

CORONAVIRUS EMPLOYMENT FAQs

MARCH 2020

Employers and employees are trying to figure out how the new emergency laws and statewide orders apply to their situation. Here are some frequently asked questions.

Presently, Ohio is under a statewide stay-at-home order unless you are an essential business. These questions apply to employees who are working. This means essential employees of essential businesses. When the Stay-at-Home order lifts, the answers will pertain to all employees.



Coronavirus
Employment FAQs

1) What if an employee has contracted COVID-19 confirmed by testing? What should an employer do?

Answer:

- Employer should implement a policy that anyone contracting COVID-19 confirmed by testing must inform their supervisor or HR immediately.
- Instruct the employee to stay home for 14 days and not return until symptom free for at least 24 hours. Grant any eligible leave (FMLA, sick leave, vacation). If no paid leave is available, then the employee may file for unemployment.
- Keep the infected individual's name private and confidential per HIPPA.
- If the employee was at work recently prior to diagnosis, the employer should contact a hazmat company to clean and disinfect the effected areas/workplace.
- Inform other employees of potential exposure without naming the infected employee.
- Inform other employees to watch for signs and symptoms.
- Offer other employees, who were exposed to the work areas or employee, leave or work from home options.

2) What if an employee is exposed to someone with the virus? What should an employer do?

Answer:

- Instruct the employee to stay home for the incubation period, from 5 to up to 14 days.
- Permit the employee to work remotely, if possible.

- Provide leave to the employee until the incubation period is exhausted.
- If the employee has symptoms, they should not return to work until symptom free for at least 24 hours.
- Quarantined or isolated employees can receive company paid time off (if eligible). If no company paid time off is available, and remote work is not available, then the employee may apply for unemployment.

3) What if an employee is exposed to someone who is sick with symptoms, cannot get tested due to the high volume of need, and a medical professional opines that they most likely have COVID-19 but it is not confirmed by testing? What should an employer do?

Answer:

a) If the employee is symptomatic themselves and diagnosed by a medical professional as most likely having the COVID-19 and ordered quarantine or isolated by the professional, then the employer should treat this situation as they would in Question #1.

b) If the employee does not have symptoms, but is exposed to someone who has been identified by a medical professional as "most likely" having COVID-19 and ordered quarantine/isolated for 14 days, then the employee should be treated as someone "exposed" in Question #2.

4) What if an employee is exposed to a family member, roommate, friend, etc. with a generic illness (flu, cold, other aches) but no exposure to confirmed COVID-19, then what should an employer do?

Answer:

a) If the employee is asymptomatic (showing no signs of illness themselves), then the employee should go to work and if any symptoms arise, then go home. Employees going to work in Ohio must take their temperature before going into work.

b) If the employee has symptoms, then the employee should stay home and call their medical professional for screening to see if their symptoms warrant a COVID-19 test.

5) What if an essential business needs an essential employee at work (telework is not feasible), and the essential employee stays at home out of an abundance of caution?

Answer:

- Here, the employee has no symptoms. They are just cautious. This absence is not protected, unless the employer permits it. An employer may grant the leave, either unpaid or with available paid time off (accrued vacation time). An asymptomatic employee staying home out of an abundance of caution is not entitled to unemployment compensation.

6) What if an employee stays at home to care for a sick family member?

Answer:

- As of today, an FMLA qualified employee may care for an eligible family member with a serious medical condition. An FMLA required employer should follow their regular notice and approval process. Employers who are not required to provide FMLA, should follow their present sick, vacation and absence leave policies. However, on April 2, 2020, Employers with less than 500 employees will have to provide federally mandated sick leave due to the COVID-19. The Emergency Paid Sick Leave Act grants employees 80 hours of sick leave to care for themselves or family members subject to an order of quarantine or isolation (i.e. Ohio's Stay-at-Home Order) or to care for themselves or others who are sick because of the COVID-19.

7) What if an employee stays home to care for a child home because the school or day care provider is closed due to the pandemic?

Answer:

- Traditional FMLA is not available for employees to care for non-seriously ill children, but beginning April 2, 2020 the new law temporarily amends the previous FMLA law to expand its coverage to individuals who have children home because the school or day care provider is closed due to the pandemic. The first 10 days of this leave are unpaid and the remaining 10 weeks are paid at 2/3 the employee's regular rate, capped at \$200 a day or \$10,000 in aggregate. An employer can claim a 100% refundable credit for any wages paid under this expansion. This expanded paid FMLA leave expires on December 31, 2020 and cannot be carried over.

8) What if an employee stays at home because the Governor declared a lock down, quarantine, closure of my business, or martial law?

Answer:

- If the government orders a business closed, then the employee should be eligible for unemployment benefits because the loss of work is due to circumstances "beyond their control." This is for an employee of a non-essential business. Beginning April 2, 2020 this employee of a non-essential business with less than 500 employees, will be eligible for expanded FMLA (EFMLA - if they need to care for children) and emergency paid sick leave (EPSL).
- If the employer remains open as an essential business, the employee still has to work or telework depending on the employer's circumstances. If the employer has work available, then the employee will not qualify for unemployment. Beginning April 2, 2020 this employee of an essential business with less than 500 employees, will be eligible for expanded FMLA (EFMLA - if they need to care for children) and emergency paid sick leave (EPSL).

9) The coronavirus caused my business to shut down. What do I do now? Are employees entitled to unemployment?

Answer:

- Yes, employees are entitled to unemployment. The business should also review their group health plan documents to determine if COBRA notifications are necessary and plan for reinstatement procedures. If your business is closed permanently, the business needs to review group health plan documents and determine if an "unavailability of COBRA" notice should be provided.

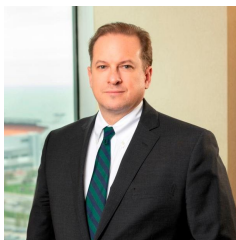
10) The coronavirus caused my business to layoff employees or reduce hours due to the loss of production. Are employees entitled to unemployment?

Answer:

- Yes. In addition, the employer should check with their group health plan insurer to see if the health plan is terminating coverage for laid off or an employee sustaining a reduction in hours below the plan terms and conditions. Many health plans are granting extended coverage concessions to laid-off employees for 30 or 60 days.

This FAQ is not intended to be comprehensive, or client specific, so please contact your Weston Hurd attorney to discuss your particular situation.

About the Author



Weston Hurd partner, [Jonathan Good](#) extensive experience in employment and labor, health care, business, and transactional matters. Specifically, Jon represents his clients in FLSA, retaliation, ERISA, workers' compensation, and related employment claims. He can be reached at 216.687.3345 (direct) or JGood@westonhurd.com.

About Weston Hurd LLP

With offices in Cleveland and Columbus, Weston Hurd LLP provides comprehensive legal counsel to Fortune 500 companies, insurance carriers, financial institutions, healthcare providers, small- and medium-sized businesses, the real estate industry, governmental agencies, non-profit enterprises and individuals.

As a reminder, this material is being provided to draw your attention to the issues discussed.

Although prepared by professionals, it should not be utilized as a substitute for legal advice and representation in specific situations.

Copyright 2020
www.westonhurd.com

