



COVID-19 Employer/HR Related Q&A

Q: What if we are notified from an employee that they have COVID19 or have been near someone with COVID19?

A: You should immediately separate them from other employees, customers and visitors and send them home. They should quarantine for 14 days and ensure they have no symptoms (fever, cough, shortness of breath) before returning to work. If COVID19 is confirmed, inform others who had contact with that employee, while maintaining confidentiality of the individual, as required by Americans with Disabilities Act and Wisconsin Fair Employment Act. Employees who had contact should self-quarantine and self-monitor for symptoms. Consider options for remote work, paid time off options, including emergency paid sick leave/EFMLEA per Families First Coronavirus Response Act.

See this website for more info: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Q: What if an employee was traveling in an area where COVID19 was more prevalent than here? Can I require the employee to stay home even if they don't have symptoms?

A: This can be answered in several ways depending on many circumstances. Be sure to be diligent and consistent in your decision-making process. Make sure you're using good information about where they traveled, what the CDC guidance is for that area, how many new cases are in that area, and whether the individual has been near anyone confirmed or having COVID19 symptoms. Also, assess the work environment and element of risk the employee will pose to other employees, customers, etc. Under OSHA, you have a duty to provide a safe work environment for others. However, depending on your company's size and other factors, there are also protections for employees who have a 'perceived' disability and/or other discriminatory factors that could result in an adverse action toward an employee (i.e. not getting paid or being treated differently in any way). This is why it's important to ensure good communication and consistent decision making in these circumstances. In these times, erring on the side of conservative is certainly best to minimize the spread of this virus. Therefore, if someone has been at a higher risk of being exposed to the virus, consider ways to allow them to stay home while continuing to be paid, allowing them to work from home or in some cases, there may be opportunities for employees to apply for unemployment if the employer requires them to not report to work. Again, being consistent is the key, so that employees aren't treated any differently in similar circumstances.

See this website for more info on unemployment: <https://dwd.wisconsin.gov/covid19/public/ui.htm>

Q: What is the difference between furlough and layoff? Why would I consider one versus the other?

A: Furlough is a temporary leave of absence without pay, so the employee is still technically employed. A layoff is a separation of employment, so the employee would no longer be employed. An employee could apply for unemployment in either case. Unemployment eligibility is based on many factors, so that will be determined by your state UC office. Ongoing benefits/insurance eligibility is driven by your benefit plan documents and eligibility requirements, but in some cases a furlough would allow someone to stay on your benefits where a layoff probably would not. Payout of earned, unused paid time off can be impacted by furlough vs. layoff – depending on your policies, you will potentially be required to pay out any unused vacation or other paid time off when someone separates employment versus them taking a temporary unpaid leave of absence.



Q: If employees were already furloughed before April 1st, does FFCRA apply?

No, FFCRA isn't effective until April 1, 2020, so if employees were not employed or had no work available on or after that date, paid sick leave nor paid EFMLEA would apply.

See this website for more info on FFCRA: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Q: If we furloughed employees, but would like to bring them back under funding from Payroll Protection Act, would that be allowable?

Anytime you furlough employees, you can bring them back at any time. You should consult with an SBA lender and tax advisor on the eligibility and details related to SBA loans and Employee Retention Credit.

See this link for more info on SBA loans:

https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf

See this website for more info on Employee Retention Credit: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Q: If I furloughed or laid off employees and bring them back, does FFCRA will apply?

Yes, if employees return after April 1 and your business must offer emergency paid leave, and if the employee is eligible, they could qualify for one of the qualifying reasons for leave after they return to work.

See required posting: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Please note: there is a different poster for federal employers; private sector employers must have 500 or less employees, and health care workers and emergency responders are excluded from FFCRA

Q: If an employee is given paid leave under FFCRA, who determines the additional 10-week benefit especially as self-quarantine is 14 days?

The additional 10 weeks is only applicable to #5 - 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. Therefore, it isn't related to any of the other leave reasons nor the quarantine periods. The other reasons are only applicable to the 80 hours of emergency paid sick leave.

Q: Can I offer benefits to furloughed employees? Can I help pay for their co-pay?

A: It depends on your benefits plans and policies, but typically yes. You have the option to assist with premium payments or to ask for employees to pay their portion in some other way (post-tax payment or payroll deduction upon return), it's really up to the employer to make those decisions, as long as they are done consistently. You should consult with your benefits service representatives.

Q: Will FFCRA still apply when school has ended?

A: Many of the reasons people are eligible for FFCRA will still apply once school has ended, including those that have no child care available. There will be documentation requirements, per IRS guidelines, for all the tax credits. Be sure to understand the documentation rules.

See this website for more info (particularly #44): <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>



Q: How can I best support my employees that I need to furlough or lay off?

A: Communication is the key. Ensure that they understand the reasons and rationale behind the decisions. Help them understand the unemployment application process, provide them tools/resources for other needs they may have. If there are other perks or additional things you can offer, do whatever you can to make the unpaid time less painful. If you have an EAP program that might be helpful, provide them information about how to access it. Some employers are offering unlimited or expanded access to EAP services. United Way Blackhawk Region may have other resources that could help employees going through financial, mental or emotional hardships. Just remember that when an employee is on furlough, they should not be working at all. If hourly employees end up working at all, you must pay them for hours worked. If an exempt/salaried employee does any work during a week, they must be paid their weekly salary per FLSA guidelines.

See 211 link: <https://211wisconsin.communityos.org/211guidedsearch2>

This document was written on April 2, 2020. Rules and legislation are changing day-to-day. If you need assistance with communications or organization-specific action plans, work with your local chamber, attorney, tax advisors, benefits representatives and/or HR consulting partners.

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