



**COVID-19:
OUR MOST PRESSING HR QUESTIONS ANSWERED**



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Some Housekeeping Items:

- All participants have been placed on mute.
- All registrants will receive a follow up e-mail with a link to the recorded webinar and any training documentation.
- Stay updated and register for upcoming webinars on our COVID-19 INFO Center here: <https://ctrhcm.com/home/covid-19-information-center/>
- This training is intended for educational and informational purposes. We hope that you learn a lot but the information should not be construed as legal or tax advice.
- If you have any questions or want to request training, please e-mail training@ctrhcm.com

Today's Presenters:



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Acuity Human Resources, LLC

- Our company works exclusively with small to medium sized employers and provides HR consulting and outsourcing
- We serve all industries and offer a “business first” HR solution for our clients
- Over the last few weeks, our team of professionals have been working almost exclusively on issues associated with COVID-19 and its impact on business, employment, and the continuity of operations for our clients
- Our goal for today is to share some of the frequently asked questions we have experienced in the last few weeks

What are the new laws and regulations impacting HR?

The Family First Coronavirus Response Act which includes sick leave provisions and extended family medical leave took effect on April 1st and the CARES Act was signed into law last week and will have major impacts on small to medium sized businesses and the HR implications are significant not just from a regulatory point-of-view, but also how HR decisions will impact the business going forward.

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. 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 the 500 employee threshold or the small business exemption, see the [DOL Q&A](#).

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

- No. The Families First Coronavirus Response Act (FFCRA) went into effect on April 1, 2020 and is not applicable before that time.

Do we need to provide the required sick leave under the FFCRA in addition to the sick leave we already offer?

- Yes. The Department of Labor makes it clear in an [FAQ](#) regarding the FFCRA that leaves under the FFCRA are intended to be in addition to any preexisting leave entitlements that an employee may have.

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.

How do expanded family and medical leave (EFMLA) and emergency paid sick leave (EPSL) interact with each other, especially in regard to caring for children?

- The EFMLA and EPSL both cover caring for children whose school or place of care is closed due to COVID-19 precautions, though EFMLA has the broader restriction that the child be under 18 years old. The leaves can run concurrently with the first 10 days of EFMLA being unpaid, which will, in many cases, coincide with the 80 hours of pay (at $\frac{2}{3}$ the regular rate) under EPSL for full-time employees.

Can employees take leave under the Family and Medical Leave Act over the next 12 months if they used some or all of their expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act?

- It depends. Employees 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 they take some, but not all 12, workweeks of their expanded family and medical leave by December 31, 2020, they 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, employees may only take FMLA leave.

Are employees required to provide documentation in support of leave taken under the FFCRA?

- 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. We expect IRS guidance/forms to be released soon.
- For leave under the EFMLA, employers may also request the following:
 - ✓ A notice that has been posted on a government, school, or daycare website;
 - ✓ A notice that has been published in a newspaper or online new article; or
 - ✓ An email from an employee or official of the school, place of care, or childcare provider.

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

- 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.

Can we send employees home if they are symptomatic?

- Yes. The Centers for Disease Control and Prevention (CDC) has advised employers that employees who appear to have symptoms of COVID-19 (e.g., cough, shortness of breath) should be separated from other employees and sent home immediately. If the employee feels well enough to work, consider whether they can effectively telecommute.

What should we do if an employee says their symptoms are not related to COVID-19?

- The EEOC and CDC advise employers to send employees home when they have COVID-19 symptoms (fever, cough, shortness of breath). Employees should not return until they are symptom free for at least 24 hours without symptom-altering medication (e.g., Tylenol, cough suppressants). The CDC is asking employers not to request a doctor's note because of the current strain on our healthcare system due to the pandemic.
- If an employee claims that their symptoms are attributed to another cause (e.g., allergies, asthma), the most risk-adverse response would be to send employees home when they have COVID-19 symptoms, with pay. We understand that providing paid leave for all employees is not feasible for every business, but paid leave will incentivize employees to be honest and help you keep your workplace safe.
- The CDC has a risk assessment tool available [here](#), which might be helpful.

If an employee is out of the office due to sickness, can we ask them about their symptoms?

- Yes. In most circumstances, employers shouldn't ask about an employee's symptoms, as that could be construed as a disability-related inquiry. Under the circumstances, however—and in line with an employer's responsibility to provide a safe workplace—we recommend asking specifically about the symptoms of COVID-19 and making it clear that this is the extent of the information you're looking for.
- Remember that medical information must be kept confidential as required by the ADA. If the employee does reveal that they have symptoms of COVID-19, or has a confirmed case, you should see the CDC's Interim Guidance to determine next steps.
 - ✓ **NOTE:** Here's a suggested communication: *"Thank you for staying home while sick. In the interest of keeping all employees as safe as possible, we'd like to know if you are having any of the symptoms of COVID-19. Are you experiencing a fever, cough, and/or shortness of breath?"*

What should we do if a potentially exposed employee came into the office?

- Immediately notify affected employees. *See next question.*
- Determine if the office location(s) need to be closed for cleaning, and if so, for how long. Communicate these measures to employees still reporting to the physical location. If cleaning to be conducted by staff, refer to the [CDC guidelines](#). Preferably, contact a professional cleaning company with expertise in this area.
- Notify immediate manager(s) that their direct report is on a leave of absence for a non-disciplinary reason.
- Determine if exposure may have been work-related and potentially qualifying as a workers' compensation claim. If work-related, record as appropriate on the OSHA log and contact your worker's compensation provider.

How do we notify potentially exposed employees?

- Immediately contact any of these individuals including coworkers, vendors, customers and third party business associates who may have been in close contact with the COVID-19 positive employee, without sharing the person's identity. Employers are **not permitted** to disclose the name of the affected employee and must adhere to HIPAA guidelines at all times.
- Uniformly communicate with each employee that someone in the organization has tested positive for COVID-19, and that they been identified as someone having close contact with this individual, as defined by the CDC. Refer to the latest guidance from the CDC regarding length of time these employees should self-isolate at home. (The fastest method of communication would be by phone).
- Direct employees to their physician or healthcare provider for any medical questions. Do not provide any medical guidance or speculation on the situation.
- Follow-up with affected employee(s) via phone or email on a weekly basis to express support.

Can we require or allow certain groups of employees, but not others, to work from home?

- Yes. Employers may offer different benefits or terms of employment to different groups of employees as long as the distinction is based on non-discriminatory criteria. For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. non-exempt), or location of the office or the employee. Employers should be able to support the business justification for allowing or requiring certain groups to telecommute.

How do I make a telecommuting policy?

- Although some employers will be comfortable sending everyone home with their laptop and saying, go forth and be productive, most will want to be a little more specific. A good telecommuting policy will generally address productivity standards, hours of work, how and when employees should be in contact with their manager or subordinates, and office expenses.
- For instance, your policy might require that employees are available by phone and messaging app during their regular in-office hours, that they meet all deadlines and maintain client contacts per usual, and that they check in with their manager at the close of each workday to report what they have accomplished. Be sure to let employees know whom to contact if they run into technical difficulties at home.

What's the difference between a furlough and a layoff?

- A **furlough** continues employment, but reduces scheduled hours or requires a period of unpaid leave. The thought process is that having all employees incur a bit of hardship is better than some losing their jobs completely. A **layoff** involves terminating employment during a period when no work is available. If you close down completely, but you intend to reopen in the relatively near future or have an expected reopening date—at which time you will rehire an employee, or all employees—this would be considered a **temporary layoff**.
 - ✓ ***NOTE:*** *The language used when sending employees home for a period of time is less important than communicating your actual intent. Since temporary layoffs and furloughs are only used regularly in certain industries (usually seasonal), you should not assume that employees will know what they mean. Be sure to communicate your plans for the future, even if they feel quite uncertain or are only short-term.*

What are some best practices for conducting layoffs?

- Double-check your decision for possible unintentional bias.
- Be consistent.
- Get straight to the point.
- Don't debate your decision with the employee.
- Be prepared to deal with the emotions that may arise.

Do we still offer the same benefits during a furlough due to COVID-19 as we did before? What about a layoff or closure?

- Check with your benefits provider before you take action. Eligibility for benefits during a furlough or layoff will depend on the specifics of your plan. For health insurance, if an employee would lose their eligibility during a furlough (or layoff), then federal COBRA or state mini-COBRA would apply.

Can we reduce pay because of economic slowdown due to COVID-19?

- You can reduce an employee's rate of pay based on business or economic slowdown, provided that this is not done retroactively. For instance, if you give employees notice that their pay will change on the 10th, and your payroll period runs from the 1st through the 15th, make sure that their next check still reflects the higher rate of pay for the first 9 days of the payroll period.

I'm concerned about the cost of unemployment as well as how to advise employees about it. Any help?

- Remember that you don't pay unemployment insurance (UI) claims directly. They are paid by the state, and the state gets funds for that from unemployment insurance taxes that employers pay into regularly. Some employers are concerned that their UI tax rate will increase due to current layoffs, but it appears that many states (perhaps all) will essentially be forgiving COVID-19-related terminations with respect to future increases in UI tax rates.
- Most employees who experience reduced hours, furloughs, or layoffs will be eligible for at least some unemployment insurance. Employees should be encouraged to file as soon as possible and to research rules, benefits, and options themselves to ensure they get the best benefit possible.

Are employers still required to review employment authorization documents for the Form I-9 in the employee's physical presence?

- No. Employers are temporarily able to inspect documents virtually (e.g., over video link, fax or email, etc.). Employers should be sure to note COVID-19 as the reason for physical inspection delay. Once normal business operations resume, employers should also note the date the physical inspection took place. See *the Temporary I-9 Guidelines During the COVID-19 Pandemic Handout* for specific details. Completion of the Form I-9 is still required within 3 business days of hire.

How will this impact the regular business issues we experience?

- The core business functions cannot be forgotten. Almost every company will still need to manage the core functions of:
 - Sales
 - Operations
 - Administration
- Assign duties to employees and managers to ensure the business remains a going concern

If I take a Payroll Protection Loan, can I still ask my employees to perform work for the company?

- Yes! If you are paying employees, you should make the best of your investment and start to engage them and assign work to them.



THANK YOU

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WEBINARS TO COME



COVID-19 Benefit & COBRA Questions Answered

Friday, April 10th @ 10AM

(Visit our Info Center <https://ctrhcm.com/home/covid-19-information-center/> to Register!)

Additional webinars to come...

- Handbooks and Paid Leave
- Managing a Remote Workforce

In addition, we will be adding more webinars including a webinar on COVID-19

MORE COVID-19 QUESTIONS?



Reach out to your CTR Support Representative or submit your question on our COVID-19 INFO PAGE to receive the answer to your most-pressing questions.

Don't see an answer to your question? Fill out the form below and we'll get back to you ASAP!

Name*

| | |
|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> |
| First | Last |

Email*

What's on your mind?

0 of 500 max characters