

### I. EMPLOYER CHECKLIST

1. Create and **over communicate** a response plan for each category of employees:
  - Do you have a contagious disease or pandemic employee policy?
  - How will leave, paid or unpaid be applied?
  - How will infections be communicated?
  - What to do if you feel sick, fear exposure, or have no childcare.
2. Control business travel, recommendations on personal travel:
  - Restrict business travel except for urgent issues or emergencies
  - Encourage employees to limit non-essential personal travel to restricted areas
  - If an employee visits an area where the virus is widespread (CDC designated country), you may send them home pending a negative test or lapsed time
3. Restrict access by customers/visitors by inquiring if they are exhibiting any COVID-19 symptoms or have been near anyone who is exhibiting symptoms
4. Understand your state's paid sick leave laws
5. Establish a telecommuting policy to enable telecommuting to the extent possible
  - Can the employee effectively work remotely
  - Track company-owned equipment that is sent home
  - Guidelines for handling sensitive business information - secure files and email
  - Unsafe work conditions or reporting of work-related injuries that occur at home or offsite
  - Method for collection and reporting of all hours worked for nonexempt employees
  - Workers Compensation and OSHA is applicable for incidents while working offsite
  - Determine performance expectations for work to be accomplished remotely.
  - Test IT Infrastructure for capacity and capability to support telecommuting arrangements
6. For positions that cannot be performed remotely, provide a safe workplace – Distancing in ALL areas is crucial, including workrooms, production floors, entrances, donning & doffing, timeclocks. Evaluate every aspect and rework as necessary.

7. Keep infected employees or exposed employees home or at a minimum isolated. If someone exhibits symptoms while at work, separate and send them home. Notify employees, confidentially, only if an employee tests positive.
8. Encourage and enable personal hygiene. Increase rigor to cleaning doorknobs, phones, computers, countertops, and other shared surfaces. Ensure appropriate training and PPE for those tasked with cleaning responsibilities.
9. Restrict on-site visitors and require 6' spacing to those remaining on-site.
10. Publish and promote the use of any Virtual Care resources available through insurance carriers or EAP providers (if applicable). The stress of the situation may exacerbate other underlying personal or health issues.
11. Cross-training on critical tasks (i.e. payroll processing)
12. Record COVID-19 illness on the OSHA log if the worker is infected "On the Job"
13. Stay up to date on the unemployment benefits and the capability for employees to be eligible and claim benefits.
14. Review your furlough/layoff policies (we can assist to create and/or update):
  - WARN Act applicability
  - Severance policy
  - Applicability of healthcare and COBRA
  - Applicability of all other benefits
  - Communication with employees while they are on furlough/layoff
  - Return to work policy (what's required?)

## II. **DEFINITIONS** - For right now we are using these definitions as described below.

1. **Healthy Employee** – Not infected or recovered. Symptom-free.
2. **Encumbered Employee**
  - Potentially exposed – close interaction or travel to restricted areas
  - A sick family member at home (see definition of family member/parent below)
  - At higher risk for adverse health complications (self-reported)
  - Schools and/or childcare facilities are closed – limited care options
3. **Infected Employee** – exhibiting COVID19 symptoms

### III. What CAN you ask/do?

1. Are you or a family member experiencing COVID-19 symptoms?
  - If yes, keep confidential, but if tested positive, other employees should be informed of potential exposure (Encumbered Employee).
  - Employees with symptoms may be sent home, pending test results or medical clearance.
  - Contact the local health department if an employee is diagnosed with COVID-19
2. Have you traveled (business or personal) to a CDC restricted travel area where the virus is widespread?
  - If yes, you may send home (Direct Threat) and require medical clearance or symptom-free lapsed time before returning to work
3. Are school or daycare closures preventing you from coming to work?
4. Do you live with or provide care for individuals with conditions that result in elevated risks from exposure?
5. Require the use of Personal Protection Equipment (PPE) (masks, gloves, goggles) and infection control practices (handwashing, coughing etiquette, tissue use & disposal, surface cleaning, etc.) to reduce the legitimate risk of exposure.
6. An employer can anonymously disclose if any employees have recently traveled to a CDC restricted area or have been diagnosed with COVID-19.
7. Follow your leave of absence or FMLA policies regarding the application of PTO and/or sick pay concurrent with the unpaid Leave/FMLA. Absent a policy, guidelines should be developed. **Under the Families First Act (FFCRA), an employer is not permitted to require the use of available paid time before granting Emergency Paid Sick Leave.**
8. Measuring body temperature as a precaution during the pandemic. Be aware that some with COVID-19 do not present a fever.
9. Transition to a partial and/or tiered workweek to reduce furlough/layoffs for both exempt/non-exempt employees. Understand the impact on unemployment compensation and benefits eligibility when deciding the course of action.

### IV. What CAN'T you ask/do?

1. Do you have a compromised immune system or chronic health condition that elevates your risk?
  - If voluntarily disclosed - keep confidential – stress hygiene and social distancing

- If requested by the employee, may need to accommodate the use of protective gear (Mask/Respirator)
  - If COVID-19 pandemic becomes severe and poses a direct threat based on objective evidence, such a restriction may be waived in the future
2. Cannot disclose an employee's confidential health information

### **V. PA Unemployment**

1. Eligibility Guidelines under COVID-19
  - Employer temporarily or permanently closes
  - Hours are reduced
  - Told not to work to mitigate the spread
  - Told to quarantine or self-isolate and cannot telework
2. CareerLink – not required to register on CareerLink
3. Duration
  - The waiting week has been suspended
  - Benefits are for up to 26 weeks
4. [How to File](#) - PA
  - (<https://unemploymentapply.com/faq.html#unemploymentfaq3>)

### **VI. Families First Coronavirus Response Act (FFCRA; HR 6201)**

#### **Who does it apply to?**

1. Employers with less than 500 employees
2. Employers with less than 50 can apply for an exemption if providing the benefits would jeopardize the viability of the business. Not yet clear how to file for an exemption.
3. Employers of healthcare providers or emergency responders may decline to offer

#### **When is it effective?**

1. Effective April 1, 2020 (or sooner?) through 12/31/20

#### **How do employers get reimbursed?**

1. Sick Leave Tax Credit not to exceed \$5110 - offset of quarterly payroll tax (Employer portion of FICA)
2. Family Leave Tax Credit not to exceed \$10,000 per eligible employee – offset of quarterly payroll tax (Employer portion of FICA)

3. Gig Workers and self-employed can get the benefits through tax credits

### Employee Benefits

1. Free Testing for Coronavirus
2. Enhanced unemployment insurance incentives provided to the states
3. Increased funding for nutritional programs
4. Expanded funding of unemployment and Medicaid benefits to the states
5. Expanded FMLA (paid)
  - a. Eligibility
    - i. 30 days of employment **AND**
    - ii. School or childcare has closed due to health emergency and the employee is unable to work (or telework) due to the need to provide care for a minor.
    - iii. Employers of healthcare providers or emergency responders may decline to offer
    - iv. For variable hour employees – average the employees' hours/day over the prior 6 months. If the employee has not worked during that period, average the daily hours the employee would have been expected to work upon hire.
  - b. Schedule of Benefits
    - i. 12 weeks – first 10 days can be unpaid if other paid leave type is not available.
      1. 10 weeks of additional paid leave
      2. 10 days of unpaid leave can be the emergency paid sick leave below or paid leave available through the company policies.
      3. Conditional Job protection, same or equivalent role, for employers >25 employees
    - ii. 2/3 of regular pay, capped at \$200 per day (\$10,000 aggregate)
    - iii. Payments are not taxable
    - iv. Healthcare benefits must continue during the leave
6. Emergency Paid Sick Leave
  - a. Eligibility – 30 days of employment **and one of the following** applies:
    - i. Ordered by Federal, State, Local Government to quarantine or isolate
    - ii. Advised by a Healthcare provider to self-quarantine or isolate

- iii. Exhibiting symptoms and seeking a medical diagnosis
  - iv. Caring for a relative who was quarantined or isolated as described in i and ii above
  - v. To care for a minor whose School or childcare is closed due to a health emergency and the provider is not available.
  - vi. The employee is experiencing any other substantially similar condition specified by Health & Human Services
- b. Schedule of Benefits
- i. FT employees receive 80 hours (two weeks)
  - ii. PT employees' hours are based on the normal schedule for the two weeks
  - iii. Variable Hour Employee - calculated based on historical or anticipated work
  - iv. 100% of pay, capped at \$511 per day (\$5110 aggregate max) for own care (bullets i, ii, iii under eligibility)
  - v. 2/3 of regular pay, capped at \$200 per day (\$2000 aggregate max) to care for a family member or child ((bullets iv, v, vi above)
  - vi. Prohibited from requiring employees to use employer-provided vacation, PTO, sick, or other paid time off in advance of Paid Sick Leave.

### What should employers do now to prepare for tracking?

1. Determine the hours of available **Emergency Paid Sick Leave** available by employee.
2. Determine the hours of available **Expanded FMLA** by employee.
3. Compute employee rate/hour that will be used to process any approved leave.
  - a. Emergency Paid Sick Leave
    - i. 100%, capped at \$511 per day for self-care **AND**
    - ii. Two-Thirds, capped at \$200 per day to care for a family member
  - b. Expanded Family Medical Leave
    - i. Two-thirds, capped at \$200 per day to a max of \$10,000 per employee
4. Create an Excel file with the available hours, applied rates, and used hours to log each employee receiving paid sick or family leave due to COVID and document whether the employee is caring for themselves or a family member and the amount of sick pay or family leave pay. This file can be used to submit payment to a payroll provider and to provide backup for tax filing reimbursement.

5. Ensure the payroll provider has unique earnings codes to capture the leave dollars paid to employees under this act. The dollar amount paid in leave will be submitted with the quarterly tax filing to get the offsetting payroll tax credits.

## **VII. What Practices are we Seeing from Employers?**

### **Healthy and Employees**

- Telework or report to work as communicated by employer
- Follow CDC guidelines for hygiene and social distancing
- Check temperature, self-evaluate for symptoms daily
- Permit the voluntary use of masks, respirators, goggles, or other PPE
- Furlough, Temporary Layoff, or RI. For Furlough or Temporary layoff, preserving benefits eligibility to the extent permitted by the carrier.
- Temporarily changing Exempt employees to Nonexempt and pay hourly
- Reductions in pay. (Exempt cannot fall below FLSA minimum of \$35,568)

### **Encumbered Employees**

- Telework or self-quarantined to prevent spread or potential spread
- FFCRA, as applicable, may apply if not able to telework
- May accelerate paid leave accruals (sick or vacation or PTO) to give early access to benefits if those provided under FFCRA are insufficient.
- If able to work, but not allowed, encourage the application of unemployment benefits
- Furlough, Temporary Layoff, or RIF – but not because they are or were encumbered, but as part of a nondiscriminatory selection process.

### **Infected Employees**

- Not permitted to work
- FFCRA, if approved, applies
- May accelerate paid leave accruals (Sick or Vacation or PTO) to give early access to benefits
- Record on OSHA 300 log IF the illness was contracted from a coworker or workplace exposure:
  - The employee is occupationally exposed to anyone with a known case of COVID-19 and develops an infection (diagnosed by a healthcare professional). Record the incident under the “respiratory condition column”
  - If you later learn that the infection was not caused by occupational exposure, you may remove

- Lives in a household where a person who was diagnosed
- Public Health Department identifies the worker as a contact to someone external to the workplace
- Medical investigation shows otherwise

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