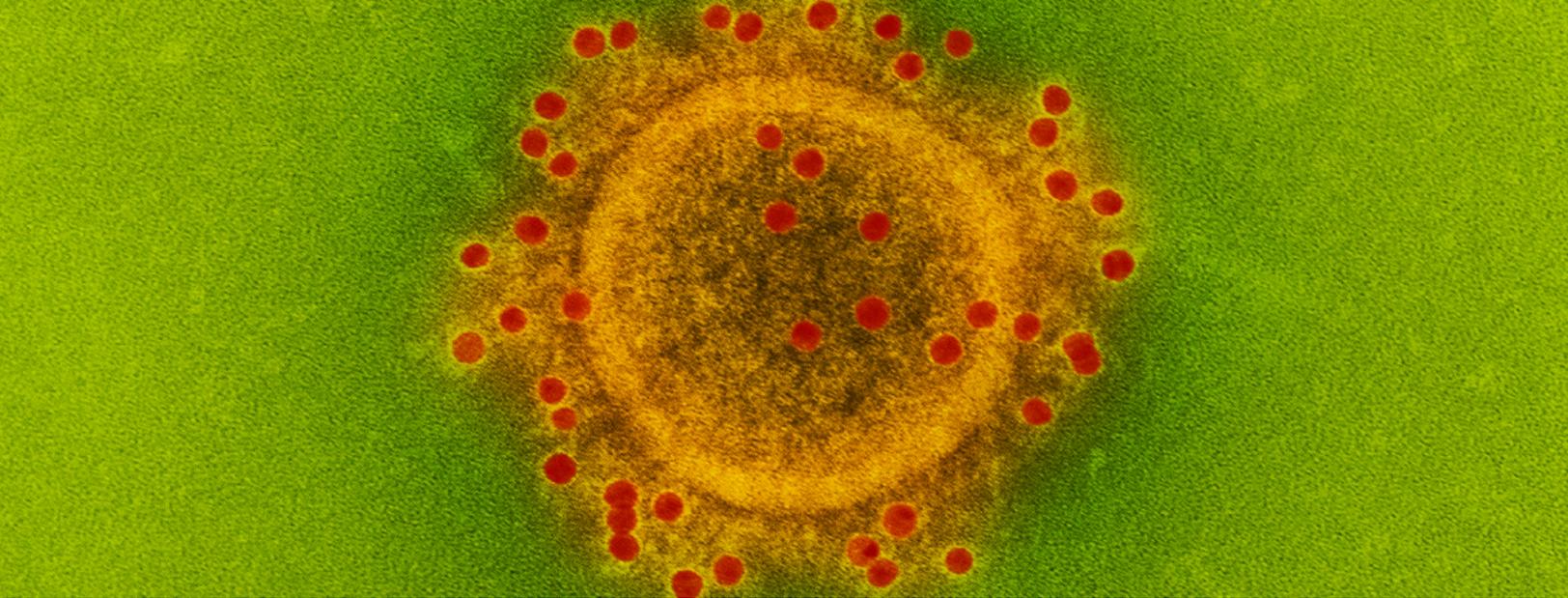


COVID-19 EMPLOYER FAQ

Curated from over 2,000 questions submitted to ThinkHR and Mammoth.



INTRODUCTION

ThinkHR has been on the ground, supporting employers as COVID-19 continues to cause understandable concern and confusion. We hosted several COVID-19 webinars recently, drawing over 20,000 participants who were looking for answers about new legal obligations, workplace health, employee management, and business operations. Even after, hundreds of questions came flooding in.

Because we understand the biggest challenges facing employers, we created this list of Frequently Asked Questions (FAQs) from our webinars to help employers get trusted answers. As we continue to hear from you, we will promptly update this resource.

The FFCRA and Other Applicable Leaves

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

Effective April 1, 2020, the **Families First Coronavirus Response Act** (Act) is a federal law that would require employers to facilitate two major benefits. Under the new law employees must be given:

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

Do we need to provide the required sick leave under this law in addition to the sick leave we already provide or can we lump it all together?

There is nothing in the law preventing employers from creating one policy that includes the sick leave under this Act as well as other sick leave an employer chooses or is required to provide.

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

In general, emergency paid sick leave is available to all employees of private employers with fewer than 500 employees and public agencies and other entities with more than one employee (no matter how long they have been employed). The expansion of the FMLA is available to employees of employers with fewer than 500 employees who have been employed for at least 30 calendar days. For both EPSL and EFMLA, employers may exempt health care providers and emergency responders.

How do I get payroll tax credits and reimbursement for EPSL and EFMLA?

Because the Act caused understandable confusion among employers, the U.S. Treasury, IRS, and U.S. Department of Labor have since **clarified**. To take immediate advantage of the paid leave credits (for both EPSL and EFMLA under the Act), employers can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.

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

The tax credits and reimbursements in this law do not apply to most public employers. They do apply to non-profit employers.

Is the Act retroactive or applicable before its effective date?

No. The Act goes into effect on April 1, 2020.

Does the Act apply to me if I have over 500 employees? How do I count them?

The Act does not apply to employers with 500 or more employees. The term “employee” is defined in the same way as in the Fair Labor Standards Act (FLSA) for EPSL and the same way as in the FMLA for EFMLA. Generally, if they are currently on your payroll, then you would count them.

How do EFMLA and EPSL relate to each other, especially in regards 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 further 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 the regular rate) under EPSL for full time employees.

How does the Act define emergency workers or healthcare providers?

In general, emergency paid sick leave is available to all employees of private employers with fewer than 500 employees and public agencies and other entities with more than one employee (no matter how long they have been employed). The expansion of the FMLA is available to employees of employers with fewer than 500 employees who have been employed for at least 30 calendar days. For both EPSL and EFMLA, employers may exempt health care providers and emergency responders.

- ✔✔ The term health care provider has the same meaning as in the FMLA:
 - ▶ A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
 - ▶ Any other person determined by the Secretary to be capable of providing health care services.

“Emergency responder” is not specifically defined in the Act.

How does the Act apply to state-mandated PSL?

Employers need to comply with both the Act as well as with their state sick leave obligations. The Act does not specifically prohibit employers from combining the sick leave under EPSL with their existing policies.

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

Generally, any eligible employee is entitled to EPSL and EFMLA effective April 1, 2020. We urge employers to consult the recent **guidance** on receiving immediate dollar-for-dollar offsets for EPSL and EFMLA as well as the plans for small business waivers for leave related to school closures when it would jeopardize the viability of the business.

Health & Safety

If employees don't want to come in or work out of fear of COVID-19, can we make them?

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, it may 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. It may be necessary to show employees that you are taking steps to keep them safe like disinfecting the office regularly and modifying operations to better observe social distancing.

- ✔✔ **Can we ask if they have COVID-19 symptoms?**

Yes. Stay away from open-ended questions, though. Ask about fever, cough, and shortness of breath.

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

Our recommendation is to follow guidance from the Centers for Disease Control and Prevention (CDC)—see Tables 1 and 2 in the CDC's **Interim US Guidance** for a Risk Assessment guide.

Can I send an employee home if they exhibit symptoms of COVID-19?

Yes.

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 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 force that on anyone who doesn't pose a risk to others.

✔✔ Do we have to pay them?

Employees must be paid for any work they do at home. If you send someone home and they cannot work remotely, then whether you pay them, and how much, will depend on whether they are classified as exempt or non-exempt. Current state and federal wage and hour laws still apply.

If an employee might have been exposed to COVID-19, such as through a roommate or family member, can we send them home?

Probably. People who live with someone who has been diagnosed with (or presumed to have) COVID-19 should self-quarantine. For more tenuous connections ("contact of a contact"), follow guidance from the Centers for Disease Control and Prevention (CDC)—see Tables 1 and 2 in the CDC's **Interim US Guidance** for Risk Assessment and Public Health Management.

✔✔ What if that potentially-exposed employee came into the office? Do we inform affected employees and/or send everyone home?

You should refer again to the CDC's Risk Assessment tool and/or contact your local health authority to help you determine what steps, if any, would be warranted to protect other employees. Remember that medical information (even of an employee's family member) must be kept confidential under the ADA.

“You should not send employees home because you believe they are higher risk - this includes pregnant employees.”



How do I handle taking the temperatures of employees?

The EEOC has issued **guidance** that employers may take employees' temperatures during the COVID-19 pandemic because COVID-19 is spreading in our community (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.

Can we require employees to get medical notes for sick or medical leaves related to COVID-19?

Yes. But the CDC asks that you not require them for an employee to return to work, as health care practitioners are already overwhelmed.

Do workers compensation laws apply to employees working from home who contract COVID-19?

Probably, though causation will be difficult or impossible to prove; this is a problem for the adjustors rather than for you. Since you can't do anything about cases that have already arisen, focus on reducing risk in the workplace going forward.

Making Working From Home Work

How do we make sure we're paying (or not paying) employees appropriately, as a result of them working 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). Non-exempt 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 messaging apps and via telephone during all working hours.



Furloughs & Layoffs

Our business is suffering. 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: furlough (temporary reduction in hours of work or weeks of work); temporary layoffs (layoff with the intention of rehire, generally within six months); or 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 still receive unemployment insurance benefits, so employers shouldn't feel like they have to terminate everyone just so they can receive UI.

Can we reduce the pay of employees? How does that work?

Yes. This is an employer's prerogative, but there are specifics. Non-exempt employees only need to be paid for hours worked. A reduction in their hourly wage may require a certain amount of notice under state law (and cannot be retroactive if you are mid pay-period).

For exempt employees, you can implement a pay cut, either for everyone or for certain departments or types of jobs. However, employees must remain above the federal minimum salary (\$684/week) or the higher state minimum. You may not prorate.

Do we still offer the same benefits during a furlough 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.



I'm concerned about unemployment, both the cost and how to advise employees about it. Any help?

Remember that you don't pay unemployment insurance 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 will essentially be forgiving COVID-19-related terminations with respect to future increases in UI tax rates.

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.

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CONCLUSION

Because we are experts in human resources, benefits, and compliance issues that affect employers, we believe it is our duty to inform both customers and the public about the on-the-ground workplace challenges caused by COVID-19. We understand that many questions are very specific to your situations. We hear you, and are working hard to answer them as efficiently as possible.

Our expertise comes from our live HR Advisors, who are equipped to answer individual and technical HR questions, our library of employer guides, summaries, and sample policies that are updated by lawyers to reflect changing laws, and our ability to release critical updates and notices through technology.



www.ThinkHR.com/COVID19

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