paid leave under the Emergency Family and Medical Leave Expansion Act.

Questions & Answers By Category

[Expand All](#) | [Collapse All](#)

▼ Definitions

- [What is my regular rate of pay for purposes of the FFCRA?](#)

- Is all leave under the FMLA now paid leave?
- What does it mean to be unable to work, including telework for COVID-19 related reasons?
- Who is a covered employer that must provide paid sick leave and expanded family and medical leave under the FFCRA?
- Who is a son or daughter?
- What is a full-time employee under the Emergency Paid Sick Leave Act?
- What is a part-time employee under the Emergency Paid Sick Leave Act?
- How does the “for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar” language in the FMLA definition of “employer” work under the Emergency Family and Medical Leave Expansion Act?
- Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?
- Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?
- Who is an emergency responder?
- What is a “place of care”?
- Who is my “child care provider”?
- My child’s school or place of care has moved to online instruction or to

› **Eligibility**

› **Coverage**

› **Application**

› **Enforcement**

Questions & Answers By Number

1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

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.

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.

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.^[1]

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.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

5. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

6. When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to [Question 5](#), because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave as described in the answer to Question 7.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

7. As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave under the FFCRA?

It depends on your normal schedule as well as why you are taking leave.

If you are taking paid sick leave because you are unable to work or telework due to a need for leave because you (1) are subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) have been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) are experiencing symptoms of COVID-19 and are seeking medical diagnosis, you will receive for each applicable hour the greater of:

- your regular rate of pay,
- the federal minimum wage in effect under the FLSA, or
- the applicable State or local minimum wage.

In these circumstances, you are entitled to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If you are taking paid sick leave because you are: (1) caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (2) caring for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; or (3) experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services, you are entitled to compensation at 2/3 of the greater of the amounts above.

Under these circumstances, you are subject to a maximum of \$200 per day, or \$2,000 over the entire two week period.

If you are taking expanded family and medical leave, you may take paid sick leave for the first two weeks of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer's policy. For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work. If you take paid sick leave during the first two weeks of unpaid expanded family and medical leave, you will not receive more than \$200 per day or \$12,000 for the twelve weeks that include both paid sick leave and expanded family and medical leave when you are on

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. If you take employer-provided accrued leave during those first two weeks, you are entitled to the full amount for such accrued leave, even if that is greater than \$200 per day.

To calculate the number of hours for which you are entitled to paid leave, please see the answers to [Questions 5-6](#) that are provided in this guidance.

8. What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave.^[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

9. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

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 $\frac{2}{3}$ 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.

11. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

12. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

13. Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

14. How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin. For example, if you want to take leave on April 1, 2020, you would need to have been on your employer’s payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.

15. What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

Regardless of whether you grant or deny a request for paid sick leave or expanded family and medical leave, you must document the following:

- The name of your employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.

If your employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. If your employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally document the name of the health care provider who gave advice.

If your employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you must also document:

- The name of the child being cared for;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

16. What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information:

- Your name;
- The date(s) for which you request leave;
- The reason for leave; and
- A statement that you are unable to work because of the above reason.

If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order. If you request

leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you must also provide:

- The name of your child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for your child.

In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

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.

18. What does it mean to be unable to work, including telework for COVID-19 related reasons?

You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.

If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

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

If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick 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.

20. May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of 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, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

21. May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?

It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are 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
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed

because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employer agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave 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, the Department is supportive of such voluntary arrangements.

22. May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

23. If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?

No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

It should be noted, however, that if your employer is paying you pursuant to a paid leave policy or State or local requirements, you are not eligible for unemployment insurance.

24. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

25. If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?

If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

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. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

27. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to

<https://www.careeronestop.org/LocalHelp/service-locator.aspx>. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.

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.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced (see [Question 5](#)).

29. May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and [DOL recently clarified additional flexibility to the States](#) (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced. Therefore, individuals should contact their State workforce agency or State unemployment insurance office for specific questions about eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

30. If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

If your employer provides group health coverage that you've elected, you are entitled to continued group health coverage during your expanded family and medical leave on the same terms as if you continued to work. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage. See WHD Fact Sheet 28A: <https://www.dol.gov/agencies/whd/fact-sheets/28a-fmla-employee-protections>.

If you do not return to work at the end of your expanded family and medical leave, check with your employer to determine whether you are eligible to keep your health coverage on the same terms (including contribution rates). If you are no longer eligible, you may be able to continue your coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA, which generally applies to employers with 20 or more employees, allows you and your family to continue the same group health coverage at group rates. Your share of that cost may be higher than what you were paying before but may be lower than what you would pay for private individual health insurance coverage. (If your employer has fewer than 20 employees, you may be eligible to continue your health insurance under State laws that are similar to COBRA. These laws are sometimes referred to as "mini COBRA" and vary from State to State.) Contact the Employee Benefits Security Administration at <https://www.dol.gov/agencies/ebsa/workers-and-families/changing-jobs-and-job-loss> to learn about health and retirement benefit protections for dislocated workers.

If you elect to take paid sick leave, your employer must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual's premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

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.

If you are required to take your existing leave concurrently with your remaining expanded family and medical leave, your employer must pay you the full amount to which you are entitled under your existing paid leave policy for the period of leave taken. If you exhaust your preexisting paid leave and still are entitled to additional expanded family and medical leave, your employer must pay you at least 2/3 of your pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave.

32. If I am an employer, may I use the paid sick leave mandated under the EPSLA to satisfy paid leave entitlements that an employee may have under my paid leave policy?

No, unless your employee agrees. Paid sick leave under the EPSLA is in addition to your employee's (including Federal Employees') other leave entitlements. You may not require your employee to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave. You also may not require your employee to use such existing leave concurrently with the paid sick leave under the EPSLA. But if you and your employee agree, your employee may use preexisting leave entitlements to supplement the amount he or she receives from paid sick leave, up to the employee's normal earnings. Note,

however, that you are not entitled to a tax credit for any paid sick leave that is not required to be paid or exceeds the limits set forth under the EPSLA. You are free to amend your own policies to the extent consistent with applicable law.

33. If I am an employer, may I require my employee to take paid leave he or she may have under my existing paid leave policy concurrently with expanded family and medical leave under the EFMLEA?

Yes. After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, you may require that your employee take concurrently for the same hours expanded family and medical leave and existing leave that, under your policies, would be available to the employee in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if your employee (or a covered family member) is not ill.

If you do so, you must pay your employee the full amount to which he or she is entitled under your existing paid leave policy for the period of leave taken. You must pay your employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per workday and \$10,000 in the aggregate, for expanded family and medical leave. If your employee exhausts all preexisting paid vacation, personal, medical, or sick leave, you would need to pay your employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to \$200 per day and \$10,000 in the aggregate. You are free to amend your own policies to the extent consistent with applicable law.

34. If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

35. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Family and

Medical Leave Expansion Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Family and Medical Leave Expansion Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the amount of paid family and medical leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

36. I am an employer that is part of a multiemployer collective bargaining agreement, may I satisfy my obligations under the Emergency Paid Sick Leave Act through contributions to a multiemployer fund, plan, or program?

You may satisfy your obligations under the Emergency Paid Sick Leave Act by making contributions to a multiemployer fund, plan, or other program in accordance with your existing collective bargaining obligations. These contributions must be based on the hours of paid sick leave to which each of your employees is entitled under the Act based on each employee's work under the multiemployer collective bargaining agreement. Such a fund, plan, or other program must allow employees to secure or obtain their pay for the related leave they take under the Act. Alternatively, you may also choose to satisfy your obligations under the Act by other means, provided they are consistent with your bargaining obligations and collective bargaining agreement.

37. Are contributions to a multiemployer fund, plan, or other program the only way an employer that is part of a multiemployer collective bargaining agreement may comply with the paid leave requirements of the FFCRA?

No. Both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act provide that, consistent with its bargaining obligations and collective bargaining agreement, an employer may satisfy its legal obligations under both Acts by making appropriate contributions to such

a fund, plan, or other program based on the paid leave owed to each employee. However, the employer may satisfy its obligations under both Acts by other means, provided they are consistent with its bargaining obligations and collective bargaining agreement.

38. Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?

Both of these new provisions use the employee definition as provided by the Fair Labor Standards Act, thus all of your U.S. (including Territorial) employees who meet this definition are eligible including full-time and part-time employees, and “joint employees” working on your site temporarily and/or through a temp agency. However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid sick leave or expanded family and medical leave on a case-by-case basis. And certain small businesses may exempt employees if the leave would jeopardize the company’s viability as a going concern. See Question 58 below.

There is one difference regarding an employee’s eligibility for paid sick leave versus expanded family and medical leave. While your employee is eligible for paid sick leave regardless of length of employment, your employee must have been employed for 30 calendar days in order to qualify for expanded family and medical leave. For example, if your employee requests expanded family and medical leave on April 10, 2020, he or she must have been your employee since March 11, 2020.

39. Who is a covered employer that must provide paid sick leave and expanded family and medical leave under the FFCRA?

Generally, if you employ fewer than 500 employees you are a covered employer that must provide paid sick leave and expanded family and medical leave. For additional information on the 500 employee threshold, see Question 2. Certain employers with fewer than 50 employees may be exempt from the Act’s requirements to provide certain paid sick leave and expanded family and medical leave. For additional information regarding this small business exemption, see Question 4 and Questions 58 and 59 below.

Certain public employers are also covered under the Act and must provide paid sick leave and expanded family and medical leave. For additional information regarding coverage of public employers, see [Questions 52-54](#) below.

40. Who is a son or daughter?

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis, see [Fact Sheet #28B](#): Family and Medical Leave Act (FMLA) leave for birth, placement, bonding or to care for a child with a serious health condition on the basis of an “in loco parentis” relationship.

In light of Congressional direction to interpret definitions consistently, WHD clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information on requirements relating to an adult son or daughter, see [Fact Sheet #28K](#) and/or call our toll free information and help line available 8 am–5 pm in your time zone, 1-866-4US-WAGE (1-866-487-9243).

41. What do I do if my employer, who I believe to be covered, refuses to provide me paid sick leave?

If you believe that your employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act, the Department encourages you to raise and try to resolve your concerns with your employer. Regardless of whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave, you may call 1-866-4US-WAGE (1-866-487-9243). WHD is responsible for administering and enforcing these provisions. If you have questions or concerns, you can contact WHD by phone or visit www.dol.gov/agencies/whd. Your call will be directed to the [nearest WHD office](#) for assistance to have your questions answered or to file a complaint. In most cases, you can also file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to [Question 54](#).

42. What do I do if my employer, who I believe to be covered, refuses to provide me expanded family and medical leave to care for my own son or daughter whose school or place of care has closed, or whose child care provider is unavailable, for COVID-19 related reasons?

If you believe that your employer is covered and is improperly refusing you expanded family and medical leave or otherwise violating your rights under the Emergency Family and Medical Leave Expansion Act, the Department encourages you to raise and try to resolve your concerns with your employer. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit www.dol.gov/agencies/whd. Your call will be directed to the nearest WHD office for assistance to have your questions answered or to file a complaint. If your employer employs 50 or more employees, you also may file a lawsuit against your employer directly without contacting WHD. If you are a public sector employee, please see the answer to [Question 54](#).

43. Do I have a right to return to work if I am taking paid sick leave or expanded family and medical leave under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act?

Generally, yes. In light of Congressional direction to interpret requirements among the Acts consistently, WHD clarifies that the Acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, you are entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, your employer is prohibited from firing, disciplining, or otherwise discriminating against you because you take paid sick leave or expanded family and medical leave. Nor can your employer fire, discipline, or otherwise discriminate against you because you filed any type of complaint or proceeding relating to these Acts, or have or intend to testify in any such proceeding.

However, you are not protected from employment actions, such as layoffs, that would have affected you regardless of whether you took leave. This means your employer can lay you off for legitimate business reasons, such as the closure of your worksite. Your employer must be able to demonstrate that you would have been laid off even if you had not taken leave.

Your employer may also refuse to return you to work in your same position if you are a highly compensated “key” employee as defined under the FMLA, or if your employer has fewer than 25 employees, and you took leave to care for your own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

- your position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
- your employer made reasonable efforts to restore you to the same or an equivalent position;
- your employer makes reasonable efforts to contact you if an equivalent position becomes available; and
- your employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

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. 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.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

45. May I take leave under the Family and Medical Leave Act over the next 12 months if I used some or all of my expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. You may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the Emergency Family and Medical Leave Expansion Act. If you take some, but not all 12, workweeks of your expanded family and medical leave by December 31, 2020, you may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Please note that expanded family and medical leave is available only until December 31, 2020; after that, you may only take FMLA leave.

For example, assume you take four weeks of Expanded Family and Medical Leave in April 2020 to care for your child whose school is closed due to a COVID-19 related reason. These four weeks count against your entitlement to 12 weeks of FMLA leave in a 12-month period. If you are eligible for preexisting FMLA leave and need to take such leave in August 2020 because you need surgery, you would be entitled to take up to eight weeks of FMLA leave.

However, 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. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But please note that if you take paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

46. If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local law, or my employer's policy?

No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

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.

48. What is a full-time employee under the Emergency Paid Sick Leave Act?

For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.

49. What is a part-time employee under the Emergency Paid Sick Leave Act?

For purposes of the Emergency Paid Sick Leave Act, a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

In contrast, the Emergency Family and Medical Leave Expansion Act does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

50. How does the “for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar” language in the FMLA definition of “employer” work under the Emergency Family and Medical Leave Expansion Act?

The language about counting employees over calendar workweeks is only in the FMLA’s definition for employer. This language does not apply to the Emergency Family and Medical Leave Expansion Act for purposes of expanded family and medical leave. Employers should use the number of employees on the day the employee’s leave would start to determine whether the employer has fewer than 500 employees for purposes of providing expanded family and medical leave and paid sick leave. See [Question 2](#) for more information.

51. I’ve elected to take paid sick leave and I am currently in a waiting period for my employer’s health coverage. If I am absent from work on paid sick leave during the waiting period, will my health coverage still take effect after I complete the waiting period on the same day that the coverage would otherwise take effect?

Yes. If you are on employer-provided group health coverage, you are entitled to group health coverage during your paid sick leave on the same terms as if you continued to work. Therefore, the requirements for eligibility, including any requirement to complete a waiting period, would apply in the same way as if you continued to work, including that the days you are on paid sick leave count towards completion of the waiting period. If, under the terms of the plan, an individual can elect coverage that becomes effective after completing the waiting period, the health coverage must take effect once the waiting period is complete.

52. I am a public sector employee. May I take paid sick leave under the Emergency Paid Sick Leave Act?

Generally, yes. You are entitled to paid sick leave if you work for a public agency or other unit of government, with the exceptions below. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of the United States, a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar government entity subject to the exceptions below. The Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees from taking certain kinds of paid sick leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take paid sick leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take paid sick leave under the Act. See [Questions 56-57](#) below. These coverage limits also apply to public-sector health care providers and emergency responders.

For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked [here](#).

53. I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?

It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity.

But if you are a Federal employee, you likely are not entitled to expanded family and medical leave. The Act only amended Title I of the FMLA; most Federal employees are covered instead by Title II of the FMLA. As a result, only some Federal employees are covered, and the vast majority are not. In addition, the Office of Management and Budget (OMB) has the authority to exclude some categories of U.S. Government Executive Branch employees with

respect to expanded and family medical leave. If you are a Federal employee, the Department encourages you to seek guidance from your respective employers as to your eligibility to take expanded family and medical leave.

Further, health care providers and emergency responders may be excluded by their employer from being able to take expanded family and medical leave under the Act. See [Questions 56-57](#) below. These coverage limits also apply to public-sector health care providers and emergency responders.

For more information related to federal employers and employees, please consult the Office of Personnel Management's COVID-19 guidance portal, linked [here](#).

54. What do I do if my public sector employer, who I believe to be covered, refuses to provide me paid sick leave or expanded family and medical leave?

If you believe that your public sector employer is covered and is improperly refusing you paid sick leave under the Emergency Paid Sick Leave Act or expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act, the Department encourages you to raise your concerns with your employer in an attempt to resolve them. Regardless whether you discuss your concerns with your employer, if you believe your employer is improperly refusing you paid sick leave or expanded family and medical leave, you may call WHD at 1-866-4US-WAGE (1-866-487-9243) or visit www.dol.gov/agencies/whd. Your call will be directed to the nearest WHD office for assistance to have your questions answered or to file a complaint.

In some cases, you may also be able to file a lawsuit against your employer directly without contacting WHD. Some State and local employees may not be able to pursue direct lawsuits because their employers are immune from such lawsuits. For additional information, see the WHD website at: <https://www.wagehour.dol.gov> and/or call WHD's toll free information and help line available 8am–5pm in your time zone, 1-866-4-US-WAGE (1-866-487-9243).

For more information related to federal employers and employees, please consult the Office of Personnel Management’s COVID-19 guidance portal, linked [here](#).

55. Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?

The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

56. Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?

For the purposes of Employees who may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual’s services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a State or territory, including the District of Columbia, determines is a health care provider necessary for that State’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness.

57. Who is an emergency responder?

For the purposes of Employees who may be excluded from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness.

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?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) 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 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.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

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. In the instance where your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order, please see [Questions 23-27](#).

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).

62. I am an employee. I become ill with COVID-19 symptoms, decide to quarantine myself for two weeks, and then return to work. I do not seek a medical diagnosis or the advice of a health care provider. Can I get paid for those two weeks under the FFCRA?

Generally no. If you become ill with COVID-19 symptoms, you may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises you to self-quarantine. If you test positive for the virus associated with COVID-19 or are advised by a health care provider to self-

quarantine, you may continue to take paid sick leave. You may not take paid sick leave under the FFCRA if you unilaterally decide to self-quarantine for an illness without medical advice, even if you have COVID-19 symptoms. Note that you may not take paid sick leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your employer's expectations and your condition, however, you may be able to telework during your period of quarantine.

63. When am I eligible for paid sick leave to care for someone who is subject to a quarantine or isolation order?

You may take paid sick leave to care for an individual who, as a result of being subject to a quarantine or isolation order (see [Question 53](#)), is unable to care for him or herself and depends on you for care and if providing care prevents you from working and from teleworking.

Furthermore, you may only take paid sick leave to care for an individual who genuinely needs your care. Such an individual includes an immediate family member or someone who regularly resides in your home. You may also take paid sick leave to care for someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

You may not take paid sick leave to care for someone with whom you have no relationship. Nor can you take paid sick leave to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine.

64. Can I take paid sick leave to care for any individual who is subject to a quarantine or isolation order or who has been advised to self-quarantine?

No. You may take paid sick leave under the FFCRA to care for an immediate family member or someone who regularly resides in your home. You may also take paid sick leave under the FFCRA to care for someone where your relationship creates an expectation that you care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.

However, you may not take paid sick leave under the FFCRA to care for someone with whom you have no relationship. Nor can you take paid sick leave under the FFCRA to care for someone who does not expect or depend on your care during his or her quarantine or self-quarantine due to COVID-19.

65. When am I eligible for paid sick leave to care for someone who is self-quarantining?

You may take paid sick leave to care for a self-quarantining individual if a health care provider has advised that individual to stay home or otherwise quarantine him or herself because he or she may have COVID-19 or is particularly vulnerable to COVID-19 and provision of care to that individual prevents you from working (or teleworking).

66. May I take paid sick leave or expanded family and medical leave to care for my child who is 18 years old or older?

It depends. Under the FFCRA, paid sick leave and expanded family and medical leave include leave to care for one (or more) of your children when his or her school or place of care is closed or child care provider is unavailable, due to COVID-19 related reasons. This leave may only be taken to care for your non-disabled child if he or she is under the age of 18. If your child is 18 years of age or older with a disability and cannot care for him or herself due to that disability, you may take paid sick leave and expanded family and medical leave to care for him or her if his or her school or place of care is closed or his or her child care provider is unavailable, due to COVID-19 related reasons, and you are unable to work or telework as a result.

In addition, paid sick leave is available to care for an individual who is subject to a Federal, State, or local 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. If you have a need to care for your child age 18 or older who needs care for these circumstances, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed two weeks.

67. What is a “place of care”?

A “place of care” is a physical location in which care is provided for your child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

68. Who is my “child care provider”?

A “child care provider” is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

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. See [Question 20](#) for more details.

70. My child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

71. May I take paid sick leave to care for a child other than my child?

It depends. The paid sick leave that is provided under the FFCRA to care for one (or more) of your children when their place of care is closed (or child care provider is unavailable), due to COVID-19 related reasons, may only be taken to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to [Question 40](#).

However, paid sick leave is also available to care for an individual who is subject to a Federal, State, or local 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. If you have a need to care for a child who meets these criteria, you may take paid sick leave if you are unable to work or telework as a result of providing care. But in no event may your total paid sick leave exceed two weeks.

72. May I take expanded family and medical leave to care for a child other than my child?

No. Expanded family and medical leave is only available to care for your own “son or daughter.” For an explanation of the definition of “son or daughter” for purposes of the FFCRA, please refer to [Question 40](#).

73. When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services?

The U.S. Department of Health and Human Services (HHS) has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

74. If I am a staffing company, how do I count internal workers and staffed workers under the FFCRA?

Regardless of how you classify or count internal or staffed workers, you must provide paid sick leave and expanded family and medical leave to workers who are your “employees” for purposes of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, as described in

Question 2. As Question 2 explains, you may be a joint employer, and if so, you must include in your count all employees on your payroll, even if you provide or refer such employees to other employers.

75. As an employer, how much do I pay a seasonal employee with an irregular schedule for each day of paid sick leave or expanded family and medical leave that he or she takes?

You may calculate the daily amount you must pay a seasonal employee with an irregular schedule by taking the following steps.

First, you should calculate how many hours of leave your seasonal employee is entitled to take each day. Because your employee works an irregular schedule, this is equal to the average number of hours each day that he or she was scheduled to work over the period of employment, up to the last six months. Please note that you should exclude from this calculation off-season periods during which the employee did not work.

Second, you should calculate the seasonal employee's regular hourly rate of pay. This is calculated by adding up all wages paid over the period of employment, up to the last six months, and then dividing that sum by the number of hours actually worked over the same period. Again, you should exclude off-season periods during which the employee did not work.

Third, you multiply the daily hours of leave (first calculation) by your employee's regular hourly rate of pay (second calculation) to compute the base daily paid leave amount.

Fourth, you should determine the actual daily paid leave amount, which depends on the type of paid leave taken and the reason for such paid leave.

You must pay your seasonal employee the full base daily paid leave amount, up to \$511 per day and \$5,110 in total, if the employee is taking paid sick leave for any of the following reasons:

- Your employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

- Your employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- Your employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$2,000 in total, if your employee is taking paid sick leave for any of the following reasons:

- Your employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- Your employee 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; or
- Your employee is experiencing any other substantially similar condition, as determined by the Secretary of Health and Human Services.

You must pay your seasonal employee 2/3 of the base daily paid leave amount, up to \$200 per day and \$10,000 in total, if the employee is taking expanded family and medical leave to care for the employee's child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. Please note that if your seasonal employees are not scheduled to work, for example, because it is the off-season, then you do not have to provide paid sick leave or expanded family and medical leave.

76. May I take paid sick leave or expanded family and medical leave if I am receiving workers' compensation or temporary disability benefits through an employer or state-provided plan?

In general, no, unless you were able to return to light duty before taking leave. If you receive workers' compensation or temporary disability benefits because you are unable to work, you may not take paid sick leave or expanded family

and medical leave. However, if you were able to return to light duty and a qualifying reason prevents you from working, you may take paid sick leave or expanded family and medical leave, as the situation warrants.

77. May I take paid sick leave or expanded family and medical leave under the FFCRA if I am on an employer-approved leave of absence?

It depends on whether your leave of absence is voluntary or mandatory. If your leave of absence is voluntary, you may end your leave of absence and begin taking paid sick leave or expanded family and medical leave under the FFCRA if a qualifying reason prevents you from being able to work (or telework).

However, you may not take paid sick leave or expanded family and medical leave under the FFCRA if your leave of absence is mandatory. This is because it is the mandatory leave of absence—and not a qualifying reason for leave—that prevents you from being able to work (or telework).

In the instance of a mandatory leave of absence, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

78. Will DOL begin enforcing FFCRA immediately?

The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e., March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. If the employer violates the Act willfully, fails to provide a written commitment to future compliance with the Act, or fails to remedy a violation upon notification by the Department, the Department reserves its right to exercise its enforcement authority during this period. After April 17, 2020, this limited stay of enforcement will be lifted, and the Department will fully enforce violations of the Act, as appropriate and consistent with the law.

79. Does the non-enforcement position mean businesses do not need to comply with the FFCRA from the effective date of April 1, 2020 through April 17, 2020?

No, the FFCRA's paid leave provisions are effective April 1, 2020. Private sector and public employers must comply with the provisions on the effective date even though the Department has a limited stay of enforcement until April 17, 2020. Once the Department fully enforces the Act, it will retroactively enforce violations back until the effective date of April 1, 2020, if employers have not remedied the violations.

80. How do I compute the number of hours of paid sick leave for my employee who has irregular hours?

Generally, under the FFCRA, you are required to provide an employee with paid sick leave equal to the number of hours that employee is scheduled to work, on average, over a two-week period, up to a maximum of 80 hours.

If your employee works an irregular schedule such that it is not possible to determine what hours he or she would normally work over a two-week period, you must estimate the number of hours. The estimate must be based on the average number of hours your employee was scheduled to work per calendar day (not workday) over the six-month period ending on the first day of paid sick leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the six-month period used for estimating average hours consists of 183 calendar days from October 14, 2019, to April 13, 2020.

During that six-month period, the first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 1,200 hours. The number of hours per calendar day is computed by dividing 1,200 hours by the 183 calendar days, which results in 6.557 hours per calendar day. The two-week average is computed by multiplying the per calendar day average by 14, which results in 91.8 hours. Since this is greater than the statutory maximum of 80 hours, the first employee, who works full-time, is therefore entitled to 80 hours of paid sick leave.

The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per calendar day is computed by dividing 650 hours by the 183 calendar days, which is 3.55 hours per calendar day. The two-week average is computed by multiplying the per calendar day average by 14, which results in 49.7 hours. The second employee, who works part-time, is therefore entitled to 49.7 hours of paid sick leave.

For each hour of paid sick leave taken, you are required to pay the employee an amount equal to at least that employee's regular rate (see [Question 82](#)).

81. How do I compute the number of hours I must pay my employee who has irregular hours for each day of expanded family and medical leave taken?

Generally, under the FFCRA, you are required to pay your employee for each day of expanded family and medical leave taken based on the number of hours the employee was normally scheduled to work that day. If your employee works an irregular schedule such that it is not possible to determine the number of hours he or she would normally work on that day, and the employee has been employed for at least six months, you must determine the employee's average workday hours, including any leave hours. The average must be based on the number of hours your employee was scheduled to work per workday (not calendar day) divided by the number of workdays over the six-month period ending on the first day of your employee's paid expanded family and medical leave. This average must include all scheduled hours, including both hours actually worked and hours for which the employee took leave.

Consider the examples below involving two employees with irregular schedules who take leave on April 13, 2020. For both employees, the six-month period would consist of 183 calendar days from October 14, 2019, to April 13, 2020.

The first employee worked 1,150 hours over 130 workdays, and took a total of 50 hours of personal and medical leave. The total number of hours the employee was scheduled to work (including all leave taken) was 1,200 hours. The number of hours per workday is computed by dividing 1,200 hours by the

130 workdays, which is 9.2 hours per workday. You must therefore pay the first employee for 9.2 hours per workday times $\frac{2}{3}$ his or her regular rate for each day of expanded family and medical leave taken, subject to a \$200 per day cap and \$10,000 maximum (see [Question 7](#)).

The second employee, in contrast, worked 550 hours over 100 workdays, and took a total of 100 hours of personal and medical leave. The total number of hours the employee was scheduled to work, including all leave taken, was 650 hours. The number of hours per workday is computed by dividing 650 hours by the 100 workdays, which is 6.5 hours per workday. You must therefore pay the second employee for 6.5 hours per workday times $\frac{2}{3}$ his or her regular rate for each day of expanded family and medical leave taken, subject to a \$200 per day cap and \$10,000 maximum (see [Question 7](#)).

82. How do I compute my employee's average regular rate for the purpose of the FFCRA?

As an employer, you are required to pay your employee based on his or her average regular rate for each hour of paid sick leave or expanded family and medical leave taken. The average regular rate must be computed over all full workweeks during the six-month period ending on the first day that paid sick leave or expanded family and medical leave is taken.

If during the past six months, you paid your employee exclusively through a fixed hourly wage or a salary equivalent, the average regular rate would simply equal the hourly wage or the hourly-equivalent of their salary. But if your employee were paid through a different compensation arrangement (such as piece rate) or received other types of payments (such as commissions or tips), his or her regular rate may fluctuate week to week, and you may compute the average regular rate using these steps:

- First, you must compute the employee's non-excludable remuneration for each full workweek during the six-month period. Notably, commissions and piece-rate pay counts towards this amount. See [29 CFR part 778](#). Tips, however, count only to the extent that you apply them towards minimum wage obligations (i.e., you take a tip credit). See [29 CFR part 531.60](#). Overtime premiums do not count towards your

employee’s regular rate. Please note that, unlike when computing average hours (see [Questions 5 and 8](#)), you should not count payments your employee received for taking leave as part of the regular rate.

- Second, you must compute the number of hours the employee actually worked for each full workweek during the six-month period. Please note that, unlike when computing average hours (see [Questions 5 and 8](#)), you do not count hours when the employee took leave.
- Third, you then divide the sum of all non-excludable remuneration received over the six-month period by the sum of all countable hours worked in that same time period. The result is the average regular rate.

Consider the examples below involving an employee who takes leave on April 13, 2020. The six-month period would run from Monday, October 14, 2019, to Monday, April 13, 2020. Assuming you use a Monday to Sunday workweek, there are twenty-six full workweeks in that period, which includes 182 calendar days. Please note this is one day fewer than the 183 calendar days falling between October 14, 2019, and April 13, 2020, because the date the leave is taken, April 13, 2020, is a Monday that does not fall in any of the twenty-six full workweeks.

Suppose your employee’s non-excludable remuneration and hours worked are as follows:

Week	Non-Excludable Remuneration	Hours Worked
1	\$1,100	50
2	\$1,300	60
3	\$700	35
4	\$700	35
5	\$1,100	50

Week	Non-Excludable Remuneration	Hours Worked
6	\$700	50
7	\$600	30
8	\$700	50
9	\$1,100	50
10	\$700	50
11	\$700	35
12	\$1,300	60
13	\$700	35
14	\$1,300	60
15	\$1,100	50
16	\$1,300	60
17	\$1,100	50
18	\$600	30
19	\$700	35
20	\$700	50
21	\$1,100	50
22	\$700	30

Week	Non-Excludable Remuneration	Hours Worked
23	\$700	30
24	\$700	30
25	\$800	35
26	\$800	50
TOTAL	\$23,000	1,150

In total, the employee worked 1,150 hours and received \$23,000 in non-excludable remuneration. The average regular rate is therefore \$20.00 (\$23,000 divided by 1,150 hours).

83. How do I compute the average regular rate of my employee who is paid a fixed salary each workweek?

It depends. If you pay your employee exclusively through a fixed salary that is understood to be compensation for a specific number of hours of work in each workweek, the employee's average regular rate would simply be the hourly equivalent of that salary.

However, if the fixed salary is understood to compensate the employee regardless of the number of hours of work in each workweek, then the regular rate may vary alongside the number of hours worked for each workweek. In this case, you would have to add up the salary you paid your employee over all full workweeks in the past six months and divide that sum by the total number of hours worked in those workweeks, as described in [Question 82](#). If you lack records for the number of hours your employee worked, you should use a reasonable estimate.

84. May I round when computing the number of hours of paid sick leave I must provide an employee with an irregular schedule or the number of hours I must pay such an employee for each day of expanded family and medical leave taken?

As an employer, generally, yes. It is common and acceptable for employers to round to the nearest tenth, quarter, or half hour when determining an employee's hours worked. But if you choose to round, you must use a consistent rounding principle. You may not, for instance, round for some employees who request leave but not others. For the purposes of computing hours under the FFCRA, you may round to the nearest time increment that you customarily use to track the employee's hours worked. For instance, if you typically track work time in quarter-hour increments, you may round to the nearest quarter hour. But you may not round to the nearest quarter hour if you typically track time in tenth-of-an-hour increments.

As an example, the number of hours of paid sick leave for the first employee discussed in [Question 81](#) is computed as 14 days times 1,200 hours divided by 183 calendar days, which is 91.803 hours. If you typically track time in half-hour increments, you would round to 92 hours. If you typically track time in quarter-hour increments, you would round to 91.75 hours. And if you typically track time in tenth-hour increments, you would to round to 91.8 hours.

- 85. What six-month period is used to calculate the regular rate under the FFCRA when, for example, my employee takes paid sick leave, gets better, and then one week (or one month or three months) later, takes expanded family and medical leave? Or perhaps the employee takes intermittent leave throughout several months in 2020? In other words, do I have to determine and review a new six-month period every time my employee takes leave?**

No. As an employer, you should identify the six-month period to calculate each employee's regular rate under the FFCRA based on the first day the employee takes paid sick leave or expanded family and medical leave. That six-month period will be used to calculate all paid sick leave and expanded family and medical leave the employee takes under the FFCRA. If your employee has been employed for less than six months, you may compute the average regular rate over the entire period during which the employee was employed.

- 86. Under what circumstances may an employer require an employee to use his or her existing leave under a company policy and when does the choice**

belong to the employee under the Department’s regulations, specifically 29 CFR 826.23(c), 826.24(d), 826.60(b) and 826.160(c)?

Paid sick leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement. An employer may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the Emergency Paid Sick Leave Act. (See also [Question 32](#).)

In contrast, an employer may require that any paid leave available to an employee under the employer’s policies to allow an employee to care for his or her child or children because their school or place of care is closed (or child care provider is unavailable) due to a COVID-19 related reason run concurrently with paid expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. In this situation, the employer must pay the employee’s full pay during the leave until the employee has exhausted available paid leave under the employer’s plan—including vacation and/or personal leave (typically not sick or medical leave). However, the employer may only obtain tax credits for wages paid at 2/3 of the employee’s regular rate of pay, up to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act (\$200 per day or \$10,000 in total). If the employee exhausts available paid leave under the employer’s plan, but has more paid expanded and medical family leave available, the employee will receive any remaining paid expanded and medical family in the amounts and subject to the daily and aggregate limits in the Emergency Family and Medical Leave Expansion Act. Additionally, provided both an employer and employee agree, and subject to federal or state law, paid leave provided by an employer may supplement 2/3 pay under the Emergency Family and Medical Leave Expansion Act so that the employee may receive the full amount of the employee’s normal compensation.

Finally, an employee may elect—but may not be required by the employer—to take paid sick leave under the Emergency Paid Sick Leave Act or paid leave under the employer’s plan for the first two weeks of unpaid expanded family and medical leave, but not both. If, however, an employee has used some or all paid sick leave under the Emergency Paid Sick Leave Act, any remaining

portion of that employee's first two weeks of expanded family and medical leave may be unpaid. During this period of unpaid leave under the Emergency Family and Medical Leave Expansion Act, the employee may choose—but the employer may not require the employee—to use paid leave under the employer's policies that would be available to the employee to take in order to care for the employee's child or children because their school or place of care is closed or the child care provider is unavailable due to a COVID-19 related reason concurrently with the unpaid leave.

87. Are stay-at-home and shelter-in-place orders the same as quarantine or isolation orders? If so, when can I take leave under the FFCRA for reasons relating to one of those orders?

Yes, as explained in [Question 60](#), for purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority. However, in order for such an order to qualify you for leave, being subject to the order must be the reason you are unable to perform work (or telework) that your employer has for you. You may not take paid leave due to such an order if your employer does not have work for you to perform as a result of the order or for other reasons.

For example, if you are prohibited from leaving a containment zone and your employer remains open outside the containment zone and has work you cannot perform because you cannot leave the containment zone, you may take paid leave under the FFCRA. Similarly, if you are ordered to stay at home by a government official for fourteen days because you were on a cruise ship where other passengers tested positive for COVID-19, and your employer has work for you to do, you are also entitled to paid sick leave if you cannot work (or telework) because of the order. If, however, your employer closed one or more locations because of a quarantine or isolation order and, as a result of that closure, there was no work for you to perform, you are not entitled to leave under the FFCRA and should seek unemployment compensation through your State Unemployment Insurance Office.

88. If my employer refuses to provide paid sick leave or refuses to compensate me for taking paid sick leave, and the Department brings an enforcement

action on my behalf, am I entitled to recover just the federal minimum wage of \$7.25 per hour of leave, or can I recover the entire amount due under the FFCRA?

If the Department brings an enforcement action on your behalf, you are entitled to recover the full amount due under the FFCRA (see [Question 7](#)), which is the greater of your regular rate (see [Question 8](#)) or the applicable minimum wage (federal, state, or local) for each hour of uncompensated paid sick leave taken, in each case, subject to the applicable FFCRA maximums (see [Question 7](#)). The FFCRA and the Department's regulations state that an employer who does not compensate you for taking paid sick leave is "considered to have failed to pay the minimum wage ... and shall be subject to the enforcement provisions" of the Fair Labor Standards Act. Those enforcement provisions state that the employer "shall be liable to the employee or employees affected in the amount of their unpaid minimum wages." For the purposes of the FFCRA, the "amount of unpaid minimum wages" does not refer to the federal minimum wage of \$7.25 per hour, but rather to the hourly wage at which the employer must compensate you for taking paid sick leave, which is, generally, the greater of your regular rate or the applicable minimum wage (federal, state, or local).

Thus, if the Department brings an enforcement action on your behalf, your recovery against an employer that refuses to compensate you for taking paid sick leave would not be limited to the federal minimum wage of \$7.25 per hour if your regular rate or an applicable state or local minimum wage were higher. For example, if your regular rate were \$30 per hour and you lawfully took 20 hours of paid sick leave to self-quarantine based on the advice of a health care provider, you may recover \$600 (\$30 per hour times 20 hours) from your employer. As another example, if you were entitled to a state or local minimum wage of \$15 and lawfully took 20 hours of paid sick leave for the same reason, you may recover \$300 (\$15 per hour times 20 hours). However, you may not recover more than the amount due under the FFCRA. For instance, if your employer initially agreed to pay your full hourly rate of \$30 per hour to allow you to take paid sick leave to care for your child whose school is closed, but

then pays you only 2/3 of your hourly rate, as required by the FFCRA, you may not recover the unpaid portion of the initially agreed amount because your employer was not required by the FFCRA to pay that portion.

89. **I hire workers to perform certain domestic tasks, such as landscaping, cleaning, and child care, at my home. Do I have to provide my domestic service workers paid sick leave or expanded family and medical leave?**

It depends on the relationship you have with the domestic service workers you hire. Under the FFCRA, you are required to provide paid sick leave or expanded family and medical leave if you are an employer under the Fair Labor Standards Act (FLSA), regardless of whether you are an employer for federal tax purposes. If the domestic service workers are economically dependent on you for the opportunity to work, then you are likely their employer under the FLSA and generally must provide paid sick leave and expanded family and medical leave to eligible workers. An example of a domestic service worker who may be economically dependent on you is a nanny who cares for your children as a full-time job, follows your precise directions while working, and has no other clients.

If, on the other hand, the domestic service workers are not economically dependent on you and instead are essentially in business for themselves, you are their customer rather than their employer for FLSA purposes. Accordingly, you are not required to provide such domestic service workers with paid sick leave or expanded family and medical leave. An example of a domestic service worker who is not economically dependent on you is a handyman who works for you sporadically on a project-by-project basis, controls the manner in which he or she performs work, uses his or her own equipment, sets his or her own hours and fees, and has several customers. Likewise, a day care provider who works out of his or her house and has several clients is not economically dependent upon you.

Of course, you are not required to provide paid sick leave or expanded family and medical leave for workers who are employed by a third party service provider with which you have contracted to provide you with specific domestic services.

Ultimately, the question of economic dependence can be complicated and fact-specific. As a rule of thumb, but not ultimately determinative, if you are not required to file Schedule H, Household Employment Taxes, along with your Form 1040, U.S. Individual Income Tax Return, for the amount you pay a domestic service worker because the worker is not your employee for federal tax purposes, then the worker is likely not economically dependent upon you and you are likely not the worker's employer under the FLSA. In this case, you likely would not be required to provide paid sick leave and expanded family and medical leave. If the worker is your employee for federal tax purposes, so that you are required to file Schedule H for the worker with your Form 1040, you will need to determine whether the worker is economically dependent on you for the opportunity to work. If you determine that the worker is economically dependent upon you for the opportunity to work, then you are likely required to provide that worker with paid sick leave and expanded family and medical leave.

90. If I am employed by a temporary placement agency that has over 500 employees and am placed at a second business that has fewer than 500 employees, how does the leave requirement work? Are one or both entities required to provide me leave?

The temporary staffing agency is not required by the FFCRA to provide you (or any of its other employees) with paid sick leave or expanded family and medical leave because it has more than 500 employees. In contrast, the second business where you are placed will generally be required to provide its employees with paid sick leave or expanded family and medical leave because it has fewer than 500 employees (see [Question 39](#)).

Whether that second business must provide *you* with paid sick leave or expanded family and medical leave depends on whether it is your joint employer. If the second business directly or indirectly exercises significant control over the terms and conditions of your work, then it is your joint employer and must provide you with paid sick leave or expanded family and medical leave. If the second business does not directly or indirectly exercise such control, then it is not your employer and so is not required to provide you with such leave. To determine whether the second employer exercises such control, the Department of Labor would consider whether it exercises the

power to hire or fire you, supervises and controls your schedule or conditions of employment, determines your rate and method of pay, and maintains your employment records. The weight given to each factor depends on how it does or does not suggest control in a particular case.

If the second business provides you with paid sick leave as your joint employer, the temporary staffing agency is prohibited from discharging, disciplining, or discriminating against you for taking such leave, even though it is not required to provide you with paid sick leave. Similarly, if the second business provides you with expanded family and medical leave as your joint employer, the temporary staffing agency is prohibited from interfering with your ability to take leave and from retaliating against you for taking such leave, even though it is not required to provide you with expanded family and medical leave.

91. **My employees have been teleworking productively since mid-March without any issues. Now, several employees claim they need to take paid sick leave and expanded family and medical leave to care for their children, whose school is closed because of COVID-19, even though these employees have been teleworking with their children at home for four weeks. Can I ask my employees why they are now unable to work or if they have pursued alternative child care arrangements?**

You may require that the employee provide the qualifying reason he or she is taking leave, and submit an oral or written statement that the employee is unable to work because of this reason, and provide other documentation outlined in section 826.100 of the Department's rule applying the FFCRA. While you may ask the employee to note any changed circumstances in his or her statement as part of explaining why the employee is unable to work, you should exercise caution in doing so, lest it increase the likelihood that any decision denying leave based on that information is a prohibited act. The fact that your employee has been teleworking despite having his or her children at home does not mean that the employee cannot now take leave to care for his or her children whose schools are closed for a COVID-19 related reason. For example, your employee may not have been able to care effectively for the children while teleworking or, perhaps, your employee may have made the decision to take paid sick leave or expanded family and medical leave to care for the children so that the employee's spouse, who is not eligible for any type

of paid leave, could work or telework. These (and other) reasons are legitimate and do not afford a basis for denying paid sick leave or expanded family and medical leave to care for a child whose school is closed for a COVID-19 related reason.

This does not prohibit you from disciplining an employee who unlawfully takes paid sick leave or expanded family and medical leave based on misrepresentations, including, for example, to care for the employee's children when the employee, in fact, has no children and is not taking care of a child.

92. My employee claims to have tiredness or other symptoms of COVID-19 and is taking leave to seek a medical diagnosis. What documentation may I require from the employee to document efforts to obtain a diagnosis? When can it be required?

In order for your employee to take leave under the FFCRA, you may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. You may not, however, require the employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms. The minimal documentation required to take this leave is intentional so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.


Please note, however, that if an employee were to take unpaid leave under the FMLA, the FMLA's documentation requirements are different and apply. Further, if the employee is concurrently taking another type of paid leave, any documentation requirements relevant to that leave still apply.

93. I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children's school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child’s care provider during the summer—a camp or other programs in which the employee’s child is enrolled—is closed or unavailable for a COVID-19 related reason.

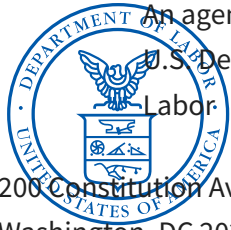
[1] If you are a Federal employee, you are eligible to take paid sick leave under the Emergency Paid Sick Leave Act. But only some Federal employees are eligible to take expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act. Your eligibility will depend on whether you are covered under Title I or Title II of the Family Medical Leave Act. Federal employees should consult with their agency regarding their eligibility for expanded family and medical leave. For more information related to federal employers and employees, please consult the Office of Personnel Management’s COVID-19 guidance portal, linked [here](#).

[2] If you are a Federal employee, the State or local minimum wage would be used to calculate the wages owed to you only if the Federal agency that employs you has broad authority to set your compensation and has decided to use the State or local minimum wage. For more information related to federal employers and employees, please consult the Office of Personnel Management’s COVID-19 guidance portal, linked [here](#).

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Coronavirus reopening

Map of when US states are ending lockdown

Last update: May 8, 2020



Across the United States, governors are rolling out a patchwork of constantly evolving plans to relax social distancing restrictions. At the height of restrictions in late March and early April, more than 310 million Americans were under directives ranging from “shelter in place” to “stay at home.” The orders varied by state, county and even city. Health officials warn that easing restrictions too soon could bring new outbreaks, but many states have forged ahead.

Map legend

Restrictions easing

Restrictions lifted

Restrictions tightening

Restrictions unchanged

AK

Click states for details

ME

VT

NH

WA

ID

MT

ND

MN

WI

MI

NY

CT

RI

MA

OR

NV

WY

SD

IA

IL

IN

OH

PA

NJ

CA

UT

CO

NE

MO

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TN

NC

SC

DC

OK

LA

MS

AL

GA

HI

TX

FL

Updates

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PUERTO RICO

Restrictions are unchanged in Puerto Rico

Updated May 7, 2020

A medical task force appointed by Gov. Wanda Vázquez Garced submitted recommendations on April 25, suggesting that Puerto Rico abide by strict social distancing and hygienic measures for 18 to 24 months, absent of a vaccine or proven treatment for the virus. On May 1, Vázquez Garced extended a lockdown order through May 25.

Stay-at-home order: Started March 15, 2020; ended on May 3, 2020

TEXAS

Restrictions are easing in Texas

Updated May 7, 2020

Hair and nail salons can reopen May 8 with restrictions on capacity and distances and gyms can get back to business on May 18, Gov. Greg Abbott said during his news briefing May 5 on the state's response to coronavirus.

Stay-at-home order: Started April 2, 2020; ended on April 30, 2020

Affected sectors: Retail, Outdoor recreation

Read more: <https://www.caller.com/story/news/local/texas/state-bureau/2020/05/0...>

MISSISSIPPI

Restrictions are easing in Mississippi

Updated May 7, 2020

Gov. Tate Reeves allowed restaurants and parks to reopen May 7 in the latest step to lift coronavirus restrictions in Mississippi after a nearly month-long lockdown.

Stay-at-home order: Started April 3, 2020; ending on May 11, 2020

Affected sectors: Retail, Restaurants

Read more: <https://www.clarionledger.com/story/news/2020/05/04/watch-gov-tate-...>

OKLAHOMA

Restrictions are easing in Oklahoma

Updated May 7, 2020

Oklahomans returned to restaurants, malls and other stores May 1 as stay-at-home orders expired in the state's biggest cities, putting local governments in line with Gov. Kevin Stitt's plans for reopening the state's economy amid the coronavirus pandemic.

Stay-at-home order: Never issued

Affected sectors: Cosmetology, Health

SOUTH CAROLINA

Restrictions are easing in South Carolina

Updated May 7, 2020

Gov. Henry McMaster lifted a mandatory stay-home order May 4, the same day that outdoor dining at restaurants resumed.

Stay-at-home order: Started April 7, 2020; ending on May 12, 2020

Affected sectors: Retail, Restaurants

Read more: <https://www.greenvilleonline.com/story/news/2020/05/01/sc-governor-...>

TENNESSEE

Restrictions are easing in Tennessee

Updated May 7, 2020

The state reopened salons and barber shops May 6, the latest in a string of restrictions to be loosened in the state. Guidance issued by Gov. Bill Lee's office May 1 says house of worship should exercise caution, encouraging their community members to wear face coverings and remain six feet away from others.

Stay-at-home order: Started April 2, 2020; ended on April 30, 2020

Affected sectors: Cosmetology, Restaurants

Read more: <https://www.tennessean.com/story/news/2020/04/28/coronavirus-tenne...>

ARKANSAS

Restrictions are easing in Arkansas

Updated May 7, 2020

Dental services may resume May 11 and the state's three casinos may reopen on May 18, Gov. Asa Hutchinson said in early May.

Stay-at-home order: Never issued

Affected sectors: Health, Fitness

Read more: <https://www.baxterbulletin.com/story/news/local/2020/05/07/governor-...>

MARYLAND

Restrictions are easing in Maryland

Updated May 7, 2020

While the state's stay-at-home order is still in place, Gov. Larry Hogan has reopened state beaches and announced that outdoor activities like golfing, camping, fishing and boating can start up again.

Stay-at-home order: Started March 30, 2020

Affected sectors: Outdoor recreation, Beaches

Read more: <https://www.delmarvanow.com/story/news/local/maryland/2020/05/06/...>

VIRGINIA

Restrictions are easing in Virginia

Updated May 7, 2020

On May 4, Gov. Ralph Northam extended an executive order through May 14 that closed restaurants, as well as recreational, retail and other nonessential businesses.

Stay-at-home order: Started March 30, 2020; ending on June 10, 2020

Affected sectors: Health

Read more: <https://www.newsleader.com/story/news/2020/04/29/elective-surgeries...>

WEST VIRGINIA

Restrictions are easing in West Virginia

Updated May 7, 2020

West Virginia has scaled back its plan to lift coronavirus restrictions to gauge how current reopenings will effect the state's caseload, officials said May 5.

Stay-at-home order: Started March 24, 2020; ended on May 4, 2020

Affected sectors: Cosmetology, Restaurants

KENTUCKY

Restrictions are easing in Kentucky

Updated May 7, 2020

Gov. Andy Beshear on May 7 announced Phase 2 of his plan for reopening Kentucky's economy, which includes restaurants, would begin in late May.

Stay-at-home order: Started March 26, 2020

Affected sectors: Health

Read more: <https://www.courier-journal.com/story/news/2020/04/29/coronavirus-ke...>

MISSOURI

Restrictions are easing in Missouri

Updated May 7, 2020

Much of Missouri reopened May 4 under relatively lenient statewide orders, but local governments can impose stricter rules if they want.

Stay-at-home order: Started April 6, 2020; ended on May 3, 2020

Affected sectors: Restaurants, Retail

NEBRASKA

Restrictions are easing in Nebraska

Updated May 7, 2020

Gov. Pete Ricketts loosened restrictions May 4 in most of the state, allowing salons, tattoo parlors and dine-in restaurants to reopen with limited capacity. Restaurant employees must wear masks. Day cares will be allowed up to 15 children per room. The loosened restrictions will be expanded to 10 more counties May 11.

Stay-at-home order: Never issued

Affected sectors: Restaurants, Cosmetology

UTAH

Restrictions are easing in Utah

Updated May 7, 2020

Utah moved May 1 from the "red" to "orange" phase of Gov. Gary Herbert's proposal to gradually scale back restrictions.

Stay-at-home order: Never issued

Affected sectors: Gatherings, Restaurants

Read more: <https://www.thespectrum.com/story/news/2020/04/28/covid-19-2-new-...>

CALIFORNIA

Restrictions are easing in California

Updated May 7, 2020

Gov. Gavin Newsom on May 7 issued the broadest loosening of his stay-at-home order so far, allowing some retailers to reopen but not have customers in stores.

Stay-at-home order: Started March 19, 2020

Affected sectors: Health, Schools

Read more: <https://www.desertsun.com/story/news/health/2020/05/07/california-g...>

NEW JERSEY

Restrictions are easing in New Jersey

Updated May 7, 2020

Gov. Phil Murphy announced April 29 that state and county parks and golf courses can reopen as soon as May 2.

Stay-at-home order: Started March 21, 2020

Affected sectors: Outdoor recreation, Parks

Read more: <https://www.northjersey.com/story/news/coronavirus/2020/05/07/nj-pu...>

PENNSYLVANIA

Restrictions are easing in Pennsylvania

Updated May 7, 2020

Two dozen counties in rural northern Pennsylvania will see some relief from restrictions, Gov. Tom Wolf said May 1. Those counties are all in the northwest and north-central regions of Pennsylvania, which have seen far fewer virus infections and deaths than the rest of the state.

Stay-at-home order: Started April 1, 2020; ended on May 8, 2020

Affected sectors: Outdoor recreation, Retail

Read more: <https://www.ydr.com/story/news/2020/05/01/coronavirus-pa-updates-g...>

OHIO

Restrictions are easing in Ohio

Updated May 7, 2020

Gov. Mike DeWine announced May 7 that hair salons, barbershops and other personal care businesses will reopen on May 15. Restaurants and bars can open outdoor patios and spaces on May 15 and indoor seating on May 21.

Stay-at-home order: Started March 23, 2020; ending on May 30, 2020

Affected sectors: Retail, Health

Read more: <https://www.cincinnati.com/story/news/2020/05/07/coronavirus-ohio-w...>

INDIANA

Restrictions are easing in Indiana

Updated May 7, 2020

As of May 4, Gov. Eric Holcomb began lifting social distancing restrictions in Indiana. Gatherings of up to 25 people are allowed in all but the three hardest-hit counties; malls and other nonessential retailers can open at 50% capacity and churches can begin holding services with no limits on the number of attendees.

Stay-at-home order: Started March 25, 2020; ended on May 1, 2020

Affected sectors: Health, Gatherings

Read more: <https://www.indystar.com/story/news/2020/05/07/indiana-lifting-covid-...>

IOWA

Restrictions are easing in Iowa

Updated May 7, 2020

Gov. Kim Reynolds said May 6 she will allow dental services to resume and campgrounds, drive-in theaters, tanning facilities and other businesses to reopen statewide beginning May 8 if they meet certain requirements. She ordered them shut down in March.

Stay-at-home order: Never issued

Affected sectors: Health, Restaurants

Read more: <https://www.desmoinesregister.com/story/money/business/2020/05/07/...>

SOUTH DAKOTA

Restrictions are easing in South Dakota

Updated May 7, 2020

Gov. Kristi Noem unveiled a "Back to Normal Plan" for businesses and residents for the next phase of the coronavirus response.

Stay-at-home order: Never issued

Affected sectors: Retail, Health

Read more: <https://www.argusleader.com/story/news/politics/2020/04/28/gov-kristi...>

WYOMING

Restrictions are easing in Wyoming

Updated May 7, 2020

Wyoming eased some of its coronavirus restrictions May 1, with barbershops, gyms, nail salons and child care centers among the businesses that were allowed limited re-openings, Gov. Mark Gordon said.

Stay-at-home order: Never issued

Affected sectors: Cosmetology, Fitness

NEVADA

Restrictions are unchanged in Nevada

Updated May 7, 2020

Gov. Steve Sisolak said May 7 that restaurants, retail stores, barbershops, hair salons and some brewpubs can resume limited operations on May 9, a full week ahead of the schedule laid out in Nevada's coronavirus recovery plan.

Stay-at-home order: Started March 31, 2020; ending on May 15, 2020

Read more: <https://www.rgj.com/story/news/politics/2020/05/07/sisolak-reopen-so...>

OREGON

Restrictions are easing in Oregon

Updated May 7, 2020

Rural counties with few cases that meet a series of health and safety prerequisites can apply to enter phase one of a three-part plan to reopen Oregon while limiting the risk of spreading coronavirus, Gov. Kate Brown announced May 7.

Stay-at-home order: Started March 23, 2020

Affected sectors: Health, Outdoor recreation

Read more: <https://www.statesmanjournal.com/story/news/2020/05/07/covid-19-so...>

MASSACHUSETTS

Restrictions are easing in Massachusetts

Updated May 7, 2020

Limited use of golf courses will be allowed, Gov. Charlie Baker said May 7. Earlier in the week, Barker said a 17-person commission is scheduled to issue a proposal May 18 on suggestions to safely open up the economy.

Stay-at-home order: Started April 24, 2020; ending on May 18, 2020

Affected sectors: Outdoor recreation

Read more: <https://www.heraldnews.com/news/20200507/fore-baker-lifts-mass-ban...>

RHODE ISLAND

Restrictions are unchanged in Rhode Island

Updated May 7, 2020

Gov. Gina Raimondo on May 7 became the first governor in the region to lift a statewide stay-at-home order, effective May 9. The order was first imposed March 28.

Stay-at-home order: Started March 28, 2020; ended on May 8, 2020

Read more: <https://www.providencejournal.com/article/20200507/NEWS/200509680>

MICHIGAN

Restrictions are easing in Michigan

Updated May 7, 2020

Michigan manufacturing will resume on May 11, with the auto plants restarting one week later, on May 18, Gov. Gretchen Whitmer said May 7. Michigan's stay-at-home order has been extended through May 28. Construction, real estate and more outdoor work resumed May 7.

Stay-at-home order: Started March 24, 2020; ending on May 15, 2020

Affected sectors: Outdoor recreation, Retail

Read more: <https://www.freep.com/story/news/local/michigan/2020/05/07/michiga...>

WISCONSIN

Restrictions are easing in Wisconsin

Updated May 7, 2020

Health systems are beginning to perform elective procedures and provide other care that has been delayed since mid-March. On April 27, Gov. Tony Evers allowed businesses that can offer services "free of contact with customers" like dog groomers, upholsterers and lawnmower repair shops to open April 29. And on May 1, 34 state parks and forests may open under special conditions.

Stay-at-home order: Started March 25, 2020; ending on May 26, 2020

Affected sectors: Parks, Retail

Read more: <https://www.jsonline.com/story/money/business/health-care/2020/05/0...>

NORTH DAKOTA

Restrictions are easing in North Dakota

Updated May 7, 2020

Most businesses reopened May 1. Gov. Doug Burgum eased restrictions that included limiting bars and restaurants to half capacity, requiring barbers and cosmetologists to wear masks and prohibiting some high-intensity fitness classes. Burgum said movie theaters could also reopen if they do such things as limit seating and stagger start times.

Stay-at-home order: Never issued

Affected sectors: Retail, Cosmetology

MONTANA

Restrictions are easing in Montana

Updated May 7, 2020

Movie theaters, gyms and museums in Montana will have the option to reopen at the end of next week as an addition to the state's phased reopening amid the COVID-19 pandemic. Montana churches were allowed to reopen April 26, and some businesses were allowed to reopen April 27. Restaurants, casinos, bars, breweries and distilleries can open May 4 with limited capacity. Schools can return to in-person instruction May 7.

Stay-at-home order: Started March 26, 2020; ended on April 24, 2020

Affected sectors: Retail, Restaurants

Read more: <https://www.greatfallstribune.com/story/news/2020/05/07/montana-cor...>

WASHINGTON

Restrictions are easing in Washington

Updated May 7, 2020

Gov. Jay Inslee announced May 1 that the state's coronavirus stay-at-home order would be extended through at least May 31 and said there will be a four-stage phase for lifting of restrictions, starting with allowing retail curbside pickup, automobile sales and car washes by mid-May. Fishing, hunting and golfing resumed May 5, at which time people could also return to state parks and other state lands for day trips.

Stay-at-home order: Started March 23, 2020; ended on May 4, 2020

Affected sectors: Outdoor recreation

Read more: <https://www.kitsapsun.com/story/news/2020/04/27/fishing-hunting-gol...>

NEW HAMPSHIRE

Restrictions are easing in New Hampshire

Updated May 7, 2020

Hospitals, which had largely been restricted to treating COVID-19 patients and emergencies, started performing time-sensitive procedures such as CT scans and knee and hip replacements for chronic pain May 4. On May 1, Gov. Chris Sununu extended the state's stay-at-home order to May 31 while allowing the restricted reopening of restaurants, hair salons and other businesses throughout the month.

Stay-at-home order: Started March 27, 2020; ended on May 4, 2020

Affected sectors: Health

VERMONT

Restrictions are easing in Vermont

Updated May 7, 2020

Gatherings of 10 people or fewer were allowed with precautions and golf courses and some other forms of outdoor recreation reopened May 7, Gov. Phil Scott announced May 6.

Stay-at-home order: Started March 24, 2020; ending on May 15, 2020

Affected sectors: Outdoor recreation, Retail

Read more: <https://www.burlingtonfreepress.com/story/sports/2020/05/06/vt-coron...>

ALASKA

Restrictions are easing in Alaska

Updated May 7, 2020

Starting May 8, bars, gyms, libraries, theaters and other entertainment venues can reopen with limited capacity as a part of the state's phased reopening, state health commissioner Adam Crum said.

Stay-at-home order: Started March 11, 2020; ended on April 21, 2020

Affected sectors: Health, Cosmetology

FLORIDA

Restrictions are easing in Florida

Updated May 6, 2020

Gov. Ron DeSantis reopened the state's parks May 4 with some restrictions, saying the ability for Floridians to get outdoors will offer some “peace of mind.”

Stay-at-home order: Started March 20, 2020; ended on April 30, 2020

Affected sectors: Beaches, Outdoor recreation

Read more: <https://www.tallahassee.com/story/news/2020/04/29/florida-reopen-bu...>

HAWAII

Restrictions are easing in Hawaii

Updated May 6, 2020

Hawaii Lt. Gov. Josh Green said May 1 the state is moving into “Phase 2” of its effort against the coronavirus now that it has successfully reduced the rate of new infections and “flattened the curve.”

Stay-at-home order: Started March 25, 2020; ending on May 31, 2020

Affected sectors: Beaches, Health

GEORGIA

Restrictions are easing in Georgia

Updated May 6, 2020

Some malls reopened May 4, though many businesses inside still shuttered and parking lots sparsely filled, as the state continued on an aggressive course to reopening. Gov. Brian Kemp allowed his statewide shelter-in-place order to expire at midnight April 30 but extended his emergency powers to June 12 and telling the elderly and medically fragile to stay at home until then.

Stay-at-home order: Started April 3, 2020; ended on April 30, 2020

Affected sectors: Fitness, Cosmetology

Read more: <https://www.usatoday.com/story/news/nation/2020/04/24/coronavirus-...>

ALABAMA

Restrictions are easing in Alabama

Updated May 6, 2020

The Alabama stay-at-home order will expire April 30, to be followed by a "safer at home" order, which will last until May 15.

Stay-at-home order: Started April 4, 2020; ended on April 30, 2020

Affected sectors: Retail, Beaches

Read more: <https://www.montgomeryadvertiser.com/story/news/2020/04/28/alaba...>

LOUISIANA

Restrictions are easing in Louisiana

Updated May 6, 2020

Louisiana Gov. John Bel Edwards signed an extension of his stay-at-home order through May 15, warning the state will enforce the restrictions if some parishes allow businesses to reopen early.

Stay-at-home order: Started March 23, 2020; ending on May 15, 2020

Affected sectors: Retail, Restaurants

Read more: <https://www.theadvertiser.com/story/news/2020/04/27/covid-19-louisia...>

D.C.

Restrictions are unchanged in D.C.

Updated May 6, 2020

Mayor Muriel Bowser announced on April 23 the formation of a task force, the Reopen D.C. Advisory Group, that will issue recommendations in May on the timeline to ease restrictions.

Stay-at-home order: Started April 1, 2020; ending on May 15, 2020

NORTH CAROLINA

Restrictions are unchanged in North Carolina

Updated May 6, 2020

Starting on May 8, North Carolina will begin lifting certain restrictions as the state transitions to Phase 1 of a three-phase plan.

Stay-at-home order: Started March 30, 2020; ended on May 8, 2020

Read more: <https://www.citizen-times.com/story/news/local/2020/04/30/coronaviru...>

KANSAS

Restrictions are easing in Kansas

Updated May 6, 2020

Gov. Laura Kelly's stay-at-home order expired May 3 as she moved the state into the first part of a three-phase plan to reopen Kansas. Some businesses, including restaurants, opened their doors for the first time in weeks, with the addition of social distancing protocols.

Stay-at-home order: Started March 30, 2020; ended on May 3, 2020

Affected sectors: Retail, Restaurants

Read more: <https://www.cjonline.com/news/20200430/kansas-coronavirus-update-g...>

NEW MEXICO

Restrictions are easing in New Mexico

Updated May 6, 2020

Gov. Michelle Lujan Grisham announced April 30 that the state would begin to ease business restrictions, acknowledging that the coronavirus has brought about an "economic crisis." Many nonessential retailers, pet groomers, state parks and golf courses resumed operations May 1 in a limited way under a new, modified state public health order. Grisham announced May 5 that employees of essential businesses operating in New Mexico will be required to wear face coverings.

Stay-at-home order: Started March 24, 2020; ending on May 15, 2020

Affected sectors: Retail, Outdoor recreation

Read more: <https://www.lcsun-news.com/story/news/2020/04/30/coronavirus-news...>

ARIZONA

Restrictions are easing in Arizona

Updated May 6, 2020

Gov. Doug Ducey on April 29 extended the state's stay-at-home order through May 15, and some businesses reopened on a limited basis May 4.

Stay-at-home order: Started March 30, 2020; ending on May 15, 2020

Affected sectors: Health, Retail

Read more: <https://www.azcentral.com/story/news/local/arizona-health/2020/04/29...>

DELAWARE

Restrictions are unchanged in Delaware

Updated May 6, 2020

Gov. John Carney announced plans May 5 to allow some businesses to operate again under social distancing rules to limit the spread of coronavirus.

Stay-at-home order: Started March 24, 2020; ending on May 15, 2020

Read more: <https://www.delawareonline.com/story/news/2020/04/24/delaware-start...>

COLORADO

Restrictions are easing in Colorado

Updated May 6, 2020

Getting a haircut and shopping in person at retail stores were allowed again in much of Colorado starting May 1 as the state eased restrictions. On May 4, nonessential business offices reopened with half the usual staff to allow for social distancing.

Stay-at-home order: Started March 26, 2020; ended on April 27, 2020

Affected sectors: Health, Cosmetology

Read more: <https://www.coloradoan.com/story/news/2020/04/29/colorado-dental-a...>

ILLINOIS

Restrictions are easing in Illinois

Updated May 6, 2020

Gov. J.B. Pritzker announced a five-phase reopening plan May 5 called "Restore Illinois" and indicated at that time that the state was already in the plan's second phase, with nonessential businesses open for curbside pickup and delivery.

Stay-at-home order: Started March 21, 2020; ending on May 30, 2020

Affected sectors: Health, Outdoor recreation

Read more: <https://www.sj-r.com/news/20200430/how-illinoisrsquo-neighbors-plan-...>

CONNECTICUT

Restrictions are unchanged in Connecticut

Updated May 6, 2020

Originally slated to expire April 22, Gov. Ned Lamont announced April 10 that Connecticut's stay-at-home order would be extended to May 20. Lamont is eying June to start reopening businesses. On May 5, Lamont said he is canceling in-person classes at all Connecticut K-12 public schools for the rest of this school year

Stay-at-home order: Started March 23, 2020; ending on May 20, 2020

NEW YORK

Restrictions are easing in New York

Updated May 6, 2020

After the state's current stay-at-home order expires May 15, Gov. Andrew Cuomo said each of the state's 10 regions can start a four-phase reopening plan — if they meet seven specific criteria.

Stay-at-home order: Started March 22, 2020; ending on May 15, 2020

Affected sectors: Outdoor recreation, Health

Read more: <https://www.democratandchronicle.com/story/news/2020/04/29/corona...>

MINNESOTA

Restrictions are easing in Minnesota

Updated May 6, 2020

Beginning May 11, doctors, dentists and veterinarians will be able to begin providing elective surgeries again — as long as they create a plan to keep patients and health care workers safe. Gov. Tim Walz signed an order May 5 to allow hospitals, ambulatory surgical centers and clinics to resume many delayed procedures.

Stay-at-home order: Started March 27, 2020; ended on May 4, 2020

Affected sectors: Outdoor recreation, Retail

Read more: <https://www.sctimes.com/story/news/2020/04/30/walz-extends-stay-ho...>

IDAHO

Restrictions are easing in Idaho

Updated May 6, 2020

Gov. Brad Little allowed his five-week stay-at-home order to expire April 30. On May 1, the state entered the first of his four-stage plan to recover from the economic damage caused by the virus. Childcare facilities and churches can reopen, with distancing and sanitation rules.

Stay-at-home order: Started March 25, 2020; ended on April 30, 2020

Affected sectors: Retail

MAINE

Restrictions are easing in Maine

Updated May 6, 2020

Gov. Janet Mills extended Maine's stay-at-home order through May 30, while introducing a plan to gradually reopen the economy, with the first phase beginning May 1.

Stay-at-home order: Started April 2, 2020; ending on May 31, 2020

Affected sectors: Outdoor recreation, Cosmetology

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OSHA Memo Permitting Discretion in Enforcement Based on Employer's Good Faith Efforts During the Coronavirus Disease 2019 (COVID-19) Pandemic

 Posted by **Darren Harrington** on May 4, 2020 in **COVID19, Employment Law, OSHA**

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OSHA's April 16, 2020 guidance memo from OSHA's Directorate of Enforcement provides OSHA area offices with unusual discretion in citing employers who otherwise exercised "good-faith" in attempting to comply with OSHA's various standards but failed due to circumstances related to the COVID-19 pandemic. The discretion provided to OSHA's area offices by this guidance will only be for the duration of the COVID-19 pandemic. Hopefully, this guidance will provide some actual protection to employers who are being investigated for compliance failures tied to the pandemic, but it should be noted that the actual language of the guidance provides no guarantee of any such protection. In fact, the language of the guidance may serve as a potential trap for the employer who relies on its intention and not its actual language.

Typically, OSHA's compliance officers operate under a "must-cite" mandate which provides the compliance officer no discretion in citing an employer where a violation has been identified, regardless of the good-faith of the employer. In lieu of this mandate, this new guidance directs OSHA Area Offices to exercise discretion in citing employers for violations where the employer can demonstrate it exercised good-faith but compliance was not possible due to conditions created by the pandemic.

Notably, the guidance imposes few, if any, actual restraints on OSHA in citing an alleged violation. In addition, the language of the guidance is filled with subjective terms that create several legal pitfalls for the employer who relies on it to justify non-compliance during the pandemic. The guidance reads, in part, as follows:

Compliance Safety and Health Officers (CSHOs) should evaluate whether the employer made good faith efforts to comply with applicable OSHA standards and, in situations where compliance was not possible, to ensure that employees were not exposed to hazards from tasks, processes, or equipment for which they were not prepared or trained. As part of assessing whether an employer engaged in good faith compliance efforts, CSHOs should evaluate whether the employer thoroughly explored all options to comply with the applicable standard(s) (e.g., the use of virtual training or remote communication strategies). CSHOs should also consider any interim alternative protections implemented or provided to protect employees, such as engineering or administrative controls, and whether the employer took steps to reschedule the required annual activity as soon as possible....

Where the employer cannot demonstrate any efforts to comply, a citation may be issued as appropriate under existing enforcement policy. However, where an employer has made attempts to comply in good faith, Area Offices shall take such efforts into strong consideration in determining whether to cite a violation.

Per the guidance, the employer is required to demonstrate compliance was “impossible” (i.e., not merely “infeasible”) and that, in those instances, the employer nonetheless “ensured” its employees were not exposed to the related hazard through alternative means of abatement. In order to establish “good-faith,” the employer will need to convince OSHA that it “thoroughly” explored “all” options to comply with the standard. Even when the employer has satisfied all these prerequisites, the Area Office is only directed to give the good-faith efforts of the employer “strong consideration” in determining whether to cite the employer. Clearly, the subjective language used in this guidance should discourage employers from relying on the memo as providing a “good-faith” exception to compliance obligations during the pandemic.

Where the employer must rely on this guidance to avoid a citation, documentation will be key to establishing the employer made a good-faith effort to comply with the standard at issue, and/or made alternative arrangements to protect its employees from the related hazard. To the extent the employer believes compliance with a specific standard is not achievable due to conditions created by the COVID-19 pandemic, I suggest documenting the following eight steps:

1. Identify the non-compliance.
2. Detail the reason the compliance cannot be achieved.
3. Explain how that reason is tied to the COVID-19 pandemic.
4. Identify the alternative forms of abatement that were explored.
5. Identify the alternative form of abatement that was selected and implemented.
6. Explain why this form of abatement was selected.
7. Calendar the date formal compliance will be achieved.
8. Explain the why this date is “as soon as possible.”

Successfully completing these eight steps will not guarantee OSHA won't cite the employer but it will improve the employer's chances and help lay the foundation for a number of defenses where a citation is issued.

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📌 *Compliance, Enforcement, Good Faith, OSHA*



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Families First Coronavirus Response Act

 Posted by **Douglas Bracken** on March 19, 2020 in

COVID19, Employment Law, FMLA, HR Policies & Procedures, Wage and Hour

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COVID-19 has already significantly impacted the U.S. in unprecedented ways. In response, Congress passed and President Trump signed into law yesterday evening a law designed to provide relief to families impacted by the recent coronavirus COVID-19 outbreak. As most people already know, the World Health Organization (WHO) on March 11, 2020 declared COVID-19 a global pandemic, the first since the H1N1 virus in 2009. But COVID-19 has already had a bigger impact on U.S. employers than H1N1 ever did, with many employees currently working remotely to help curb the spread of COVID-19.

As a result, President Trump declared a national emergency on March 13, 2020, and signed new emergency measures into law just last night. One significant law for employers is the Families First Coronavirus Response Act providing:

- Free coronavirus testing;
- Paid emergency leave;
- Enhanced unemployment insurance;
- Protections for health care workers and workers who clean at-risk places;
- Additional funds for Medicaid.

Among other provisions, the Act (1) expands the Family and Medical Leave Act (FMLA) temporarily, and (2) provides paid sick leave for employees impacted by COVID-19 and their caregivers. These provisions take effect on April 2, 2020 and will sunset as of December 31, 2020.

To help pay for these emergency measures, covered employers required to provide emergency FMLA leave or paid sick leave will be eligible for refundable tax credits to be taken against the employer's portion of Social Security taxes. Employers whose costs exceed their portion of the taxes will be reimbursed for the wages that exceed the taxes they would owe.

Emergency Family and Medical Leave Expansion Act

First, the Act expands the FMLA in several ways. Significantly, it changes the employee threshold for coverage from requiring more than 50 employees, to applying to employers with fewer than 500 employees. The idea was not to provide federal funding for leave that some believed large employers should already provide.

The Act also allows employees to qualify after working for an employer only 30 days prior to the requested leave, as opposed to requiring a year of employment. There is an exception allowing the Secretary of Labor to exempt small businesses with fewer than 50 employees if the requested leave would jeopardize the business, and to exempt healthcare providers and emergency responders from the definition of employees.

The new Act provides coverage for one scenario. It provides up to 12 weeks of job-protected leave under the FMLA for an employee employed by the employer for at least 30 days before the leave starts if the employee is unable to work or telework and needs to care for the employee's child because the child's school, place of care or care provider is closed or unavailable due to a public health emergency. Significantly, this is the only qualifying reason for the expanded FMLA coverage.

The Act also expands the relief to include paid leave for the first time. The first 10 days may be unpaid, but the rest of the leave must be paid at two-thirds of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled; although pay is limited to \$200 per day and \$10,000 per employee. Employees who work part-time or irregular schedules are entitled to receive pay based on the average number of hours worked for the six months prior to taking the requested leave. If the employee has not yet worked six months, then the pay is calculated based on the average number of hours the employee reasonably expected to work when hired.

The Act also expands the job protection aspect of the FMLA. Employers with more than 25 employees must still return employees returning from Emergency Leave to the same or similar job position. However, employers with fewer than 25 employees are generally excluded if the position no longer

exists because of an economic downturn or similar circumstance caused by the public health emergency.

Emergency Paid Sick Leave Act

Also passed was the Emergency Paid Sick Leave Act further providing paid sick leave on a national level to qualifying employees. The Act applies to businesses with fewer than 500 employees if the employee is:

- Subject to quarantine or isolation related to COVID-19, including self-quarantine pursuant to advice from a health care provider;
- Experiencing COVID-19 symptoms and seeking medical diagnosis;
- Caring for an individual subject to quarantine or isolation related to COVID-19, including self-quarantine pursuant to advice from a health care provider (and this protection is not limited to just family members);
- Caring for the employee's child because the child's school, place of care, or care provider is closed or unavailable due to public health emergency; or
- Experiencing another substantially similar condition as specified by the Secretary of Health and Human Services (in consultation with the Secretary of the Treasury and the Secretary of Labor).

A business employing fewer than 500 employees is required to pay a full-time employee for 80 hours of emergency paid sick leave, and may provide, at the request of a qualifying employee, this paid sick leave instead of the unpaid leave permitted in the first 10 days by the Emergency Family and Medical Leave Expansion Act. For the Act's paid leave, the employer must provide 80 hours of paid sick leave at the employee's regular rate, or two-thirds of the employee's regular rate when caring for others or when any other substantially similar condition applies. Like the FMLA, there is an exception for employers who are healthcare providers or emergency responders. The Act also caps the wages at \$511 per day up to \$5,110 total per employee for their own use, and \$200 per day up to \$2,000 total to care for others and for any other substantially similar condition. This paid sick leave is in addition to any leave already provided, and it does not carry over to the next year.

Similarly to the emergency FMLA's paid leave, employees who work part-time or irregular schedules are entitled to receive pay based on the average number of hours worked for the six months prior to taking the requested leave. In a slight departure, however, if the employee has not yet worked six months, then the pay is calculated based on the average number of hours the employee would have worked in a two-week period.

COVID-19 Testing Coverage

The new emergency laws now also require private health care plans (including self-insured plans) to cover COVID-19 diagnostic testing and related services for employees and their covered dependents without requiring any cost sharing with the employee, like deductibles, copayments or coinsurance. The plans also cannot require prior authorization or similar medical management as a precondition of COVID-19 testing or related services.

Conclusion

The new emergency measures significantly expand paid leave to employees affected by the COVID-19 pandemic. Employers should use the short period before these provisions take effect on April 2, 2020 to carefully review the new requirements with an employment law professional and understand their obligations. KRCL's Employment Practice Group will continue to monitor this rapidly evolving area and stands ready to provide guidance for employers.

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📌 *coronavirus, COVID-19*



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Coronavirus FAQ #2 for Employers – Working from Home

👤 *Posted by Andrea (AJ) Johnson on March 13, 2020 in*

Coronavirus FAQ, COVID19, Department of Labor, Employment Law, Wage and Hour

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Dear AJ: Some healthy employees want to work at home. Do I have to allow that?

AJ's Answer: The question posed, in my view, requires a larger look at our businesses and what we want to accomplish, how we want to do that, what we actually are able to do, *and* what makes sense for our business and employees. The answer also involves a recognition that this is a temporary problem. Finally, the answer also is less legal and more practical in nature.

First of all, of course, yes, we seem to have jumped into the abyss called COVID-19 (“CV-19”) and its *pandemic panic*. The world is topsy turvy, and how we relate to each other and get stuff done in business seems to have changed—a lot. We, here in Houston, seemingly have less to be concerned about – at least based on numbers and reports and in relative comparison to other locations around the U.S. Nonetheless, the panic pandemic has gripped us, too – we hear stories and feel the fear about Seattle, California, cruise ships, an empty Venice, Italy, stock market deterioration, long lines at HEB, schools closing, the Rodeo ending early (!), etc. This is not our world! *Um, yes, it is.*

The world is strange for employers and employees. The old rules, in a sense, don’t apply.

And, yet, we know, in our souls, that this is a *flu*, and it will have its way with us, get some sick, sadly fail some, and leave many others (we hope) as survivors or happily unscathed. The point: there will be an end to this. Sometime in the next four-to-eight weeks, probably the entire sickness will do its thing and largely be done. Then we will “clean” up our situation and get back to work, I think, as usual, hoping that our economy returns and blooms again. We have to assume some positivity.

So, a worker, panicked today, wants to work at home?

A beginning question: Is work at home even possible? Given our electronic society, for some jobs, this is not a problem. For others, it may not be possible. I think that employers have to look at their worksite and ask these questions:

- Can people work at home, given the nature of the work?
- What will we lose by people working at home?
- Are the people asking to work at home – are *they* sick or healthy?
- Do we know of anyone in the workplace being sick or being in contact with someone with CV-19?
- What are we doing in the workplace to reduce issues from developing?
- Is it possible that our workplace might be such that some could work at the office/worksite and others work at home?

Seems to me that, at least for the next couple of months, we should be telling anyone who is ill to “go home”—that’s why we have sick days. I say this even if the sickness is just the “common cold.” We don’t need to ramp up panic with our employees, and, as employers, we have every right to tell personnel to stay home, if we choose (as long as we enforce the rules evenly with all).

Also, naturally, we cannot have employees come to work in an environment that may be dangerous, where perhaps there is a certain danger of CV-19 contagion. If that possibility happens, we may have to shut down our workplace and allow work to be done at home, at least for a week or two. We would likely not have a choice then.

Aside from a known danger, what do we tell people?

That answer may depend on where we are. In a location where there is a flu hotbed, it may be wise to allow at-home work. If not, then each employer should determine what works for its location. Generally, it is good to work around others, to have the interchange of ideas and comradery of colleagues. So, work in the office may be favored. I think, if that’s the direction we go, we have to provide assurances to our workforces about the workplace, its cleanliness, and steps taken to make sure all is well. There may be additional steps in the office that we can use to limit possible problems

and essentially distance people, perhaps (*e.g.*, stop a lot of in-person meetings, which may be welcomed by many).

Does the law require that I permit work at home?

At this stage and in Houston, no. There is no legal mandate. That may change tomorrow if our Governor or Mayor order something different. Without governmental intervention or law, and without a known medical danger in our office or workplace, we as employers have the right to choose where the work will be done. So, there is no current legal obligation requiring work at home or forcing employers to allow employees to work at home.

What about the fact that schools are closing, putting pressure on workers?

That's a serious consideration. Children are a fact of life, a job at times, sweet and tender on some days, and, sometimes, as my Dad called me, "stinkers." Yet, we parents love our children, and we have to ensure their safety and wellbeing also. When they are out of school and if the parental unit(s) are working, what do we do with them and how does that personal imposition affect work? This is a typical problem when there are weather problems (snow or heat days, hurricanes, etc.). It is also a problem when there are school holidays that are not work holidays. Generally, parents can plan for these "ahead." Here, the situation is foisted suddenly on our employees. And, it may last 2-4 weeks, who knows? I think that, for retention purposes, employers should be considerate of employees and work with them as best as possible, either to work at home or allow for some time off, even if unpaid, to take care of children suddenly out of school. Likewise, employees need to be considerate of employers and find alternatives to work at home, if presence in the workplace is preferred.

If I have to shut our doors for a couple of weeks or longer, and we send our personnel home, what do I do with pay?

See my blog on March 11, 2010. Bottom line, we would be obligated, by current law, to pay our exempt, salaried personnel, but we are not legally required to pay our hourly workers unless they are able to work at home.

All work, whether at home or in the office, must be compensated. *But, if a non-exempt, hourly worker cannot do his/her job at home, what then?* That's the \$64,000 question, as they say. By law, by the standards on which our traditional work view is founded, no work means no pay. But here, the situation may be different – this is a unique medical crisis, it seems. As employers, we have to be concerned about employee morale and retaining employees for the day that our doors will open again. Paying people, beyond sick and vacation days, for an extended period (*e.g.*, a month's time) may be much more than a lot of employers can bear, however. My hope, as I write this, is that Congress and

the President will get less political and more *American-oriented* to put in place some measures to help workers (and businesses) that may be caught in this predicament. We will see.

As events unfold and there are changes in Houston or elsewhere, these considerations may also change. It will be a day-by-day balancing of our legal and business requirements against these uncertain days and weeks in the next month or two.

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📌 *coronavirus, COVID-19, CV-19*



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