

**INFINISOURCE**  
BENEFIT SERVICES

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# Top Employer FAQs About COVID-19 Answered

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March 27, 2020



- Presenters

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- Agenda

- Wage and Hour Issues
- ADA/Medical Information Questions
- Unemployment Insurance
- WARN Act and Layoffs
- Legislative Updates

Non-  
Exempt  
Employees

Not required to pay non-exempt workers for work not performed

Be mindful of state waiting/reporting time laws

Exempt  
Employees

Not required to pay exempt workers for full-week absences

Need to pay exempt employees for any workweek in which they perform work – regardless of amount

- ❖ Some companies choosing to continue pay/give stipend
- ❖ Be mindful of Collective Bargaining Agreements
- ❖ Short-Term Disability may provide income replacement

- ❖ Can I pay employees for COVID-19 related absences even if they are not entitled to paid sick or vacation leave, or PTO?
- ❖ Can I provide employees with additional sick days or allow employees to go “into the red” on PTO for absences related to COVID-19?
- ❖ Do I have to pay an exempt employee if the business is closed, shut down, or no work is available due to COVID-19?

The ADA prohibits employee disability-related inquiries or medical examinations ***unless*** they are job-related and consistent with business necessity.

COVID-19 guidance states that if an employee's ability to perform essential job functions will be impaired by a medical condition, or that an employee will pose a direct threat due to a medical condition – then inquiries ok.

- ❖ How much information may an employer request from an employee who calls in sick during the COVID-19 pandemic?
- ❖ When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?



- ❖ Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?
- ❖ When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

- ❖ Do I have to provide reasonable accommodations to an employee with COVID-19 under the ADA?
- ❖ Can we tell other employees, customers, vendors, contractors, or others on the premises if one of our employees has tested positive or been exposed to COVID-19?

A number of states have enacted changes to UI laws

Arkansas waived requirements that applicants search for work for 30 days – allows for telephone/online unemployment applications

Massachusetts waived 1-week waiting period

### ❖ Federal Emergency Unemployment Insurance Stabilization Access Act of 2020

- ❖ Requiring employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment.

- ❖ Ensuring that applications for unemployment are accessible in at least two of the following: in-person, by phone, or online.

- ❖ Notifying applicants about steps the applicant can take to ensure the successful processing of the application."

- ❖ When do unemployed workers become eligible for unemployment benefits?
- ❖ Won't all these unemployment claims impact my business negatively – I usually contest terminated employees' unemployment claims?
- ❖ What reason should I list for unemployment to ensure my terminated employees qualify?

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## ❖ Furlough, Layoff or RIF

- ❖ Furlough – working less hours or taking unpaid time off
- ❖ Layoff – temporary separation from employment
- ❖ Reduction in Force (RIF) – position is eliminated without the intent to replace it

## Should I do a furlough, layoff or RIF

- If you furlough – employees may remain eligible for benefits and emergency FMLA and paid sick leave
- If you layoff or RIF, not eligible for benefits or the emergency FMLA/paid sick leave
- Must be able to document economic need to conduct layoff



## ❖ WARN Act

- ❖ Federal applies to companies with more than 100 employees
- ❖ Many states have mini-WARN laws that apply to companies as small as 50 employees
- ❖ Require additional notice procedures
- ❖ Exceptions for unforeseen business circumstances or faltering company

- ❖ Are employees entitled to the Emergency FMLA or Emergency PSL if they are terminated?
- ❖ Should I tell employees I will rehire them once this has all passed?
- ❖ Can I keep terminated employees on our health insurance plan?

- Emergency Family and Medical Leave Expansion Act
  - Effective 4/2/20 – 12/31/20
  - Covers private employers with less than 500 employees and employees who have worked at least 30 days
  - Provides leave for 12 weeks
  - First 10 days unpaid – then 2/3 of regular rate after that
  - Use when employee cannot work due to minor child's school/daycare closure

- Emergency Paid Sick Leave
  - Effective 4/2/20 – 12/31/20
  - Covers private employers with less than 500 employees and all employees eligible without a days of service requirement
  - Provides 2 weeks (80 hours of leave) for FT employees, prorated for part time employees

## Paid at regular rate of pay:

- Employee is subject to a quarantine or isolation order related to COVID-19
- Employee has been advised by a health care provider to self-quarantine because of COVID-19
- Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis

## Paid 2/3rds regular rate of pay:

- Employee is caring for an individual ordered or advised to quarantine or isolate
- Employee is caring for a son or daughter whose school or place of care is closed, or child-care provider is unavailable, due to COVID-19 precautions
- Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor

## Tax Credits:

- The law provides for reimbursement for employers via payroll tax credits. Refundable tax credits equal to 100% of qualified family and sick leave wages an employer pays for each calendar quarter will be available.
- Tax credits against income taxes are also available to self-employed individuals (at a reduced, two-thirds rate when using emergency paid sick leave to care for family members or due to school or child-care closures).

- ❖ Are employees able to use either type of leave on an intermittent basis
- ❖ What if an employee has already used their 12-week allotment of FMLA
- ❖ Can we require that our employees use their accrued, but unused bank of paid time off before using the emergency FMLA or PSL
- ❖ How do we apply for the small business exemption

A modern office hallway with large windows overlooking a city skyline. The hallway is empty, with a polished floor reflecting the light from the windows. The city skyline is visible through the windows, featuring several tall buildings. The overall atmosphere is bright and professional.

Questions





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