

Given the unprecedented nature of the current Coronavirus, COVID-19, pandemic, many of our members are asking for guidance on handling employment-related issues that will likely arise in the days ahead. To help you prepare, we have put together some information covering various scenarios. Because each member will have different policies and contractual obligations that may apply, you should seek counsel from your practice's regular attorney for more specific assistance.

Scenario 1: (Office Shuts Down)

An employer may elect to close the office or may be forced to do so through government directive. In the case of a full office closure, employers may wish to have employees who can perform their duties from home, do so. You may want to plan now to make sure those employees have the right technology and systems access to work remotely. Such employees would continue to be treated as active employees with the same pay, benefits, hours, and terms and conditions of employment as if they were still working from the office.

Employees who are unable to work from home would not be eligible for pay. Except for exempt employees (salaried employees not eligible for overtime pay), who must be paid their full week's salary during any week in which they perform any work. In place of pay, employers can permit or require that employees who are unable to work use any available paid time off/vacation. Once such time is exhausted, employers may continue to pay employees or elect not to do so. Employees not receiving pay could then file for unemployment compensation through the CT Department of Labor website. Here is the link:
<https://sso.ctdol.state.ct.us/English/CommonLogin/CommonLogin.aspx>.

Separately, employers should continue all benefits during any paid period, and may then continue them indefinitely, or for some fixed period. Once benefits are discontinued, employers must provide COBRA rights. From a practical standpoint, non-medical benefits, like life insurance, disability coverage, and retirement plans, should typically be continued due to their relatively low cost, and the administrative burdens of removing and re-enrolling employees from such plans.

Scenario 2: (Office Remains Open, but some Employees are Uncomfortable Coming to Work)

While an employer may elect to remain open, some employees may express concern about coming into work and ask to work from home or for a modified work environment without patient contact. From a practical perspective, it may be hard to force employees who do not want to come to work to do so. Therefore, if possible, employers should seriously consider allowing employees to request a right to work from home to do so or to modify their work environment. Those employees would be treated the same as employees working from home in scenario 1.

If the employer chooses to deny the right to work from home or to modify their work environment, they can require or permit the employee to use any PTO/vacation, until exhausted. Any additional time off could be considered unexcused, and subject an employee to disciplinary action, and eventual termination. Employees who refuse to work when work is available would not be eligible for unemployment compensation. Also, employers would have to decide whether to continue benefits during periods of unexcused absence.

Once terminated, an employee could file for unemployment. The Department of Labor would decide whether the termination was for willful misconduct, considered a voluntary quit (in both cases no benefits are due), or was for a reason other than willful misconduct, in which case benefits would be payable.

Heightened Legal Risk- If there are employees more susceptible to catching the virus, or suffering higher risks if they do (e.g., because they have a compromised immune system), the Americans with Disabilities Act (ADA) and the Connecticut Fair Employment Practices Act (CFEPA) require employers to consider making reasonable accommodations. This may include permitting employees who can effectively work from home the flexibility to do so or providing a setting without patient contact. Employers who fail to grant work from home or alternative accommodation should be prepared to prove that working from home was an unreasonable accommodation that, if granted, would have caused the employer undue hardship.

Also, if such high-risk employees cannot perform their duties from home, but are uncomfortable coming to work, the employer may consider providing a leave of absence, with or without pay, and with or without benefit continuation. Such leave would be viewed as a reasonable accommodation under the law.

Scenario 3: (Office Remains Open, and Employees Continue to Work as Normal)

Under this scenario, the business continues as usual, with all pay and benefits available. Even under this scenario, employers may want to provide some flexibility for employees to deal with unexpected situations, like sudden changes in childcare or the need to care for a sick family member. Also, employers covered under the FMLA would be obligated to meet any requirements of that law.

Scenario 4: (What if one of my employees contracts COVID-19?)

This would be treated the same way as any other medical condition that requires the employee to stay home and not work. The office's PTO / sick time policies would apply. After that time is exhausted, short-term disability insurance may kick in depending on the terms of your policy. Whether the coronavirus is compensable under a worker's compensation policy will depend on the business classification. If contracting the disease is a direct hazard of the job or profession, such as in a medical setting, this may fall under a covered hazard. Still, a claim must be filed to determine if coverage is applicable. If not covered by workers' compensation, it should be covered under the employer's non-occupational health plan. For additional information on this WC issue, here is a [link](#) to an article published by the National Council on Compensation Insurance (NCCI).

Scenario 5: (What if one of my employees does not want to treat a patient showing symptoms of COVID-19?)

Under OSHA's General Duty Clause, employers have a duty to protect employees from recognized hazards likely to cause death or serious physical harm. Also, employees have a right to refuse to perform tasks that would subject them to serious injury or death. The key is whether a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury if the task is performed. Provided employees are properly trained and provided the necessary protective equipment. They will normally be required to perform their duties. Where such protection and training are absent,

employees may be able to make a legitimate claim that their refusal to work was protected under the law. Here is a [link](#) to guidance from the United States Department of Labor Occupational Safety and Health Administration that includes guidance for healthcare workers and employers of workers with potential occupational exposures to COVID-19:

Scenario 6: (If an employer lays off an employee, is the employer required to pay out PTO/Vacation?)

In the event, an employee is laid off (not working, but will be recalled to work in the future), the employer's policy will govern whether an employee is paid any available PTO/vacation during the period of layoff. Where there is no employer policy, the employer may allow the employee to decide whether they want to be paid, or the employer can make that decision. Any payment of PTO/vacation will impact the collection of unemployment compensation by offsetting those benefits in weeks during which the employee received PTO/vacation pay.

Scenario 7: (Can an employer convert full-time employees to part-time for some time and reduce their pay?)

Employers can change the hours of work for all employees with advanced notice. Full-time non-exempt employees (those paid on an hourly basis who are eligible for overtime) can have their hours reduced and can receive pay for actual hours worked. Full-time, exempt employees (salary does not fluctuate based on hours), could be converted to part-time exempt employees, given a reduced schedule of hours, and receive a reduced fixed salary. Employers would then have to pay that reduced salary regardless of the number of actual hours worked. Once the crisis passes, exempt employees could be returned to full-time schedules with their salary adjusted accordingly. Alternatively, employers could convert exempt employees to non-exempt status and pay them on an hourly basis (including overtime over 40 hours/week). They could then be switched back to exempt status and paid a salary. Employers should, however, consider that frequent switching of status could damage the employee's exempt status going forward, thereby making those employees eligible for overtime. Also, under various benefit plans, there are eligibility definitions based on hours scheduled, so employers should make sure they are not eliminating coverage by reducing scheduled hours.

For answers to additional commonly asked COVID-19 questions from employers, please see the attached FAQ prepared by The Society for Human Resource Management (SHRM).

The information provided above should not be considered legal advice.