



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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COVID-19 Employer/HR Related Q&A

Part 2

Q: What if my employees refuse to work, even when there is work available? They want to be laid off to collect unemployment because they are fearful to come to work.

A: If work is available and employees refuse to work, unemployment will likely not apply. Obviously, anyone can apply for unemployment, but the determination is based on whether work was available and what the circumstances were behind them no longer working, not to mention other individual factors. Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. In this example, the individual—not the employer—is choosing not to work and, therefore, would be ineligible. However, the facts of each circumstance are important. Be careful on the communication process. Also, be sure to ensure the best possible safety of your employees so that those considerations minimize the concerns of employees. While unemployment may not apply, some employers are still allowing more flexibility in attendance, paid time off or unpaid time off options to accommodate individuals who might have personal reasons for not coming to work. Every employer has some discretion in how to handle those situations. It's important to be consistent in your practices and consider your own policies and/or union contracts. Some employers are temporarily modifying certain policies or enacting reasonable accommodations during this time. For example, employees with disabilities that put them at high risk for complications from COVID-19 may be entitled to a reasonable accommodation that removes the direct threat. A common example of this is the right to perform work from home, where work at home is available.

Here's a link to some ERD info: <https://dwd.wi.gov/covid19/public/er.htm>

Q: What is a 'voluntary' furlough? If there are no hours to work, how can the furlough be considered voluntary?

A: This terminology typically means that the employer is slower than usual, has less work and therefore less revenue to support full production or all employees. The employer still needs some employees to remain working to keep up with the lower demand in work, but they need to relieve their financial payroll burden so they may ask for people to come forward if they have interest in an unpaid leave of absence or furlough (temporarily layoff) before mandating them. If those employees are still able and available to work, and the employer attests that they are not working due to lack of work, they could still potentially qualify for unemployment benefits. Again, there are other individual factors at play for unemployment benefits. Addressing furloughs or layoffs in this manner can be tricky because the number of 'volunteers' and the needs of the employer may not match, so employers could still have to make some difficult decisions if they get too many or too few volunteers to match the workload needs. Usually employers make the decision about who goes on furlough, rather than asking employees to help make these decisions, so that the decisions made are fair and equitable.

Q: My employee has a child off from school and they must stay home to care for them. Can they receive unemployment?

A: No. Employees must be able and available to work to be eligible for unemployment benefits. In this case, FFCRA may apply, depending on the size of the employer.

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



Q: Why do employees still have the one-week waiting period for unemployment benefits? I thought the waiting period was suspended.

A: Yes, there is still a waiting week. Governor Tony Evers released draft legislation that would repeal the waiting week and there seems to be bipartisan support, which would permit a claimant to receive UI benefits beginning with his or her first week of eligibility, but the legislature has not acted to vote on it. The waiting week is state law that was enacted with Act 32 in 2011 and requires legislative action to repeal. It appears that the waiting period bill, as originally written, allows the secretary of workforce development to suspend the one-week waiting period for up to 52 weeks, during a declared state of emergency as is needed to address the state of emergency. It also requires the suspension to occur retroactively to March 15, 2020 for the public health emergency declared by executive order 72 (Safer at Home). Since the bill hasn't yet passed, it's difficult to know how to specifically answer this question.

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

Q: How do I best handle the amount of UCB-23 wage verification requests that I'm receiving from unemployment office when their website can't be used to process them?

A: Wage verifications only have to be completed if they are incorrect. If you do make a correction, you can then fax or mail it into UC office. See this link for more info: <https://dwd.wisconsin.gov/ui201/b9201.htm#23>

Q: Our understanding is that Federal unemployment benefits of \$600 per week will be added to the Wisconsin unemployment payments of \$370 per week. Together that equals \$970 per week. Our company is desperate for workers but with these stacked incentives, how are we expected to attract new employees who have been laid off from other jobs?

A: The additional benefits are only available until July 31, 2020. However, as in any tight job market where you compete with other employers for the same workers, you may have to do the same thing in this environment. In addition, you will also want to show how you're a safe place to work since that's top of mind for most people right now. You can offer other attractions and incentives and market why you are an employer of choice. Hiring bonuses, retention bonuses, referral bonuses, spot bonuses and other incentives could be considered. The other benefits (insurance, retirement savings options, etc) you offer can be appealing, as those will typically go away, even when unemployment benefits are available. Most employees don't want to be unemployed, but if they are temporarily laid off, they will likely wait for their own employer to call them back, regardless. If they were permanently laid off, they will likely want to get back to work as soon as possible, since these additional UC benefits only last for a short period of time. Utilize your marketing department – find ways to best get the word out to passive job seekers (radio, social media, etc) about your open positions and be sure to emphasize the benefits to working for your organization.

See this link for more info on UC website about the additional federal benefits: <https://dwd.wisconsin.gov/uiben/caresact/>

Q: I believe the FFCRA notice contains an error. Under Paid Leave, the reference to additional paid leave for reason #5 should be \$10,000 total, not \$12,000, correct?

A: There was an error, but the notice has been updated. The combination of paid sick leave and expanded family leave together (2/3 pay) maximum is 12 weeks and \$12,000, but the 10 weeks of expanded leave alone is \$10,000 (\$200 per day). Here's the updated posting: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf



Q: Is there any reason an employer couldn't "wrap around" the 67% expanded family medical leave per FFCRA? For instance, 67% paid by expanded family medical leave and 33% paid by the employer? This would help make an employee 'whole' for up to 12 weeks (for reason #5) and up to 2 weeks for reasons #4 and #6.

A: An employer can certainly be more generous than FFCRA requires. The tax credit that comes with FFCRA has a maximum benefit to the employer, so those decisions must be made based on the employer's ability to pay the additional benefits.

Q: May an eligible employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?

A: Yes, but not for the same wages. The amount of qualified wages for which an eligible employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.

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

Q: May an eligible employer receive both the Employee Retention Credit and a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act?

No. An eligible employer may not receive the Employee Retention Credit if the eligible employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act ("Paycheck Protection Loan"). An eligible Employer that receives a paycheck protection loan should not claim Employee Retention Credits.

See this link for more info on small business loans:

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

Q: Can business owners and self-employed individuals apply for unemployment?

A: There are some new benefits for self-employed and independent contractors under CARES Act but Wisconsin Unemployment hasn't yet updated their system to immediately respond to those claims. They are awaiting more guidance from Department of Labor. Benefits should still be retroactive to the date of unemployment, not from the time your application is submitted. If you currently pay unemployment tax on yourself as the business owner, there are various factors at play, including how you are paid and other criteria you must still uphold to be eligible for benefits. Consult with your tax advisor and/or contact UC/DWD.

See this link for more info: <https://dwd.wisconsin.gov/uiben/caresact/>



Q: What must I do under WARN Act for updating employees on potential layoff or reduction of hours?

A: The Wisconsin Business Closing and Mass Layoff (WBCML) requires employers to give a 60-day notice when deciding on a mass layoff or business closing or reduction in hours. This requirement (and similar requirements under federal WARN Act) remains in effect. The law applies to businesses with 50 or more employees in Wisconsin. A mass layoff is a layoff of 25 people or 25% of the workforce in a single municipality, whichever is greater. Per the DWD/Equal Rights COVID19 web page, employers undergoing a covered event should provide notice as soon as possible and update that notice as things change, due to the pandemic. All complaints received by ERD are investigated on unique facts, and employers may not be found liable for failing to provide notice related to COVID19 given the unforeseen nature of the pandemic and the State of Wisconsin's response to it. However, delay in providing required notices could lead to employer liability

See this website for more info on WBCML: <https://dwd.wisconsin.gov/dislocatedworker/employer/tools/notice/wbcml-overview.htm>

Q: What if I don't have the cash to pay for FFCRA requirements?

A: If you are under 50 employees, there are some reasons to request exemption of payment for reason #5 (emergency family medical leave to care for child due to school or daycare closing), but not the other FFCRA sick leave options. To take immediate advantage of paid leave tax credits, businesses can retain and access funds that they would otherwise pay the IRS in payroll taxes. If those amounts aren't sufficient, employers can seek expedited advance from IRS by submitting a form 7200: <https://www.irs.gov/pub/irs-pdf/f7200.pdf>

Just remember that you still must obtain proper documentation to be eligible for these tax credits.

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>

This document was written on April 9, 2020. Guidance, 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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Q: What is my legal exposure if one of my employees gets sick from being exposed at my business?

A: In short, if you are conducting a risk analysis and managing the risk and exposure for your employees in a highly proactive manner and you document and show that you've done so, you will minimize your legal liability. Unfortunately, since this is new and there hasn't been any specific case law in this area, it's tough to detail exactly what every business should do to minimize the risk to illness exposure. There are some bills in the works from lawmakers that address the issue of immunity from lawsuits due to COVID-19, but there is a differing of opinion from both sides on how that should look, so it is important to put yourself in a position of protecting employees and your business, regardless. See the above re-open guidelines by industry as one source of guidance. Talk to your legal and risk management partners to further determine what to implement. To minimize OSHA claim exposure, review their guidelines:

<https://www.osha.gov/SLTC/covid-19/controlprevention.html>

There are specific pages associated with different industries that will offer some interim guidance. Just remember that OSHA tends to review documentation of employee training and policies/practices, so be sure to retain employee training materials and consider a method of documenting training (employee sign-offs, checklists, etc). When requiring or offering the use of PPE (personal protective equipment), this includes training on how to properly use and care for the PPE.

Be sure to consider requests for accommodations for disabilities, where appropriate. If someone is at higher risk due to their disability, they may have protection under ADA or Wisconsin Fair Employment Act. It isn't appropriate to ask about medical conditions, but when they are brought to your attention, you should be involved in an interactive process to determine if an accommodation is necessary to perform the essential duties and/or to comply with safety guidelines.

Consider screening methods to determine if employees have been exposed or have symptoms of COVID-19. Just be sure you do so in a manner that is keeping health care information confidential and compliant with ADA/EEOC/Wisconsin Fair Employment Act. Here is some guidance from EEOC:

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

Finally, be sure to address positive cases or exposures to COVID-19 in your workplace very proactively. You will want to be prepared with a specific response plan to a report of a positive COVID-19 exposure in the workplace beyond your other precautionary measures. Response should include sanitation/disinfection plans, informing employees who may have had contact with the exposure (while keeping identifying medical information confidential) and determining if further action needs to be taken. See CDC guidance for more information:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

This document was written on May 18, 2020. Guidance, 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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COVID-19 Employer/HR Related Q&A

Part 3

Q: What factors must I consider for bringing employees back to work as we're able to re-open?

A: There are many factors to consider when bringing employees back to work, but first and foremost is safety. You should implement various precautionary measures to prevent illness and spread of illness amongst employees and customers. There are recommendations that people over age 60 and those that are medically vulnerable continue to shelter in place through Phase 1 and 2 of Badger Bounce Back plan, so that may be something to consider when making decisions. Implement sanitation practices and track adherence to those practices; implement telework and other social distancing practices; require employees to stay home when sick; promote handwashing; provide PPE and supplies for cleaning and disinfecting; review ventilation systems; and in workplaces where it's impossible to eliminate face-to-face contact, consider additional precautions. Consider screening methods and identify/isolate newly ill employees per CDC and public health recommendations and take additional measures for sanitation and safety when there are cases of COVID-19 confirmed in your workplace.

The other key to re-opening is communication. Develop signage/postings/communication plans for employees and customers; develop and implement training; and put policies in place and document/address employees, vendors or customers that don't adhere to policies. Review and consider more flexible leave and return-to-work policies, where appropriate. Review and communicate travel and meeting practices/policies. And, most importantly, check in with employees to find out if they feel safe and good about the measures put in place. Listen and implement their suggestions, where it's feasible. It's critical to ensure two-way communication and understand where there are gaps and concerns.

Here's a link to Wisconsin's re-open guidelines, including specific guidelines by industry: <https://wedc.org/reopen-guidelines/>

Here are some new resources from CDC on decisions to make before re-opening: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/workplace-decision-tree.pdf>

There's also a restaurant/bar decision tree and another guidance piece related to disinfecting and cleaning on this website:

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

Q: When I call my employees back to work, they would prefer to stay off work and earn more money on unemployment, what do I do?

A: When work is available and refused without good cause, unemployment benefits typically stop. The additional federal unemployment offered through the CARES Act will end on July 31. Some are earning unemployment, even when they are partially unemployed. If there isn't enough work to bring employees back full-time, there may be opportunities to reduce hours versus laying off employees under Wisconsin's Work-Share program, where employees could still qualify for UC benefits. Here's more info about Work-Share: <https://dwd.wisconsin.gov/uitax/workshare.htm>
More info about Unemployment/COVID-19: <https://dwd.wisconsin.gov/covid19/public/ui.htm>

As an employer, if you have to make difficult layoff decisions, remember to utilize the local county resources available to you and your employees. There are many funded programs and agencies that will assist employees during any sort of dislocation. Contact Gail Graham from Southwest WI Workforce Development Board if you have questions: g.graham@swwdb.org or (608) 314-3300 x304.