

Coronavirus Update & COVID-19 FAQs - March 17, 2020¹

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We have received many questions over the last week about the coronavirus (or COVID-19) and its impact on jobsites, work, and employees health and safety. In an effort to convey as much information as possible to our clients, we've developed this sheet of answers to frequently asked questions. *Note, however, that state and federal laws, administrative guidance and regulation are rapidly changing as the United States, its agencies, and individual states develop their own responses to this pandemic. We will attempt to keep you updated as we are able.*

1. Can Employers ask employees about where they've traveled or require employees to stay home because of where the employee has traveled?

Ordinarily, no. However, as a practical matter, employers do have an obligation to keep employees safe on the job site. Under the current circumstances which include the declaration of COVID-19 as a pandemic by the World Health Organization, the obligation to ensure jobsite safety requires that employers take some action to protect employees from unnecessary exposure to the virus. In light of the new CDC and OSHA guidance on this subject, preventing unnecessary exposure tends to mean preventing individuals who traveled to certain international "hot zones" like Italy or China and other countries, or who have traveled on a cruise ship where someone was diagnosed with coronavirus, from working until they've undergone a quarantine period of usually 14 days.

These guidelines have not changed (yet) since President Trump and the CDC recommended that domestic air travel end over the weekend of March 15, but may in the near future.

2. Can an employer implement new work rules?

As noted above, and with the understanding of the employer's obligations regarding exposure in mind, employers still cannot institute new testing requirements or work rules except to the extent they are permitted by the CBA and/or its management rights clause. Employers looking to implement questionnaires or new rules in response to the coronavirus pandemic still have the same general duty to bargain and should reach out to the appropriate union personnel about the policies to discuss them.

¹ The information and laws/rules/guidelines are rapidly changing. In addition, some circumstances are very specific to the industry/type of work at issue. Please contact us for more information if necessary.

3. Can employers ask employees about how they are feeling of if they have a fever?

The Americans with Disabilities Act prohibits employers from inquiring into whether individuals have disabilities and from discriminating against individuals on the basis of disability. Some employers are now requiring that employees obtain medical exams or answer health questionnaires – presumably so the employer can determine if the employee should be permitted to continue working. An employer may not generally ask questions like “do you have a fever” or “do you have a cough or shortness of breath” as these may be indicative of a disability. This prohibition is lifted from time to time when certain health conditions are regionally widespread. We have not reached that level in Wisconsin, yet. As a result, an employer should not be asking broad questions about medical conditions that could easily be attributed to other disabling conditions, however, it is likely okay if they ask whether an employee has developed an unexplained or new fever or cough.

4. What if the employee does not want to work due to fear of COVID-19?

At the moment, there is no exception or exemption that would allow an employee to take leave from work simply because the virus exists. However, an employee who has a chronic medical condition that makes him or her immunocompromised – and thus particularly vulnerable to COVID-19 – may want to take certain precautions and ask his or her employer if they are able to make reasonable accommodations – such as avoiding call outs or interaction with the public – to avoid or minimize exposure to other individuals.

5. What is the effect, impact of the pending federal COVID-19 Legislation for Employees?

Over the weekend, the U.S. Congress passed the **Families First Coronavirus Response Act** to address the economic impact of the coronavirus (COVID-19) and related isolation and quarantine requirements will have on workers and their families. The Act has not yet been passed by the US Senate or signed by President Trump, however, it is expected that it will be passed and signed in the near future although the final form could contain some modifications from the information discussed below .

In the case of COVID-19, employers and state and federal governments are taking sweeping action to try to curb the spread of the virus and are asking people to self-isolate and requiring that their family members self-isolate, even if they are not physically ill, or if they are not physically unable to work. A number of these reasons are not protected by currently existing U.S. law. As a result, the Act provides two different types of partially paid leave for employees who must miss work related to the coronavirus. The new

benefits provided for in the law are not meant to take the place of collectively bargained benefits if the collectively bargained benefits are better.

SUMMARY

	FMLA	COVID-19 Act
Covered Employers	Employers greater than 50	Employers with less than 500 employees; Possible exclusions for health care industry and small employers of less than 50 upon a showing of hardship
Covered employees	12 months of service and 1,000 hours worked	30 days of service
Benefit	12 weeks job-protected <i>unpaid</i> leave	12 weeks job-protected and partially paid leave - First 10 days unpaid, then paid at 2/3 employee's regular rate of pay Capped at \$200/day or \$10,000 total (per employee)
Purposes	To care for self or family member with a serious health condition (SHC) *A SHC requires inpatient treatment or several doctor visits	To care for self/family member with SHC <i>*and</i> "because of a qualifying need related to a public health emergency" (isolation/quarantine at recommendation of med professional due to exposure or symptoms; or to care for employee's child if child's school/day care is closed or unavailable due to a coronavirus)
Emergency Paid Sick Leave?	No.	2 weeks paid emergency leave (80 hours for full time employees) paid at - Employee's regular wage rate if absent due to own medical condition - 2/3 of employee's regular rate if absent to care for others w/condition Capped at \$511/day, \$5,110 total (per employee)

FMLA. Specifically, for the duration of 2020, the law expands the coverage of the Family Medical Leave Act (“FMLA”). FMLA ordinarily provides certain covered employees of covered employers with up to twelve weeks of unpaid leave for their own or to care for a family member with a serious health condition.

The new law expands the protections of FMLA. While the FMLA ordinarily requires that employees be employed by an employer for 1,000 hours and 12 months before they can receive FMLA leave, coverage under the Act for COVID-19 related purposes begins after 30 days of employment. The Act also extends 12 week of job protected leave for covered employees (those with 30 days of service who work for employers with less than 500 employees and not a small, exempted employer) in the event the employee needs to self-isolate because they or a family member are diagnosed with COVID-19, if they need to obtain medical care because of symptoms, or if they are complying with the recommendation or order of a health care department or health official to self-isolate due to exposures or symptoms. Finally, and importantly, the expanded FMLA protections are available if the employee needs to care of a child if the child’s school or childcare center is closed because of COVID-19.

Emergency Paid Sick Days. In addition, covered full time employees will receive up to two weeks (80 hours) of paid (or partially paid) emergency/COVID-19 sick leave which is for leave *in addition* to sick days or PTO already available under an employer’s existing policies. The leave is to be paid at the employee’s regular wage rate if he/she is absent due to his/her own medical condition, and at 2/3 of the employee’s regular rate if he/she is absent to care for others with the condition.² An employer may not require an employee to use other paid time off (vacation, PTO, personal or sick days) before using the emergency paid sick days provided for by this Act.

Multiemployer Bargaining Agreements. The Act intends that employees who work under the terms of a multiemployer CBAs be provided similar benefits to those described above. The Act requires that employers – consistent with their obligations under the CBAs, make contributions to a fund, plan or program based on the paid leave each of its employees is entitled to in the Act.

The specific details on how these provisions will work in practice have yet to be worked out.

² Unused days cannot be paid out.

