

## COVID-19 Update Legal, HR and Legislative for Mfgs.

March 26<sup>th</sup>, 2020

### Speakers Panel:

- John C. Porter, Esq. – *Griffith, Lerman, Lutz & Scheib*
- Vicki Krotzer, PHR, SHRM-CP, HR Consultant – *The Manufacturers' Association* -
- Becky Stauffer, SPHR, SHRM-SCP, HR Consultant – *The Manufacturers' Association*

**Moderator:** Tom Palisin, Executive Director

### Update on Sick Leave/FMLA Federal Legislation – John C. Porter

- Limits on FMLA, Counting of employees: US [DOL Facts Sheets](#)
- Federal Tax Credits
  - US Treasury Guidance: [Tax Credits for Small and Midsize Businesses](#)

### Update on Governor's Executive Order "life-sustaining" businesses - Tom Palisin

- Revised Order - issued 3/24/2020: <https://dced.pa.gov/>
- [Exemption process](#) – PA Department of Community and Economic Development
- Standard letter template

### Business Financing Programs - Tom Palisin

- Federal Financing Programs – CARE Act
  - [SBA Disaster Emergency Loans](#)
  - Paycheck Protection Program
  - SBA Eligibility
- New PA State Financing Programs: <https://dced.pa.gov/>

### HR Q&A

- FAQ's – see below
- Questions? [HR@mascpa.org](mailto:HR@mascpa.org)



**The Manufacturers' Association**

320 Busser Road, 2<sup>nd</sup> FL, P.O. Box 493, Emigsville, PA 17318

Phone (717) 843-3891 • Fax (717) 854-9445 • [office@mascpa.org](mailto:office@mascpa.org)

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# **COVID-19 Webinar**

## **HR and Legislative Overview for Mfgs**

March 26<sup>th</sup>, 2020

Manufacturers' Association HR Hotline: [HR@mascpa.org](mailto:HR@mascpa.org)

### **Webinar FAQ's**

**Q:** How many companies are currently paying incentives or bonuses to employees who are working amidst this challenge?

**A:** Some larger companies and those companies who are hiring or need to maintain their workforce because of increased production had deployed bonuses or increased hourly pay. Examples include grocery stores and Amazon distribution centers.

Regular Rate under the Fair Labor Standards Act

<https://www.dol.gov/agencies/whd/overtime/2019-regular-rate>

If you are paying bonuses be sure that you are calculating the regular rate correctly. Bonuses that you pay your non-exempt employees for working "hazard" pay effect this regular rate.

**Q:** Specific scenario: An employee lives with roommate who has fever and the roommate's doctor advised to quarantine. The employee has called their doctor and their doctor told the employee to quarantine. How does the Families First act apply in this specific scenario?

**A:** The employee should stay home. The employer should not allow the employee to work. Effective April 1<sup>st</sup>, the employee will be eligible for paid sick leave for 80 hours at 100% of her or his regular rate or pay. Employer may take a payroll tax offset from employee's income tax, Medicare tax, or Social Security tax or from employer's share of employee's Medicare tax or Social Security tax.

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>



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**Q:** For the roommate scenario who has the fever, is the employee paid at 100% or 75% of pay?

**A:** Under the Act (which is in effect only on April 1) the employee can claim sick leave as they have been advised by a doctor to quarantine and this is eligible under the Act. Employer should consider documenting with doctor's order/excuse.

Sick leave is 100% during the 10 days (80 hours for fulltime employees) if the employee is requesting sick leave – which this scenario would fall under. If asked for leave for the care of a child during school closures or FMLA, the pay would be 2/3 of pay.

**Q:** Are we comfortable posting the new DOL posters to our employees, given that the Act has not yet passed in Congress as far as how it's being paid? The poster we're referring to is regarding the Paid Sick Leave and Extended FMLA.

**A:** The sick leave/FMLA became law on 3/18/2020 and becomes effective on April 1st. So, yes, the notice should be posted for April 1<sup>st</sup>.

**URGENT – EFFECTIVE IMMEDIATELY:** Employers are now required to post in a conspicuous location in the workplace the attached poster that announces employees' rights to Paid Sick leave and Emergency FMLA under the Families First Coronavirus Response Act (FFCRA). This poster has been issued by the Secretary of Labor pursuant to the FFCRA. More information and copies of the poster can be found at:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

If your business has ceased physical operations due to Governor Wolf's Order closing all non Life Sustaining businesses, you should place the poster on your intranet, email it to employees, or mail it to employees.

- Link to the poster: Click [DOL Poster](#)
- Poster [Questions & Answers](#)

**Q:** Please clarify whether we should pay the first ten days of a leave to care for school children at 100% or 67%.

**A:** The Act applies on April 1<sup>st</sup>, 2020. For care of a child the employee would receive 2/3 of their regular rate of pay.



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**Q:** How do we handle the situation of when we have employees who we've asked to return from a layoff, and they are refusing from fear of catching COVID-19? What do you suggest we do?

**A:** Offer the position, if they don't come back, then UC may not be available. Can't force anyone – but work is available, so may not be eligible for UC. If someone in workplace has been exposed, we can't make people come back.

Employers don't have to send the UC employer form back unless the employer wants to challenge the UC Benefits.

A refusal to work may be grounds for discipline up to and including discharge. Check your company policy. Also consider the unprecedented and extraordinary circumstances we are all faced with in this pandemic of global proportion. Is the employee's fear reasonable? Has a co-worker come down with COVID-19? Does the workplace need to be sterilized? An employee could report this to OSHA if their fear is reasonable and the workplace needs to be sterilized.

**Q:** How is the \$600 extra in unemployment benefits going to work? When will that start to be paid? With that extra payment isn't it most advantageous to lay people off to help protect the company?

**A:** Benefits extended from 26 weeks (in most states) to 39 weeks.

Benefits are payable for the period beginning on January 27, 2020, and end on December 31, 2020.

The amount of benefits includes the amount that would be calculated under state law plus \$600 per week for **up to four months**.

Waiver of the usual one-week waiting period to receive UC benefits payments.

**Q:** How much information regarding COVID-19 are we allowed to ask from our employees? Especially when we are beginning to re-open, we want to make sure returning employees have not potentially been exposed to COVID-19.

**A:** Refer to the EEOC Link for questions you may ask under ADA. Employers can ask about symptoms during the pandemic and may take temperatures, but must keep employee information private because the HIPAA laws are still in effect. If employees refuse, employers can ask them to leave and may employ discipline measures. Executive management staff can have knowledge because of potential exposure to other employees and may need to take action to alert impacted employees. EEOC Link:

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).



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**Q:** How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

**A:** During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

- More Info [HERE](#)

**Q:** Should you record the temp? Do you need this documentation?

**A:** Employers should not be in the position to act as medical personnel. Some manufacturers are checking temperatures of arriving employees, but have tried to acquire laser thermometers so the individual checking is not potentially exposed or in close proximity. Also keep in mind that the employee could be a carrier but potentially not exhibiting a temperature.

**Q:** Please confirm Governors Executive Order for business closings qualify as quarantine/isolation. I read debrief dated 3/23/2020, which stated that was still in question.

**A:** While Governor Wolf's Order closing all non-Life Sustaining businesses may be a quarantine or isolation order, the U.S. Department of Labor has recently clarified that employees whose businesses closed before the effective date (April 1<sup>st</sup>, 2020) of the Families First Coronavirus Response Act (FFCRA) will not be eligible for the paid sick leave or the expanded FMLA leave under the FFCRA. Those employees should apply for unemployment compensation benefits. "This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>."

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

**Q:** If an employee has a spouse or family member either diagnosed with or who have symptoms of COVID-19, should the employer place this employee on an employer mandated quarantine until such time they are medically released to return to work?

**A:** OSHA Standards and directives may apply to worker exposure to the Coronavirus. Click [HERE](#) for more information. Report cases to OSHA and local Departments of Health. Employers should also consider sanitizing the workplace – examples are provided by the CDC website on employer responsibilities.



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**Q:** If someone presents sick with symptoms associated with the Coronavirus, do I as an employer have the right to send them home?

**A:** Yes. This is a pandemic with a highly contagious virus. An employer may require an individual to leave their premises if they are showing signs of illness that are signs of COVID-19. You can insist they seek medical attention. Employers may also require the employee to present a Medical Release in order to return showing that they do not have the virus and have not been directly exposed to the virus.

**Q:** Can salaried employees request to work from home if all work can be performed remotely? Can an employer deny this request?

**A:** Salaried employees can request to work from home. If the employee works for a Life Sustaining business, the business should decide whether it is necessary to have the employee physically present at the worksite. Social distancing should be kept in mind.

**Q:** Outside sales exemption – Has DOL put out any guidance allowing “outside” salespeople to work remotely and keep the exemption?

**A:** Sales employees do work from home anyway in most scenarios, so employers should continue to pay salary. Employers should document and manage employee’s remote work habits; employees are still responsible for the employer’s expectations for work to be completed and for the number of work hours. The Fair Labor Standard Act is still in effect.

**Q:** How does a small company (under 500) become exempt from having to pay their employees 80 hours sick leave for Covid-19?

**A:** There is currently not a provision for companies with less than 500 employees to apply for an exemption from the Emergency Paid Sick Leave Act. The Emergency FMLA Expansion Act, on the other hand, does have a provision for an exemption for employers with fewer than 50 employees. This exemption will be available if the employer with less than 50 employees can show that “the imposition of [the Emergency FMLA] requirements would jeopardize the viability of the business as a going concern.” The Secretary of Labor is to promulgate regulations setting forth what will constitute good cause for an exemption. The Secretary has not yet done so. Companies that wish to apply for this exemption should document now why they believe good cause exists for them to be granted an exemption.