

COVID-19: PEOPLE: EMPLOYMENT ISSUES - KEY DEVELOPMENTS AND RESOURCES (UNITED STATES)

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Legal Briefings - By **Barbara Roth and Tyler Hendry**

As COVID-19 continues its spread across the United States, federal, state, and local governments are taking emergency measures on a daily basis to respond to the pandemic.

To keep our clients updated on these developments, below we have provided key considerations, developments, and resources in employment law.

Because the situation is constantly evolving, we advise clients to reach out to a member of our team for any specific questions. Moreover, for global considerations, please visit our region-specific guidance available [here](#).

As governments mandate stay-at-home measures and employers take proactive measures to reduce the risk of employee exposure – the current structure of US employment is almost unrecognizable. Remote work, as well as reduced hours, layoffs, and unexpected closures have become the unfortunate new reality in many industries. The summary below covers key considerations distilled from the most frequent inquiries we have received, and updated developments from federal, state, and local governmental authorities.

WAGE AND HOUR

The US Department of Labor has provided a [Questions and Answers](#) guide that addresses the most common wage and hour issues arising from the pandemic. Key takeaways include:

- Non-exempt employees must be paid for all hours worked, whether those hours are worked at home or in the workplace, but there is no requirement to pay non-exempt employees for the time they are performing no work.
- Exempt, salaried employees, must generally be paid – with limited exceptions – their full salary in any workweek which they perform at least some work.
- Absent a collective bargaining agreement or contractual arrangement, employers are generally able to modify employee work hours, pay, and schedules.

LEAVE LAWS

The most rapidly evolving topic and most inquired about is the use of paid and/or unpaid leave for absences related to the pandemic.

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Effective April 1, the [Families First Coronavirus Response Act \(FFCRA\)](#) will become the first ever federally mandated paid leave law in the United States – allowing workers to receive paid leave for specified reasons related to COVID-19. The federal government is also currently working on legislation that may expand this relief further.

Under the FFCRA, a covered employer must provide *all* employees with:

- Up to 80 hours of leave at the employee’s regular rate of pay when the employee is unable to work because the employee is quarantined (pursuant to a governmental order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Up to 80 hours of leave at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a need to care for an individual subject to quarantine (pursuant a governmental order or advice of a health care provider), or care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

In addition, a covered employer must provide all employees who have been employed for at least 30 days:

- Up to 10 weeks of leave at two-thirds the employee's regular rate of pay when an employee is unable to work due to a need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

A "covered employer" is defined as an employer with 500 or fewer employees, and the law allows the Secretary of Labor to issue regulations limiting the impact of the Act on employers with 50 or less employees. The [Questions and Answers](#) document from the US Department of Labor explains the mechanics of the Act, as well as explaining other key provisions, including a tax credit for employers and the Act's December 31, 2020 end date.

OTHER AVAILABLE LEAVE AND BENEFITS

In addition to the FFCRA, employers should continue to apply their existing policies for the use of accrued, but unused Paid-Time Off and monitor any state emergency laws relating to mandatory sick and/or paid family leave. For example, in [New York](#), employees are now legally entitled to paid sick leave for a COVID-19 related illness or quarantine to care for a family member. The employer's size and net income dictates the amount and duration of leave available. In certain circumstances, disability insurance under existing policies and/or state law - which requires certification from a medical provider - may also be available, and in exceedingly rare circumstances, workers' compensation may be available.

LAYOFF/FURLOUGH/REDUCTION IN WORK

Decisions to lay off employees or to implement workplace closures may require compliance with the notification requirements of the federal Worker Adjustment and Retraining Notification Act (**WARN Act**) and/or similar state laws.

The federal WARN Act requires advance notice for employers (with 100 or more full-time employees) who implement a covered "plant closing" or "mass layoff." While the Act typically demands 60 days' notice, where unforeseeable business circumstances cause the closing, the notice must be provided as soon as possible. Notably, many states, including [California](#) and [New York](#), have issued guidance or emergency measures to relax the notice requirements under their respective state laws. Employers should work closely with employment counsel in drafting compliant notices, as well as ensuring the notices are delivered to the proper governmental authorities.

UNEMPLOYMENT INSURANCE BENEFITS

Federal and many state governments have expanded access to unemployment insurance benefits, as well as waiving waiting periods that often apply to the receipt of such benefits. President Trump is also expected to sign a bill that is currently pending before the House, that would allow laid off employees to collect an extra \$600 per week in unemployment insurance benefits for up to four months. This amount would be in addition to any unemployment benefits available under state law.

Moreover, in certain states, including [California](#) and [New York](#), employers may apply for “workshare programs”, which allow employers to retain workers during times of slowdown by reducing work hours while allowing the impacted employees to apply for and receive unemployment insurance benefits.

Employers and employees should review their states’ respective unemployment insurance websites, see, e.g., [New York](#), [California](#) – as most contain COVID-19 specific guidance.

DISCRIMINATION UNDER THE ADA

The Equal Employment Opportunity Commission has released a [guidance document](#) to address COVID-19 and its interplay with the Americans with Disabilities Act. Key takeaways include:

- An employer may send employees home if they display influenza-like symptoms.
- An employer may measure employees’ body temperatures.
- Employers may require employees to provide a doctor’s note to certify that they are fit to return to work (if state law allows the employee to return) and do not have the virus.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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