



WHAT TO DO AS A U.S.- EMPLOYER DURING THE TIME OF COVID- 19

FREQUENTLY ASKED QUESTIONS

Disclaimer: State regulations may vary. The following provides an overview considering federal regulations and given recommendations from federal health agencies.

1. Do I have to pay my employee's paid sick leave?

The employer has the obligation to pay sick leave when the employment contract regulates such payment. Without any provision in the contract the employer is not obliged to pay any sick leave under federal law, unless the employee is protected under the Family and Medical Leave Act (FMLA). According to FMLA an employee has the right of twelve workweeks of leave in a 12-month period in special cases. Most employees and cases do not fall under the FMLA. The scenarios where FMLA might be relevant for Covid-19 cases are a) when the employee has to care for the employee's spouse, child, or parent who has a serious health condition or b) in case of a serious health condition that makes the employee unable to perform the essential functions of his or her job. Keep in mind that also state workers' compensation laws will apply.

Some States such as New Jersey force the employer to pay 40 hours per year of sick leave. In New York City the Paid Sick Leave Law requires that for-profit or nonprofit employers with five or more employees must provide sick leave. Employers with four or fewer employees must also provide sick leave but are not required to pay for it. This law also protects workers who live outside of New York City but work in New York City.

2. Is there any governmental financial support?

Not yet. However, H.R.6201 (Families First Coronavirus Response Act) passed the House of Representatives. This bill includes, among other provisions: the establishment of a federal emergency paid leave benefits program to provide payments to employees taking unpaid leave due to the coronavirus outbreak, expansion of unemployment benefits and provision granted to states for processing and paying claims,

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the requirement for employers to provide paid sick leave to employees, the establishment of requirements for providing coronavirus diagnostic testing at no cost to consumers, treatment and personal respiratory protective devices as covered countermeasures that are eligible for certain liability protections, and temporarily increases the Medicaid federal medical assistance percentage (FMAP).

3. Can I send my employees home without paid sick leave?

You have discretion and authority as an employer to send an employee home if you think it is needed to keep co-workers and other personnel safe. In case an employee feels sick or shows symptoms the employee should be sent home. You do not have to pay sick leave as long as your state or the employment contracts do not regulate paid sick leave.

Employees that do not present symptoms can be sent home too, as a preventive measure. Depending on the contractual regulations, you might have to pay the employees even if they are not working and are healthy at home due to your decision. Just be aware that your decision is made without any discriminatory means such as on the basis of age.

4. Can I terminate my employee's contract due to the coronavirus?

The employment contract and its regulations determine the requirements for a termination. In an "employment at-will" relationship you can terminate the employment without cause.

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5. Do I have to send my employees to quarantine?

The employer has the general duty to take care of the well-being of all the employees. In the United States, employees are protected under the Occupational Safety and Health Act (OSH Act), the Family and Medical Leave Act (FMLA) and state workers compensation laws. Section 5(a)(1) of the OSH Act is the general duty clause, which requires employers to provide their employees with a workplace “free from recognized hazards [...] likely to cause death or serious physical harm.” The federal Occupational Safety and Health Administration (OSHA) can cite employers for violating the general duty clause if there is a recognized hazard and they do not take reasonable steps to prevent or abate the hazard.

It is therefore recommended that you are careful and take whatever precautions might seem necessary to protect your employees and personnel (e.g. home office, remote work). Sending your employees to quarantine might be the right thing to do under some circumstances.

6. What obligations do I have as an employer regarding employees with children?

The FMLA applies when the parent has to stay home due to the sickness of the child (refer to answer no. 1). In cases where the parent has to stay home because of school or day care closure the employer is not obliged under federal law to pay the employee for such time. In those times it might be useful to allow the employee to work from home. Therefore, the option of home offices should be considered and proposed.

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7. Can I restrict my employee's business travel?

The employer has discretion to restrict or ban business travel. Employers should consider making attendance optional for work-related events that require travel, especially if it is likely that attendees will have traveled from areas impacted by COVID-19. Employees are not required to give an explanation for their decision not to attend and are not required to reveal the reason(s) behind their decision, which may be related to protected characteristics (such as a compromised immune system, pregnancy, etc.) or caregiver status (such as elderly relatives or infants in the home).

8. Can I restrict my employee's personal travel?

Employers may request that employees avoid all non-essential, personal travel, particularly to locations with known cases of COVID-19. If employees decide to travel for personal reasons to such areas or return from vacation from those areas the employer may require a 14-day self-quarantine or a medical clarification before returning to work. An employer may also prohibit employees from traveling, unless state law applies (i.e., California, Colorado, New York, and North Dakota) that prohibits employers from infringing on an employee's right to engage in lawful, off-duty activities.

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9. What should I do to be prepared for a total shut down ordered by the government?

A preparation for the worst-case scenario is useful, meaning that cities or areas might be shut down with the consequence that employees cannot go to the office. You should evaluate, if working from home is logistically possible and/or wanted. Despite any legal obligations you should consider under which circumstances you want to extend or expand benefits and protections for your employees. Especially in regard of income protection. You should decide whether you want to pay sick leave or not, even if not legally obliged to do so. Keep your relationship with the employees in mind to keep a good trust-based relationship intact.

10. What are general recommendations for employers at this point?

It is recommended to provide the employees with access to enough disinfection materials or the possibility to wash hands. The working spaces should be kept clean and disinfected. It might be helpful - especially in offices with many employees - to hang out an information bulletin explaining how to avoid or minimize a risk of infection and what an employee should do and who to inform when he/she feels sick or has symptoms. You should also have an internal agenda for the case that one of your employees is tested positive. If so, you should contact the health agency/authority of the State, clean the office again and inform other employees or people that the infected person had contact with. Do not mention the name of the employee. In case you have insurance policies for your employees you should identify exclusions in the policies. Some insurance policies exclude pandemics. You should plan and be prepared for different scenarios to keep your business running normally.
