



Alerts

Additional FAQs Regarding Employer Compliance and COVID-19

April 29, 2020

Insights for Employers

On April 23, 2020, Brette Bensinger, Maryjo Pirages Reynolds, and Leigh Bonsall presented a webinar titled "[Employer compliance and COVID-19: Paid sick Leave, Furloughs and Layoffs](#)." Hosted by the Chicago Bar Association, the program provided an overview of the Federal Families First Coronavirus Response Act (FFCRA) and its emergency FMLA and paid sick leave requirements, and unemployment relief provided by the CARES Act. The presentation also addressed the EEOC's guidance regarding COVID-19, including the interplay between CDC guidelines and the Americans with Disabilities Act (ADA).

As an update to the material presented at the webinar, the speakers also encourage employers to review [Hinshaw's alert regarding updated EEOC guidance on testing employees for COVID-19](#).

Webinar Q&A

The webinar included a Q&A session, and to assist employers seeking to navigate employment issues arising out of COVID-19 we have provided these below.

Q: Are employees entitled to unemployment benefits if they were supposed to start work with a new company, but their employment offer was rescinded because of COVID-19? If so, how would the unemployment be calculated?

A: Yes, the CARES Act specifically provides for unemployment if an "individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency." The CARES Act also provides for unemployment if an individual "does not have sufficient work history, or otherwise would not qualify for regular unemployment." If the employee has a prior work history, the weekly benefit amount would depend on the amount of wages he or she was paid by the previous employer (s) during the 2 highest quarters of his or her base period (which generally consists of the first 4 of the last 5 completed calendar quarters preceding the first day of his or her benefit year). If the employee lives in Illinois, and particularly if he or she has no prior work history, there may be a delay in the processing and approval of the application as new processes are being finalized.

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Q: Some employees' hours are reduced as a result of COVID-19, but not enough to qualify for Illinois partial unemployment. Will these employees be eligible for the federal benefit of an additional \$600 per week of unemployment compensation under the CARES Act?

A: No, in order to be eligible for the additional \$600 weekly unemployment benefit under the CARES Act, the employee must first qualify for unemployment.

Q: If an employee is found to have contracted COVID-19, may an employer disclose his or her identity to other employees? Is the answer the same even if certain employees worked in close proximity to the employee diagnosed with COVID-19?

A: Employers may not disclose the identity of an employee who tested positive, even to those in who may have had close physical contact with the employee, because of confidentiality requirements under the ADA and applicable state laws. Rather, they should tell employees someone tested positive with whom they may have come in contact. Employers may also provide information regarding the floor or wing of the building where the diagnosed employee worked.

Q: What if the employer becomes aware that a customer of the business was diagnosed with COVID-19? May the employer inform the all employees or just the ones who may have had direct contact with the customer? Is the answer different if the setting is a hotel or a retail business?

A: In accordance with HIPAA, the employer should disclose a positive test of a customer, without disclosing a specific name, to any and all employees who have been or may have been in contact with the customer. Then, working with local health department authorities and the customer's health care providers, employers should consider if it is appropriate to recommend quarantine or take another proactive measure. This applies to hotel and retail businesses, as well as other sectors.

Q: In view of local governmental Orders, are employers required to provide masks to workers?

A: Employers should provide masks (to the greatest extent possible) if they are concerned about the ability of their employees to successfully social distance at all times during working hours. Depending upon the industry, employers should consider additional personal protective equipment.

Q: Do E-FMLA and paid sick leave under the FFCRA operate similar to certain disability benefits, in that a worker must be totally unable to work in order to receive the benefits? Are employees allowed to take E-FMLA and paid sick leave under the FFCRA on an intermittent basis?

A: It depends. An employer may, but is not required to, allow employees to take paid sick leave or expanded FMLA leave intermittently while teleworking. Additionally, if reporting to the physical worksite, an employer may, but is not required to, allow employees to take paid sick leave or expanded FMLA leave on an intermittent, but only for child care reasons. The Department of Labor encourages collaborative, flexible approaches to meet mutual needs. However, if an employee is taking paid sick leave because he or she is subject to a quarantine or isolation order, has been advised to by a health care provider to self-quarantine due to COVID-19 concerns, is experiencing COVID-19 symptoms and seeking a medical diagnosis, or is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine, unless the employee is teleworking, paid sick leave must be taken in full-day increments.

Q: An individual who works for a health care facility and was just given notice that her salary was being reduced but not her hours. Is the individual entitled to unemployment under state law or the CARES Act or any benefits under the FFCRA?

A: Generally speaking, a salary reduction does not entitle an employee to unemployment under state law (or the expanded unemployment provisions under the CARES Act). Similarly, a salary reduction does not entitle an employee to leave benefits under the FFCRA.

In contrast, if an employee's pay is reduced *due to work hours being cut* and the employee is making less than the maximum weekly unemployment benefit amount in his or her state (\$484 per week in Illinois), the employee may be able to obtain unemployment benefits



You can visit the [Chicago Bar Association's website](#) to download and view the webinar.

Related Content

- [Employer FAQs for COVID-19 \(Coronavirus\), March 18, 2020](#)