

COVID-19 FAQ

Workforce Resource

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COVID-19 BENEFITS FAQ

Disclaimer: this information is not intended to be exhaustive, nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

If our employees are no longer working, are they still entitled to group health plan coverage?

Not necessarily. You need to check your group health plan document (or certificate of coverage if your plan is fully insured) to determine how long employees who are not actively working may remain covered by your group health plan. Once this period expires, active employee coverage must be terminated (unless the insurance carrier or self-funded plan sponsor otherwise agrees to temporarily waive applicable eligibility provisions), and a COBRA notice must be sent. If your plan is self-funded and you would like to waive applicable plan eligibility provisions, you should first make sure that any stop-loss coverage insurance carriers agree to cover claims relating to participants who would otherwise be ineligible for coverage.

What happens to group health plan coverage if employees are not working and unable to pay their share of premiums?

In the normal course of events, group health plan coverage will cease when an employee's share of premiums is not timely paid. However, several actions might be taken that could allow coverage to continue.

First, the insurance carrier providing the health coverage may voluntarily continue the coverage while the disaster is sorted out and until an employer reopens its doors. More likely, the employer may make an arrangement with the insurance carrier providing health coverage to pay the employees' share of premiums to keep coverage in place (at least temporarily) and possibly until the employer can reopen its doors. Each situation will be different, depending upon the insurance carrier and the relationship between the employer and the insurance carrier. Therefore, each factual situation will need to be individually assessed.

Is COVID-19 testing covered by our group health plan?

The CDC continues to offer free testing for Coronavirus. Until further notice, health benefits, medical services, and items purchased in association with testing for or treatment of COVID-19 may be provided by a health plan without a deductible, or at a reduced or no cost to participants, without disqualifying the HDHP or covered individual from making HSA contributions. The exact coverage details and cost-sharing amount for individual services vary by plan. Employers should consult with their plan's issuer or benefits administrator regarding their plan's benefits for COVID-19 testing and treatment.

How can we better leverage existing group health benefits for our employees?

Employers should consider enhanced promotion of current benefit offerings to ensure employees take advantage of all existing healthcare services offered, such as:

- **Telemedicine Services:** Telemedicine may be an option for persons seeking medical consultation for mild-non-emergency care. If telemedicine services are offered as part of your group health plan, services may include coordination of diagnosis and treatment plans and/or specialist referrals. Telemedicine services may be utilized from the comfort of an employee's home and may be a valuable option for persons who want to minimize external exposure. Some insurance carriers are waiving out-of-pocket costs for telemedicine visits for urgent care needs for the next 90 days. To access telemedicine, please go to the health provider employee portal and sign in. If you have not already registered, you will need to register at this time. The websites are provided at the bottom of this document.
- **Employee Assistance Program:** Employee Assistance Program or Emotional-Support Help Line often provide great benefits that impact not only physical, but mental health stress management, elder care, personal finance, and substance abuse consultation to name a few. Check with your employer or health provider to see if this program is available.
- **Wellness Program Services:** Wellness programs are a rich resource of education related to disease prevention. Many offer basic education on a variety of pertinent topics such as basic hygiene and traveling tips.
- **Disease Management Programs:** Disease Management Programs are often tailored to employees and/or families at risk of developing chronic medical conditions, such as high blood pressure and diabetes. Individuals in these programs may be more susceptible to COVID-19, so ensure they have opportunity to consult with their coaches or case monitor as necessary to manage their health conditions.
- **Preventive Care:** Flu shots and other vaccines as well as diagnostic testing are often provided at no or low cost via a group plan or wellness program.
- **Prescription Refills:** Select insurance carriers are allowing early refills on prescription medications to ensure individuals have their medications. Check with your insurance carrier if you are on any medications and need/will need a refill soon.

Individuals should refer to the health plan SPD to understand the specifics of the plan. Please use the links listed below to register for the health insurance employee portal. From this employee portal, you will have access to your health policy, explanation of benefits, and telemedicine services.

- Anthem: <https://www.anthem.com/>
- United Health Care: <https://www.uhc.com/>
- Humana: <https://www.humana.com/>

*** If you have any questions regarding FMLA, STD, ADA or Worker's Compensation, please refer to the HR FAQ.**

COVID-19 HR FAQ

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How do we handle absenteeism due to illness and dismissals of schools?

Implement plans to continue your essential business functions in case you experience higher than usual absenteeism. If you have the ability for any staff to administratively work remotely, you may consider that as well. If you can limit your scheduling, do so, this allows you better control of your abilities and staffing needs as you will have staff who are now impacted for childcare needs. Also consider cross-training personnel to perform essential functions so that the workplace is able to operate even if key staff members are absent.

If a staff person is unable to come to work due to COVID-19 and childcare needs, do not penalize them for this. They may be eligible to participate in the FFCRA Paid Sick Leave program. Please review the FFCRA Employee Rights poster for additional information.

What if an employee appears sick?

Employees who present themselves at work with a fever or difficulty in breathing, are recommended to stay home and not come to work until they are free of fever (100.4° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. Tylenol).

CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 Coronavirus or the flu?

Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace.

The EEOC has said that sending an employee home who displays symptoms of contagious illness would not violate the ADA's restrictions on disability-related actions.

Under the federal Occupational Safety and Health Act of 1970 (the OSH Act), employers have a general duty to provide employees with safe workplace conditions that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

Workers also have the right to receive information and training about workplace hazards, and to exercise their rights as employees without retaliation. There is no specific Occupational Safety and Health Administration (OSHA) standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposure to COVID-19.

Also, OSHA requires many employers to record certain work-related injuries and illnesses on their OSHA Form 300 (OSHA Log of Work-Related Injuries and Illnesses). OSHA has determined that COVID-19 is a recordable illness when a worker is infected on the job. Establishments that are required to complete an OSHA 300 log should be sure to include all COVID-19 infections that are work related.

An employee of ours has tested positive for COVID-19. What should we do?

It is a best practice to send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws. Also, do not tell employees that the individual tested positive for the virus but they have exhibited symptoms to lead you to believe a positive diagnosis is possible.

You may also want to consider asking a cleaning company to deep clean the affected workplaces. If you work in a shared office building or area, you should inform building management, so they can take whatever precautions they deem necessary.

If we learn or suspect that one of our employees has COVID-19, do we have a responsibility to report this information to the CDC?

There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

What do I do about those employees who are traveling?

Advise employees before traveling to take certain steps:

- Check the CDC's Traveler's Health Notices for the latest guidance and recommendations for each country to which you will travel. Specific travel information for travelers going to and returning from China, and information for aircrew, can be found at on the CDC website.
- Advise employees to check themselves for symptoms of acute respiratory illness before starting travel and notify their supervisor and stay home if they are sick.
- Ensure employees who become sick while traveling or on temporary assignment understand that they should notify their supervisor and should promptly call a healthcare provider for advice if needed.

- If outside the United States, sick employees should follow your company's policy for obtaining medical care or contact a healthcare provider or overseas medical assistance company to assist them with finding an appropriate healthcare provider in that country. A U.S. consular officer can help locate healthcare services. However, U.S. embassies, consulates, and military facilities do not have the legal authority, capability, and resources to evacuate or give medicines, vaccines, or medical care to private U.S. citizens overseas.
- The FLSA generally does not regulate the accumulation and use of vacation and leave. The salary requirements for exempt "white collar" employees can implicate time-off allotments under various circumstances. The USDOL has provided some guidance on this topic in an opinion letter that is accessible [here](#). Again, however, what an employer may, must, or cannot do where paid leave is concerned might be affected by an employment contract, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law.

Does family and medical leave apply to this situation?

If an employee, or an employee's family member, contracts COVID-19, the employee may be entitled to time off from work under federal or state leave laws, specifically the FFCRA. For example, an employee who is experiencing a serious health condition or who requires time to care for a family member with such a condition may be entitled to take leave under the Family and Medical Leave Act (FMLA). Please review the FFCRA Employee Rights Poster for additional information.

Employees may also be entitled to FMLA leave when taking time off for medical examinations to determine whether a serious health condition exists.

Many states and localities also have employee leave laws that could apply in a situation where the employee or family member contracts COVID-19. Some of these laws require employees to be given paid time off, while other laws require unpaid leave. Employers should become familiar with the laws in their jurisdiction to ensure that they are compliant.

Some employees may wish to stay home from work out of fear of becoming ill. Whether employers must accommodate these requests will depend on whether there is evidence that the employee may be at risk of contracting the disease. A refusal to work may violate an employer's attendance policy, but employers should consult with legal counsel prior to disciplining such an employee. However, if there is no reasonable basis to believe that the employee will be exposed to the illness at work, the employee may not have to be paid for any time that is missed.

When should an employee take a leave of absence?

If an employee will be off beyond three consecutive calendar days, they should contact their direct supervisor and Tilson's HR Department to request a leave of absence. An employee must call their supervisor to inform them of their situation. Then the employee must work with your supervisor and Tilson, as they determine eligibility to apply for Federal Medical Leave or Personal Leave if FMLA is not applicable to the employee.

How do employees request a leave of absence?

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Does this qualify as short-term disability (STD), if an employee has STD coverage?

If an employee is unable to work due to illness, yes. STD must be substantiated with the appropriate documentation from the employee's medical provider. As long as there is a documented illness and medical certification to support, then the claim would be filed, and determination of the benefits comes from the Carrier.

Does Worker's Compensation apply to absences because of Coronavirus?

Employees may be entitled to workers' compensation benefits if they contract the disease during the course of their employment. For example, employees in the healthcare industry may contract the disease from a patient who is ill. Whether an employee is eligible for other benefits, such as short-term disability benefits, will depend on the terms of the policy and the severity of the employee's illness.

How does the Americans with Disability Act (ADA) apply?

The Americans with Disabilities Act ("ADA") protects applicants and employees from disability discrimination. It is relevant to COVID-19 because it prohibits employee disability-related inquiries or medical examinations unless:

- They are job related and consistent with business necessity; or
- The employer has a reasonable belief that the employee poses a direct threat to the health or safety of him- or herself or others (i.e., a significant risk of substantial harm even with reasonable accommodation).

According to the Equal Employment Opportunity Commission (EEOC), whether a particular outbreak rises to the level of a "direct threat" depends on the severity of the illness.

Employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

The EEOC has said that sending an employee home who displays symptoms of contagious illness would not violate the ADA's restrictions on disability-related actions because advising such workers to go home is not a disability-related action if the illness ends up being mild, such as a seasonal influenza. On the other hand, if the illness were serious enough, the action would be permitted under the ADA as the illness would pose a "direct threat." In either case, an employer may send employees home, or allow employees to work from home, if they are displaying symptoms of contagious illness.

The ADA requires that information about the medical condition or history of an employee, obtained through disability-related inquiries or medical examination, be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record. Employers should refrain from announcing to employees that a coworker is at risk of or actually has a disease. Instead, employers should focus on educating employees on best practices for illness prevention.

Can employees request to work from home? Do we have to grant the request?

Only if leadership determines the employee's work can be performed from home for a defined period of time.

An employee is only entitled to refuse work if they believe they are in imminent danger. OSHA defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of danger can be eliminated through the enforcement procedures otherwise provided by the Act." OSHA discusses imminent danger as where there is "threat or death or serious physical harm", or "a reasonable expectations that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency." For example, requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to the threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work.

The guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse work.

COVID-19 PAYROLL FAQ

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Must we keep paying employees who are not working?

Under the Fair Labor Standards Act (FLSA), for the most part the answer is “no.” FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires. However, there are some exceptions.

If an employee is an FLSA salary, exempt employee, you may need to pay them in certain circumstances. If your office remains open but the employee is taking a personal day, you do not have to pay them for that day. If an employee is absent for a full day due to personal illness, an employer can deduct from the employee’s salary *if* it has a policy providing for paid sick leave. If you close the office, any exempt employee who performs at least some work in the employee’s designated seven-day workweek, the salary basis rules require that they be paid the entire salary for that particular workweek. If they do no work during the workweek, you do not have to pay them.

Also, non-exempt employees paid on a “fluctuating-workweek” basis under the FLSA normally must be paid their full fluctuating-workweek salaries for every workweek in which they perform any work. If you have an employment contract, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law, you will still need to abide by those.

Just because you do not have to pay employees, doesn’t mean you can’t. Given the publicity surrounding this outbreak, employers should consider the public relations aspect of not paying employees who may not be working if they have contracted or are avoiding the COVID-19 coronavirus. It is possible that these decisions could reach the media and damage your reputation and employee morale.

Can we charge time missed to vacation and leave balances?

In most cases, the answer is yes. The US Department of Labor has provided some guidance on this topic in an opinion letter that is accessible [here](#). However, what an employer may, must, or cannot do where paid leave is concerned might be affected by an employment contract, a state leave policy, a collective bargaining agreement, or some policy or practice that is enforceable as a contract or under a state wage law. The FFCRA Paid Sick Leave and Emergency Paid FMLA may impact this as well. Please review the FFCRA Employee Rights poster for additional information.

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