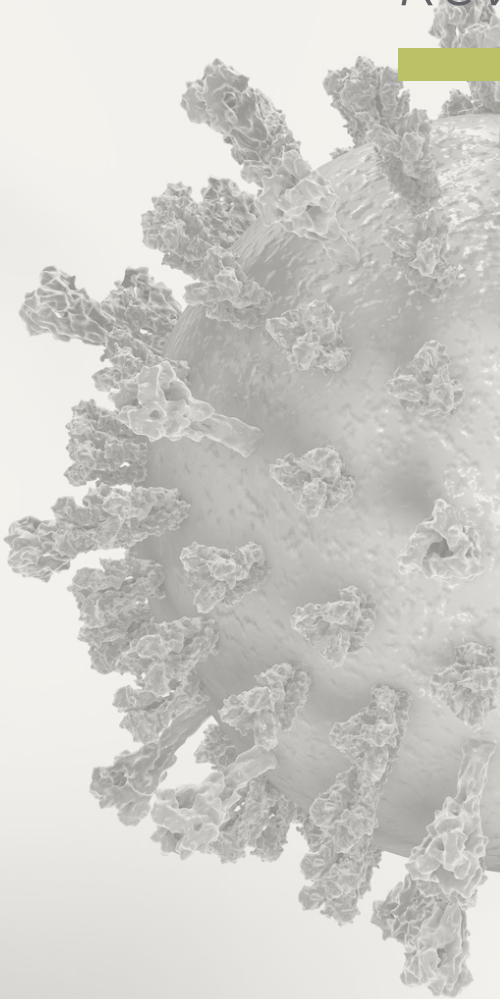


COVID-19 HR GUIDE FOR EMPLOYERS

Rev. 08/04/2020



INTRODUCTION

We are here to support you as COVID-19 continues to cause confusion, anxiety, and operating challenges.

We have fielded thousands of calls and want to share this consolidated list of Frequently Asked Questions (FAQs) and government-issued resources to help you and your team through the COVID-19 Pandemic.

This material is offered for general information only. It does not provide, nor is it intended to provide, tax or legal advice. As always, please contact your Regis HR Representative to discuss your specific concerns.

Regis HR Group is an ESAC-Accredited Professional Employer Organization (PEO) headquartered in Miami, Florida that offers HR solutions to help small and medium-sized businesses attract and retain top talent while staying in compliance with federal, state, and local employment regulations.

Through economies of scale, Regis provides business owners access to cost-effective employee benefits including 401(k) plans, FSA, employee training, and competitive rates on health, life, vision, and dental insurance.

Regis HR Group offers customizable HR solutions with a dedicated team of specialists to each client, focusing on HR compliance, payroll processing, safety and risk-mitigation, unemployment claims management, workers compensation claims management, employee engagement, and much more.

In 2019, Regis was the employer of record for over 8,000 worksite employees, processed over \$430mm in payroll annually.

Call 1-844-RegisHR (1-844-734-4747) for more information.

THE FFCRA AND OTHER APPLICABLE LEAVES

What is the new federal COVID-19 law, and what does it do?

The Families First Coronavirus Response Act (FFCRA) is a federal law that will require employers to facilitate two major benefits leave taken on or after April 1, 2020. Under the new law, most employees must be given:

1. Up to two weeks of emergency paid sick leave (EPSL) for illness, quarantine, or school closures related to COVID-19.
2. Up to 12 weeks of emergency Family and Medical Leave Act (EFMLA) leave for care of their children during school closures related to COVID-19, most of which must be paid. A few exceptions apply.

Payment under these leaves is 100 percent reimbursable by the federal government through a payroll tax credit up to certain caps.

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 pre-existing sick leave entitlements that an employee may have.

THE FFCRA AND OTHER APPLICABLE LEAVES

Is the FFCRA retroactive or applicable before its effective date?

No. The leaves available under the FFCRA went into effect April 1. Leave taken before April 1 is not covered and employers can't get a tax credit for anything paid out prior to that date.

What are our EPSL and EFMLA obligations to different employee situations, such as remote employees?

All employees are entitled to emergency paid sick leave (EPSL) and emergency expansion of the FMLA (EFMLA) benefits unless a specific exemption applies to your business or the individual.

How do EFMLA and EPSL relate to each other, especially in regard to caring for children?

The emergency FMLA (EFMLA) and emergency paid sick leave (EPSL) both cover caring for children whose school or place of care is closed due to COVID-19 precautions. 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 2/3 the regular rate) under EPSL for full-time employees. If an employee uses EPSL for a non-childcare reason first, they'd still have 12 weeks of EFMLA available for use.

THE FFCRA AND OTHER APPLICABLE LEAVES

Does the FFCRA apply to me if I have more than 500 employees? How do I count them?

The FFCRA does not apply to your organization if you employ more than 500 employees.

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. 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.

If I am a nonprofit or a public employer, do tax credits and reimbursement apply to me?

Most public employers (e.g., cities, municipalities, public school districts) will not be eligible for the tax credits or reimbursements provided in the act. Private nonprofit entities, however, are eligible.

THE FFCRA AND OTHER APPLICABLE LEAVES

How does the FFCRA define emergency workers or healthcare providers?

The FFCRA defines healthcare workers as 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 individual employed by an entity that contracts with any of the above to provide services or to maintain 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 the District of Columbia) determines is an emergency responder necessary for the response to COVID-19.

An emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of 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...

THE FFCRA AND OTHER APPLICABLE LEAVES

How does the FFCRA define emergency workers or healthcare providers? *(continued)*

...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 that the highest official of a state (or the District of Columbia) determines is an emergency responder necessary for the response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department of Labor encourages employers to be judicious when using these definitions to exempt employees from the provisions of the FFCRA.

THE FFCRA AND OTHER APPLICABLE LEAVES

Do we still have to provide EPSL or EFMLA if we lay off or furlough employees?

No. Employers who are closed — either due to lack of business or a state or local order — do not have to provide these leaves because they don't have work available. Employees who are furloughed (temporarily not working but still on the payroll) are also not entitled to these benefits. In either of these cases, employees may be eligible for unemployment insurance instead. However, employers should ensure that they are not making furlough or layoff decisions based on an employee's request or potential need for leave, as this would likely be considered interference or retaliation (and grounds for a lawsuit).

How are we supposed to pay for the sick leave and FMLA leave mandated by the Families First Coronavirus Response Act?

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting Form 7200.

We know that for many of our clients, business slowdowns related to the spread of COVID-19 have made it hard to imagine how they could bear any additional expenses. We encourage anyone with these concerns to read the [Treasury, IRS, and Labor Announcement on FFCRA](#) announcement carefully.

THE FFCRA AND OTHER APPLICABLE LEAVES

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.

A written request for leave from the employee should include the following (and you can't require that it include more):

- The employee's name;
- The date or dates for which leave is requested;
- A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
- A statement that the employee is unable to work, including by means of telework, for such reason.

Regis [Emergency Family & Medical Leave Request Form](#)
Regis [Emergency Paid Sick Leave Request Form](#)

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

For a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is...

THE FFCRA AND OTHER APPLICABLE LEAVES

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

...unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

It's worth noting that the FFCRA makes emergency FMLA available to an employee who is "unable to work (or telework) due to a need for leave to care for the son or daughter if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency." In the case of a child over the age of 14, to claim the tax credit, the IRS is asking that employers collect a statement from the employee noting that a special circumstance exists requiring them to provide care. For questions about tax credit documentation, we recommend consulting with a qualified tax professional."

"...the IRS is asking that employers collect a statement from the employee noting that a special circumstance exists requiring them to provide care."

HEALTH & SAFETY

Can we tell employees who travel to stay home and quarantine, even if they don't have symptoms?

Yes. However, given the widespread community transmission in the United States, an individual who has traveled may pose no more risk than someone who has not. If you feel where they traveled to was higher risk than where your workplace is located and that concerns you, consider options to keep them working during the quarantine period.

Is it safe for our employees to keep working? How do we decide whether to keep employees working or not?

Ultimately each company will need to determine how it will fulfill its duty to provide a safe workplace to its employees. It's very important to pay attention to federal, state, and local authorities to see if they are rolling out specific guidance or prohibitions that you need to be aware of. For example, some locations have issued an order for individuals to "shelter in place," which drastically limits what workplaces can remain open and provides some guidance for those who can remain working.

Guidance has been changing from day to day and region to region. We recommend keeping up with the latest information on the Centers for Disease Control (CDC) Coronavirus home page, related pages on that site, and your local health department for the most up to date guidance for your region and operations.

HEALTH & SAFETY

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.

Note: Nonexempt employees may be entitled to a few extra hours of pay if you're in a state with reporting time pay, but this cost will be well worth it to maintain the safety of the workplace.

Can I send an employee home if they are sick or pregnant, regardless of whether it's COVID-19-related, just to be safe?

You have the right to send people home for sickness if it appears that they have something contagious; in this case, you are protecting other employees in the workplace. This includes sending employees home who have the common cold.

You should not send employees home because you believe they are higher risk — this includes pregnant employees. We would encourage you to make working from home or unpaid leaves available for employees who want that option, but not to force that on anyone who doesn't pose a risk to others.

HEALTH & SAFETY

We are an essential business where there's a shelter-in-place-rule and an employee is refusing to work as they say it's not safe. Can we discipline them?

This is certainly a difficult situation to be in. We recommend extreme caution in disciplining or terminating an employee who refuses to work in a location that has shelter-in-place rules in effect, as it poses several types of legal risk.

Generally, employees do not have a right to refuse to work based only on a generalized fear of becoming ill if their fear is not based on objective evidence of possible exposure. In that case, you would be able to enforce your usual attendance policies. However, under the current circumstances, where COVID-19 cases are increasing and many cities and states are implementing drastic public health measures to control spread of the virus, we think it would be difficult to show that employees have no reason to fear coming in to work, particularly in a location with a shelter-in-place rule.

Provide Reasonable Accommodation

Employees who are in a high risk category — either because they are immunocompromised or have an underlying condition that makes them more susceptible to the disease — should be granted a reasonable accommodation under the Americans with Disabilities Act (ADA) and/or state law. Employees who live with someone who is at high risk should be granted a similar accommodation. It would be a reasonable accommodation under the circumstances to allow the employee to work from home or take a non-working leave, if working from home is not possible.

HEALTH & SAFETY

We are an essential business where there's a shelter-in-place-rule and an employee is refusing to work as they say it's not safe. Can we discipline them? *(continued)*

Under OSHA rules, an employee's refusal to perform a task will be protected if all of the following conditions are met:

- Where possible, the employee asked the employer to eliminate the danger, and the employer failed to do so;
- The employee refused to work in "good faith." This means that the employee must genuinely believe that an imminent danger exists;
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There is not enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

No Punishment or Retaliation for Raising Safety Concerns

An employer cannot retaliate against an employee for raising a safety concern. Additionally, employees who won't work because of safety concerns may be considered to be engaging in protected concerted activity under the National Labor Relations Act (NLRA) if they have a "good faith" belief that their health and safety are at risk.

Incentivize Employees Instead

Instead of disciplining employees who express fear at this time, we recommend you consider methods to encourage employees to come to work and to help put their minds at ease. Consider emphasizing all of the safety methods you have put in place (e.g., scheduled hand-washing, frequent disinfection of surfaces, social distancing rules...

HEALTH & SAFETY

We are an essential business where there's a shelter-in-place-rule and an employee is refusing to work as they say it's not safe. Can we discipline them? *(continued)*

...reduced customer capacity, staggered shifts, or more extreme measures if warranted by your industry). We recommend relying heavily on the Centers for Disease Control and Prevention (CDC) guidelines and local health department information in establishing safe working conditions at this time. You might also consider offering premium pay or additional paid time off (PTO) for use in the future to employees who must come to work.

What if my employee discloses that their family member or roommate has COVID-19?

Individuals who share a household with someone who is infected should self-quarantine for 14 days per the Centers for Disease Control and Prevention (CDC). The CDC does not currently recommend special scrutiny or quarantine for those who have been exposed to an asymptomatic person who has been exposed to someone with COVID-19 (meaning you don't need to send everyone home to quarantine as a result). Remember that the confidentiality of medical information must be maintained per the Americans with Disabilities Act.

HEALTH & SAFETY

Given COVID-19, if an employee is out of the office due to sickness, can we ask them about their symptoms?

Yes, but there's a right way to do it and a wrong way to do it. 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.

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?"

Remember that medical information must be kept confidential as required by the Americans with Disabilities Act (ADA). If the employee does reveal that they have symptoms of COVID-19, or has a confirmed case, the CDC recommends informing the employee's co-workers of their possible exposure to COVID-19 in the workplace (but not naming the employee who has or might have it) and directing them to self-monitor for symptoms (fever, cough, or shortness of breath).

HEALTH & SAFETY

Can employers conduct work site SARS-CoV-2 testing?

"Yes. Employers may consider implementing strategies to reduce risks to the safety and health of workers and workplaces from COVID-19 that include conducting SARS-CoV-2 testing. Neither the OSH Act nor OSHA standards prohibit employer testing for SARS-CoV-2, if applied in a transparent manner applicable to all employees (i.e., non-retaliatory).

Because of the limitations of current testing capabilities, employers should act cautiously on negative SARS-CoV-2 test results. Employers should not presume that individuals who test negative for SARS-CoV-2 infection (i.e., the virus that causes COVID-19) present no hazard to others in the workplace. Employers should continue to implement the basic hygiene, social distancing, workplace controls and flexibilities, and employee training described in this guidance in ways that reduce the risk of workplace spread of SARS-CoV-2, including by asymptomatic and pre-symptomatic individuals." (Ref. "OSHA Guidance on Return to Work")

HEALTH & SAFETY

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

This is a tough situation. The Centers for Disease Control and Prevention (CDC) advises employers to send employees home when they have COVID-19 symptoms (fever, cough, shortness of breath). If an employee claims that their symptoms that are similar to those of COVID-19 are from another cause (e.g., allergies, asthma), the most risk-adverse response would be to send them home with pay. We understand that providing paid leave is not feasible for every business, but under the circumstances this is the best way to keep your workplace safe.

“The CDC recommends informing the employee’s co-workers of their possible exposure to COVID-19 in the workplace (but not naming the employee who has or might have it) and directing them to self-monitor for symptoms (fever, cough, or shortness of breath).”

REMOTE WORK

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 nondiscriminatory criteria. For instance, a telecommuting option or requirement can be based on the type of work performed, employee classification (exempt v. nonexempt), 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.

REMOTE WORK

How do I make a telecommuting policy? *(continued)*

You'll also want to specify how expenses related to working from home will be dealt with. If you don't expect there to be any additional expenses involved, communicate this. You don't want employees thinking this is their chance to purchase a standing desk and fancy ergonomic chair on your dime. That said, you should consider whether employees will incur reasonable and necessary expenses while working from home. Some states mandate reimbursement for these kinds of expenses, but it's a good practice to cover such costs even if it's not required by law.

How do we make sure we pay employees appropriately when they work from home?

You'll want to pay an employee that is working from home just like you would pay someone who is working in the office. Have them log their time and, if needed, report it to someone who can enter it into your payroll system (if this is something they can't do themselves online). Nonexempt employees should take all the same breaks at home that they are required to take in the workplace. With respect to ensuring that people are actually doing work at home, you may want to set up regular check-ins to see that things are getting done. You can also require that employees remain available online via a messaging app and are available by telephone or for video conferences during working hours.

FURLOUGHS & LAYOFFS

Our business is suffering due to COVID-19. We can't afford to pay people and might have to close. What do we do?

This is understandably a very difficult situation for employers and their employees. There are three basic options when it comes to keeping employees or letting them go:

1. furlough (temporary reduction in hours of work or weeks of work);
2. temporary layoffs (layoff with the intention of rehire, generally within six months); or
3. permanent layoffs (layoff with no anticipated rehire date).

In all situations, it's best to be very clear in written communications about your decision and work with an attorney. Employees who are furloughed can generally still receive unemployment insurance benefits, so employers shouldn't feel like they have to terminate everyone just so they can receive unemployment insurance.

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

First, you should note that 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.”

FURLOUGHS & LAYOFFS

Furlough

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. For example, a company may reduce hours to 20 per week for a period of time as a cost-saving measure, or they may place everyone on a two-week unpaid leave. This is typically not considered termination; however, you may still need to provide certain notices to employees about the change in the relationship, and they would likely still be eligible for unemployment.

If the entire company won't be furloughed, but only certain employees, it is important to be able to show that staff selection is not being done for a discriminatory reason. You'll want to document the nondiscriminatory business reasons that support the decision to furlough certain employees and not others, such as those that perform essential services.

Layoff

A layoff involves terminating employment during a period when no work is available. This may be temporary or permanent. 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. Temporary layoffs are appropriate for relatively short-term slowdowns or closures. A layoff is generally considered permanent if there are no plans to rehire the employee or employees because the slowdown or closure is expected to be lengthy or permanent.

FURLOUGHS & LAYOFFS

Pay for exempt employees (not entitled to overtime)

Exempt employees do not have to be paid if they do no work at all for an entire workweek. However, if work is not available for a partial week for an exempt employee, they must be paid their full salary for that week, regardless of the fact that they have done less work. If the point is to save money (and it usually is), it's best to ensure that the layoff covers the company's established seven-day workweek for exempt employees. Make it very clear to exempt employees that they should do absolutely no work during any week you're shut down. If exempt employees do any work during that time, they will need to be paid their normal weekly salary.

Pay for nonexempt employees (entitled to overtime)

Nonexempt employees only need to be paid for actual hours worked, so single day or partial-week furloughs can be applied to them without worrying about pay implications. We recommend that you engage in open communication with the affected employees before and during the furlough or temporary layoff period.

FURLOUGHS & LAYOFFS

Can we reduce pay because of an 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.

Nonexempt employees (those entitled to overtime)

A nonexempt employee's new rate of pay must still meet the applicable federal, state, or local minimum wage. Employees must be given notice of the change to their rate of pay, and some states require advance notice.

Exempt employees (those not entitled to overtime)

An exempt employee's new salary must still be at or above the federal or state minimum for exempt employees. The federal minimum salary is \$684 per week. Several states have weekly minimums that are higher than that (California and New York, for instance, are in the \$1,000 per week range). The minimum may not be prorated based on hours worked.

Employees with contracts or CBAs

If employees have employment contracts or are subject to collective-bargaining agreements (CBAs), you should consult with an attorney before making any changes to pay.

FURLOUGHS & LAYOFFS

If we choose to close temporarily, do we need to pay employees?

It depends on the employee's classification.

Nonexempt employees only need to be paid only for actual hours worked. For these employees, you may:

1. Pay the employee for the time, even though they did not work;
2. Require they take the time off unpaid;
3. Require they use any available vacation time or paid time off (PTO)*; or
4. Allow employees to choose between taking an unpaid day or using vacation or PTO.

All four options are compliant with federal law. We generally recommend option 4 — allowing but not requiring employees to use vacation time or PTO. If your office is required to close by health authorities, mayor, or governor and your state has a sick leave law, employees may be able to use accrued paid sick leave during the closure depending on the terms of the applicable sick leave law.

Exempt employees must be paid their regular salary unless the office is closed for an entire workweek and they do no work at all from home. You can, however, require them to use accrued vacation or PTO during a closure if you have a policy that indicates you will do so, or if this has been your past practice.* When it comes to accrued vacation or PTO, it is safest to give employees advance notice if there are situations where you will use their accrued hours whether they like it or not.

*California limits mandatory PTO use without significant notice. Check state law.

FURLOUGHS & LAYOFFS

Exempt employee reclassification

If an exempt employee has so little work to do that it does not make sense to pay them the federal or state minimum (or you simply cannot afford to), they can be reclassified as nonexempt and be paid by the hour instead. This must not be done on a very short-term basis.

Although there are no hard and fast rules about how long you can reclassify someone, we would recommend not changing their classification unless you expect the slowdown to last for more than three weeks. Changing them back and forth frequently could cause you to lose their exemption retroactively and potentially owe years of overtime.

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 carrier 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 layoff, then federal COBRA or state mini-COBRA would apply.

FURLOUGHS & LAYOFFS

If we close temporarily, will employees be able to file for unemployment insurance?

Yes. Employees should be encouraged to apply as soon as possible.

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. Exactly how much will depend on a number of factors. 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. We recommend that both employers and employees visit their state's unemployment insurance department website and track local and state news, as departments across the country are updating their rules to facilitate displaced workers during this time.

FINANCIAL RELIEF

Is there financing or tax relief is available to help my business avoid furloughs and layoffs?

Yes, three new ways that business owners can get assistance with payroll expenses during this crisis are the SBA Paycheck Protection Loan Program, 50% Employee Retention Tax Credit or the Social Security Tax Deferral.

SBA Paycheck Protection Loan Program

The biggest change is a new streamlined SBA loan program to provide eligible businesses with cash to meet payroll (including benefits) and other fixed costs (such as rent, interest on mortgages, and utility payments) for up to eight weeks. The maximum loan amount would be 250% of the employer's average monthly payroll costs, capped at \$10 million.

The law expands the previous SBA definitions of small employer in a number of ways to increase the availability of these loans and makes changes in the traditional SBA loan process that should speed-up the process of obtaining a loan.

Additionally, after the borrowing business demonstrates that the loan proceeds were used to maintain previous payroll or pay those other fixed costs, then the loans (and any interest due) would be eligible for very generous loan forgiveness (and the forgiven amounts would not be taxable).

[Click here](#) for a guide and checklist on the new loan program from the U.S. Chamber of Commerce.

FINANCIAL RELIEF

50% Employee Retention Tax Credit

Another option allows employers (regardless of size) that are uniquely affected by COVID-19 to claim a refundable tax credit against the employer portion of payroll tax equal to 50% of certain wages paid to an employee between March 13, 2020 through the end of the year. Only \$10,000 of wages could be taken into account for any employee. This 50% credit would be available to businesses (i) that have had their operations fully or partially suspended by government order due to COVID-19 or (ii) that experienced a 50% decline in gross receipts during a 2020 calendar quarter when compared with the same quarter in 2019.

Social Security Tax Deferral

Another provision that is available to employers of all sizes is the ability to defer the payment of the employer portion of Social Security taxes (6.2% of wages) for the remainder of 2020. Fifty percent of those deferred taxes would have to be repaid by the end of 2021, with the remainder due by the end of 2022.

NOTE: a business cannot choose all the options. For instance, "once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date." [Click here](#) for IRS Guidance.

"We recommend that you discuss the available options with your accountant to determine the best fit."

FINANCIAL RELIEF

What Are The Expanded Unemployment Benefits Under The CARES Act?

Eligible individuals can receive the weekly benefit amount generally determined under state law plus an additional \$600 per week for up to 39 weeks (which is longer than the typical 26-week limitation in most states). The CARES Act also authorizes up to 13 weeks of additional emergency unemployment benefits for eligible individuals who have exhausted the 39 weeks of benefits and remain unemployed.

What Are The Eligibility Criteria for The Expanded Unemployment Benefits Under The CARES Act?

Eligibility is provided via self-certification for individuals who are otherwise able & available to work but are unemployed, partially unemployed (pay cut or hours cut), or unable to work for the following reasons:

- The individual is diagnosed with COVID-19 or experiencing COVID-19 symptoms and seeking medical diagnosis;
- A member of the individual's household was diagnosed with COVID-19;
- The individual is caring for a member of their family or household who was diagnosed with COVID-19;
- A child or person for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 health emergency and such school/facility is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19 public health emergency;

FINANCIAL RELIEF

What Are The Eligibility Criteria for The Expanded Unemployment Benefits Under The CARES Act? *(continued)*

- The individual is unable to reach the place of employment because a health care provider advised to self-quarantine due to COVID-19 related concerns;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual became the breadwinner or major support because the head of household died from COVID-19;
- The individual quit as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of COVID-19 public health emergency;
- or The individual meets additional criteria established by the Secretary of Labor.

Note: The Act includes benefit coverage for self-employed individuals and independent contractors, gig economy employees (like Uber drivers), those who are seeking part time employment, and those who would not otherwise have sufficient work history to qualify so long as they meet a qualifying reason above.

Note: The Act excludes individuals who have the ability to telework with pay or employees receiving paid sick leave or other paid leave benefits.

FINANCIAL RELIEF

Does The CARES Act Provide For Partial Unemployment Compensation Programs?

Yes. In addition to expanded unemployment compensation benefits, the CARES Act is temporarily providing full funding for states with Short Time Compensation or Work Sharing programs. These programs currently exist whereby an employer agrees to reduce an employee's hours instead of laying off the employee and the state unemployment office provides partial unemployment compensation benefits to the employee. States typically bear the full cost for these programs. There is \$100M in federal funds allocated for promotion of the program, enrollment of employers, and implementation and improved administration of such programs.

RETURN TO WORK / REOPENING

As an employer, how can we protect against the risk of infection in our workplace?

Advanced preparations, documented action plans, and proactive communication will be necessary as we prepare to reopen.

Pre-Screening

Ideally, employees should be screened prior to entering a shared facility. Please reference "*Can we screen employees returning to work for COVID-19?*" and "*How do we handle taking employee's temperatures?*"

Cleaning and Sanitizing Surfaces

- Supply employees with EPA-approved disinfectants and assign/schedule frequent intraday cleaning of frequently touched surfaces (inc. door handles, faucets, copier/fax, telephone receivers, coffee machine, water dispenser, time-clock machines, computer keyboards, and mobile phones)
- Remove area rugs and cover high-traffic areas with antimicrobial floor mats.

Hand-washing and Hand Sanitizers

- Schedule automated computer alerts or loudspeaker announcements with multiple intraday hand-washing reminders. [Click here](#) to access the CDC recommendations on When and How to Wash Your Hands.
- Place hand sanitizing dispensers (preferably touch-less dispensers) at the entrance to your facility and in high traffic areas (copier/fax stations, waiting rooms, time-clock machines, cafeterias, etc.)

RETURN TO WORK / REOPENING

Flexible Work Schedules (Staggered Shifts)

Employers who are reopening or recalling employees to a shared physical workspace should consider dividing the workforce into staggered shifts. Please discuss specific plans with your assigned Regis HR Representative to determine if there are Wage and Hour implications.

Remote Work (Telework)

The US continues to fight the spread of COVID-19, so even though stay-at-home or safer-at-home orders are expiring, employers are encouraged to extend remote work arrangements if duties permit.

Reconfigured Workspaces

If employees are returning to a shared workplace, the CDC recommends that employers increase the physical space between employees to maintain 6 feet as work duties permit in the workplace.

Physical Barriers & Alternative Operations

In addition to increasing physical space between employees and customers, the CDC encourages alternative product delivery methods (i.e. curbside pick-up, drive through, etc.) and physical barriers like plastic partitions.

Personal Protective Equipment

The CDC recommends that the public wear face masks in all public settings. Employers can require employees to wear a face mask while in a shared workplace as long as the employee does not have a pre-existing condition that prevents the employee from doing so. Employers can issue face-masks or can approve employees' supplied cloth face coverings. Contact your assigned Regis HR Representative to discuss related EEOC and ADA concerns.

RETURN TO WORK / REOPENING

Can we screen employees returning to work for COVID-19?

Yes. Generally, inquiries about an employee's health or a medical exam (like a temperature check) would not be allowed, but the Equal Employment Opportunity Commission (EEOC) has stated that screening employees for symptoms of COVID-19 is allowed since it is a direct threat to others in the workplace. Because of that, you may inquire about symptoms related to the virus, require self-reporting by employees, and take employees' temperatures.

Known symptoms of COVID-19 include fever, cough, chills, shortness of breath or difficulty breathing, muscle pain, headache, sore throat, and sudden loss of taste or smell. As the medical community learns more about COVID-19, additional symptoms could be added to this list. Employers can [check this page](#) for currently recognized symptoms.

If you decide to do screenings, make sure you screen all employees; otherwise you may find yourself in the middle of a discrimination claim. And remember that all information about employees' health — including a lack of symptoms or temperature — must be kept confidential.

"If you decide to do screenings, make sure you screen all employees; otherwise you may find yourself in the middle of a discrimination claim."

RETURN TO WORK / REOPENING

How do we handle taking employee's temperatures?

The Equal Employment Opportunity Commission (EEOC) has issued guidance ([click here](#)) that employers may take employees' temperatures during the COVID-19 pandemic because COVID-19 is spreading nationwide.

Note that many people may have COVID-19 without a fever, so other safety precautions should not be scaled back just because employees "checked out" upon arrival to work. The CDC summarizes symptoms [here](#). Employees' body temperatures are considered medical information and must be kept confidential under the Americans with Disabilities Act (ADA).

The main CDC COVID-19 page has general community mitigation strategies as well as certain regional specific strategies. We cannot provide guidance on how to implement temperature checking procedures, but significant precautions should be taken so that you do not actually increase risk by reusing a tool that comes into contact with hands, faces, and/or mouths of multiple employees.

"Employees' body temperatures are considered medical information and must be kept confidential under the Americans with Disabilities Act (ADA)."

RETURN TO WORK / REOPENING

Some of our employees have said they don't feel safe returning to work. Can we just permanently replace them?

We recommend extreme caution when deciding to replace an employee who refuses to work because of concerns about COVID-19. Generally, employees do not have a right to refuse to work based only on a generalized fear of becoming ill if their fear is not based on objective evidence of possible exposure.

However, under the current circumstances, where COVID-19 continues to be a threat across the country, we think it would be difficult to show that employees have no reason to fear coming in to work, particularly but not exclusively in a location with a shelter-in-place rule. Returning employees may also have certain rights under state and federal law.

Here are few things to keep in mind:

- Recalled employees may have a right to job-protected leave under a city ordinance, state law, or the federal Families First Coronavirus Response Act (FFCRA).
- Employees who are in a high-risk category — either because they are immunocompromised or have an underlying condition that makes them more susceptible to the disease — may be entitled to a reasonable accommodation under the Americans with Disabilities Act (ADA) or state law if their situation doesn't qualify them for leave under the FFCRA (or if they have run out of that leave). It would be a reasonable accommodation under the circumstances to allow the employee to work from home or take an unpaid leave, if working from home is not possible.
- Employees who live with someone who is high risk are not entitled to a reasonable accommodation under federal law, but we strongly recommend allowing them to work from home if possible or take an unpaid leave. Otherwise, they may decide to quit and collect unemployment insurance. If you want to keep them as an employee, being compassionate and flexible is your best bet.

RETURN TO WORK / REOPENING

Some of our employees have said they don't feel safe returning to work. Can we just permanently replace them? *(continued)*

- Under Occupational Safety and Health Administration (OSHA) rules, an employee's refusal to perform a task will be protected if all of the following conditions are met:
 - Where possible, the employee asked the employer to eliminate the danger, and the employer failed to do so;
 - The employee refused to work in "good faith," which means that the employee must genuinely believe that an imminent danger exists;
 - A reasonable person would agree that there is a real danger of death or serious injury;
 - and There isn't enough time, because of the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Check state and local law to see if additional protections may apply.

Instead of replacing employees who express fear at this time, we recommend that you consider methods to encourage employees to come to work and to help put their minds at ease. Consider emphasizing all of the safety methods you have put in place (such as scheduled handwashing, frequent disinfection of surfaces, social distancing rules, reduced customer capacity, staggered shifts, or more extreme measures if warranted by your industry).

We recommend relying on the Centers for Disease Control and Prevention (CDC) and local health department guidance for establishing safe working conditions at this time. You might also consider offering premium pay (a.k.a. hazard pay) or additional paid time off for use in the future to employees who must come to work.

RETURN TO WORK / REOPENING

When can an employee who has tested positive for COVID-19 return to work?

In July 2020, the CDC modified its Return-to-Work guidance for employees who test positive. The most important changes were:

- to the criteria used in the "symptom-based" strategy for ending isolation after a COVID-19 diagnosis
- the circumstances under which the "test-based" strategy for isolation is recommended

In the CDC's earlier guidance described scenarios in which viral testing would be appropriate. However, under the new guidelines, the CDC no longer recommends employers to use viral tests to "determine resolution of infection."

Currently the CDC establishes a preference towards the symptom-based strategy in determining when an employee can return to work. The CDC recommends viral testing only if it works to end self-isolation earlier than the symptom-based strategy would, or when dealing with severely ill or immunocompromised employees.

Specifically in non-healthcare settings, the CDC recommends COVID-19 positive employees remain quarantined until:

- At least 10 days (with certain caveats) have passed since the onset of symptoms; and
- At least 24 hours have passed since the resolution of the last fever without the use of fever-reducing medications; and
- Other symptoms have improved.

Be advised that the above is a brief summary of the guidance as of July 20, 2020. Please visit [CDC.gov](https://www.cdc.gov) to read the current guidance on Discontinuation of Isolation for persons with COVID-19.

RETURN TO WORK / REOPENING

What are the responsibilities of management when reopening the business during the COVID pandemic?

Safety

Managers should understand and communicate all safety hazards (incl. those related to COVID-19) and enforce related safety protocols. Reference "*As an employer, how can we protect against the risk of infection in our workplace?*"

Required Posters

Employers are required to post the Families First Coronavirus Act (FFCRA) poster ([English](#), [Spanish](#)) in a visible place and distribute the file via email or company intranet to ensure access to all employees, **including** those at remote worksites.

Handbook & Policy Review

Prior to reopening, employers should review their handbooks and personnel policies including changes to vacation/sick policies, telework policies, restrictions following travel to COVID-19 hot-spots, and staggered work schedules. Contact your assigned Regis HR Representative to discuss the changes to your business operations.

Recordkeeping

Maintaining accurate attendance records with an indication if leave is being taken in connection with specific federal, state or local laws, including whether the sick leave qualifies for paid leave under the FFCRA. Detailed recordkeeping will be essential to contact tracing in the event of an exposure to COVID-19.

RETURN TO WORK / REOPENING

Weekly Inventory

Take weekly inventory of disinfectants, personal protective equipment, soap/sanitizers and related products to ensure sufficient supplies are available.

Monitor State & Federal Updates

COVID-19 regulations are constantly changing. Managers should be monitoring and disseminating applicable information to employees.

Welcome Back Meeting

Schedule all employees to participate in a Welcome Back meeting in compliance with social distancing requirements (i.e. teleconference) to inform employees of the changes to daily operations aimed at mitigating the spread of COVID-19 and to give them an open forum to ask questions and voice concerns.

Proactive Communication

Post workplace signage on the entrance to your facility and in high-traffic areas to instruct employees and customers on safety protocols.

Prompt Disclosure of Exposure to COVID-19

According to the CDC, "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."

FEDERAL RESOURCES

The situation is constantly evolving, so we've consolidated the following federal resource hyperlinks to help you stay informed and to support your workforce during this crisis:

Centers for Disease Control and Prevention (CDC)

The U.S. Centers for Disease Control and Prevention (CDC) has issued the following guidance documents, downloadable resources.

- [Resuming Business Toolkit with links to cleaning/disinfection guidance, social distancing best practices & discontinuation of isolation](#) (rev. 7/20)
- Symptoms of COVID-19 ([English](#), [Spanish](#))
- [All CDC Guidance Documents](#)
- [CDC print/poster resources](#)

Occupational Safety & Health Administration (OSHA)

The U.S. Occupational Safety & Health Administration (OSHA) has created a COVID-19 website with downloadable resources for workers and employers.

- [OSHA COVID-19 Resources](#)
- [OSHA Return to Work Guidance by Industry](#)
- OSHA Guidance on Preparing the Workplace for COVID-19 ([English](#), [Spanish](#))
- [OSHA Guidance on Returning to Work](#) (rev. 6/19)

Small Business Administration (SBA)

The U.S. Small Business Administration has published the following COVID-19 resources

- [SBA Loan and Debt Relief Resources](#)
- [Paycheck Protection Program Borrower Application Form](#) (rev. 4/20).
- [List of PPP Participating Lenders by State](#) (rev. 4/23)
- [PPP Loan Forgiveness Application](#) (rev. 6/16)
- [AICPA PPP Loan Forgiveness Calculator](#) (rev. 6/16)

FEDERAL RESOURCES

Department of Labor (DOL)

The U.S. Department of Labor (DOL) has published the following resources for workers and employers.

- [Department of Labor Coronavirus Resources](#)
- **Required poster:** Employee Rights - Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act ([English](#), [Spanish](#))

Equal Employment Opportunity Commission (EEOC)

The U.S. Equal Employment Opportunity Commission (EEOC) is continuing to enforce employment non-discrimination laws while ensuring compliance with public health guidelines.

- [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)
- [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](#)

Department of Health and Human Services (HHS)

The U.S. Department of Health and Human Services (HHS) issued a bulletin regarding [HIPAA Privacy, Civil Rights and COVID-19](#).

Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) is offering help for taxpayers, businesses, tax-exempt organizations and others affected by coronavirus (COVID-19).

- [Filing and Payment Extensions](#)
- New Employer Tax Credits ([English](#), [Spanish](#))
- [Tax Deferrals and PPP Forgiveness FAQ](#)

STATE UPDATES & RESOURCES

In addition to staying abreast of federal government directives and resources available nationwide, we are also monitoring state updates. Based on the questions we've received, we consolidated the following list of state resource hyperlinks.

State-by-State Business Reopening Guidance

- [US Chamber of Commerce Interactive Map](#)

Florida

- [COVID-19 Data by Florida County](#)
- [Florida Health print/poster resources](#)
- [Florida Department of Economic Opportunity COVID-19 Reemployment Assistance FAQs and Resource Guide](#)
- [Florida Department of Economic Opportunity Business Resources](#)

California

- [COVID-19 Data by California County](#)
- [California Department of Public Health Updates](#)
- California Department of Fair Employment and Housing FAQ ([English](#), [Spanish](#))
- City of Los Angeles [Supplemental Paid Sick Leave Due to COVID-19](#)
- San Francisco [Office of Labor Standards Enforcement](#) and [Supplemental Paid Sick Leave Due to COVID-19](#)

Georgia

- [COVID-19 Data by Georgia County](#)
- [Georgia Health print/poster resources](#)
- [Georgia Department of Labor COVID-19 FAQs](#)

STATE UPDATES & RESOURCES

Illinois

- [COVID-19 Data by Illinois County](#)
- Illinois Department of Public Health print/poster resources ([English](#), [Spanish](#))
- [New Jersey Department of Employment Security FAQs](#)

Massachusetts

- [COVID-19 Cases in Massachusetts](#)
- [Resources & Guidance for Massachusetts Businesses](#)
- [Massachusetts COVID Unemployment Information](#)
- Massachusetts Employee Rights and Employer Obligations ([English](#), [Spanish](#), [Portuguese](#), [Chinese](#))

New Jersey

- [COVID-19 Data by New Jersey County](#)
- [What New Jersey Employers Should Know](#)
- [What New Jersey Workers Should Know](#)
- [COVID-19 FAQs for New Jersey Businesses](#)
- New Jersey COVID-19 Unemployment Benefits ([English](#), [Spanish](#))

New York

- [COVID-19 Data by New York County](#)
- [Guidance on Designation as an Essential Business](#)
- [New York Paid Family Leave FAQs](#)
- New York COVID-19 Paid Sick Leave Benefits ([Employer](#), [Employee](#))
- [COVID Unemployment Insurance Assistance](#)

STATE UPDATES & RESOURCES

North Carolina

- [North Carolina COVID-19 Dashboard](#)
- [Business & Employer COVID-19 Resources](#)
- [North Carolina Department of Commerce Employment Security COVID Unemployment Insurance Information](#)
- [North Carolina Health Department Directory](#)

South Carolina

- [South Carolina COVID-19 Cases by County](#)
- [South Carolina COVID-19 Unemployment Insurance Eligibility and Employer Charges](#)
- [South Carolina COVID-19 Unemployment FAQs](#)
- [South Carolina Employer Resource Hub](#)

Texas

- [Texas COVID-19 Cases by County](#)
- [COVID-19 Unemployment Resources](#)
- [COVID-19 Resources for Texas Employers](#)
- [COVID-19 FAQs for Texas Businesses](#)