

10 questions employers are asking about leave law and COVID-19

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1. My employee has COVID-19. Now what?

If one of your employees reports a COVID-19 diagnosis, consider these options:

- **Begin business response protocols recommended by the Centers for Disease Control and Prevention (CDC).** The CDC offers guidance on how to properly clean and sterilize, prevent further exposure, obtain employee reporting, and more.
- **Determine your employee's exposure to others.** Find out who your employee has been in contact with at work since their exposure to coronavirus, then, while being careful to maintain the confidentiality of any diagnosed employee in accordance with the Americans with Disabilities Act (ADA) and state medical privacy laws, notify those people to self-monitor and quarantine as appropriate. The Occupational Safety and Health Administration (OSHA) offers further guidance on this. Employers should also check with state and local public health departments as some may require employers to report cases of COVID-19.
- **Manage your diagnosed employee's absence.** Determine your employee's leave options under the law, including new federal and state law developing to address the COVID-19 situation specifically, and your company policies and implement the best option.

2. My employee was exposed to COVID-19 but has no symptoms. What are our options?

According to the CDC, employees who have been exposed to someone with COVID-19 but have no symptoms should quarantine as a precaution. Note that employers cannot require any employee to stay in quarantine outside of work, but they may send home or prevent sick or symptomatic employees from reporting to work. Next, the employer should notify all people with whom an exposed employee had contact since their exposure, while maintaining employee confidentiality in accordance with the ADA and state medical privacy laws, and advise those people to self-monitor and quarantine as appropriate.

It is important to determine whether employees are entitled to leave and/or pay during their quarantine. Some points to remember:

- If they have no symptoms, it is likely they will not be entitled to leave under the Family and Medical Leave Act (FMLA) or state family and medical leave laws, because they are not deemed to have a serious health condition.

- While the FMLA and some of the state leave laws have expanded in response to COVID-19, asymptomatic employees under quarantine generally would not qualify because the expanded provision applies to people who must care for a minor-dependent child whose school is closed due to mandatory quarantine.
- Determine if the quarantine qualifies for leave under the Families First Coronavirus Response Act (FFCRA).
- Always review other company policies and applicable state law under which the quarantine may apply, including short-term disability and state sick leave.

3. My employee traveled to a coronavirus hot zone but has no known exposure. Should we do anything?

Yes. Your employee should quarantine for 14 days per CDC guidelines to monitor health and symptoms.

Ideally, your employee should get a note from a health care professional clearing them to return to work. Be aware they might not be able to, however, given how the coronavirus pandemic is currently diverting health care resources. An alternate approach may be necessary, such as allowing the employee to provide a form, stamp or e-mail from a local clinic to certify that the individual does not have COVID-19.

The Department of Labor is looking for employers to be flexible in this situation. Consider other options, such as allowing your employee to work from home or extend their leave time. Approach each situation on a case-by-case basis and use your best judgment.

4. Schools and daycares are closed. What leaves are available to employees who must take care of their kids?

Under the FFCRA, the FMLA was expanded to provide family leave for an employee who is unable to work (or telework) due to the need to care for a minor son or daughter if the child's school or childcare facility is closed due to a public health emergency. Employees would be eligible for up to 12 weeks of leave under this leave reason and need to have worked for their employer for only 30 calendar days. However, that FMLA expansion only applies to employers with fewer than 500 employees so employers also should take a look at their company policies to see if other leaves might apply, and be sure to consider state provisions, such as paid sick leave laws triggered by school closures.

5. Our employees are afraid to work despite no known cases in our workplace. Must we accommodate them?

We are in the middle of an unprecedented, global pandemic. If an employee is afraid to come to work, the most important thing you as an employer can do is open up a dialogue with that person and find out why they are scared. Some possible reasons:

- **Your employee has a preexisting condition that increases vulnerability to infection.** In this case, your employee may be entitled to an accommodation under the Americans with Disabilities Act (ADA) that allows them to work from home.
- **Your employee has a mental disorder exacerbated by the fear of COVID-19 infection.** In this case, consider letting your employee work from home, or weigh options based on what their healthcare provider recommends.

While employees in this situation most likely will not qualify for FMLA (unless they actually have a serious health condition), it is important to remember that we are in uncharted territory. The best course of action is to talk with your employee about their concerns and do whatever you can to accommodate them.

6. Will short term disability benefits or other paid leaves apply during a quarantine period?

In general, short term disability benefits will likely not apply if an employee is not sick or disabled as a result of COVID-19. However, it is important to determine if the employee may be eligible for paid leave under other laws or policies, such as FFCRA, state disability, sick or family leave laws, or other policies in effect at your company.

7. Should we require medical clearance before employees return to work?

It depends on your company policies – but in these trying times, the need for flexibility is important.

For employees diagnosed with COVID-19, an employer may require a doctor's note, a medical examination or a time period during which the employee has been symptom free before allowing the employee to return to work.

If your employee was not ill with COVID-19 or had no known exposure, obtaining medical clearance may be unnecessary, especially if it only puts more strain on the medical resources available to your employee.

At the very least, any employee who was symptomatic or exposed to someone who tested positive for COVID-19 should wait a full 14 days before returning to work.

8. My city has ordered everyone to “shelter in place.” What leaves are available to my employees?

Aside from PTO or other personal leave policies provided by your company, paid leave mandates will likely not apply to an order to stay home and practice social distancing. Rather, it will depend on whether an individual is subject to a mandatory or precautionary order of quarantine or isolation. In that case, it could trigger a leave law depending on the state you are in (for example, this scenario would trigger the [state leave law in New York](#)).

If an employee cannot work, most states will allow them to collect unemployment benefits – but you will have to look at the unemployment benefit laws in your state, and what conditions trigger them.

9. Does the ADA apply to coronavirus situations?

Yes, in some circumstances.

The coronavirus crisis is profoundly affecting major life activities. Many employees who are suffering from COVID-19 or an underlying health condition may fall under ADA protections and be entitled to accommodations as a result. Further, the ADA bans employers from taking negative employment actions based on preconceived notions of a person's condition. Employers should be careful not to assume that all disabilities increase the risk of COVID-19 complications.

The [U.S. Equal Employment Opportunity Commission offers guidance](#) with regard to pandemics, and specific to COVID-19.

10. An employee wants to take leave to care for a family member who is quarantined. What leaves are available to them?

If their family member has been quarantined but is asymptomatic, they may not be entitled to take leave as if they were disabled or suffering from a serious health condition. Take a look at your company policies, and monitor state leave changes. In addition, if the employee is unable to work or telework because of caring for a family member who is quarantined, he or she may be entitled to the FCCRA paid sick leave provisions.

For more information and guidance related to COVID-19, please visit guardianlife.com/coronavirus. Guardian, its subsidiaries, agents and employees do not provide tax, or legal, advice. Consult your tax, legal, or professional regarding your individual situation.