



Covid-19 FAQ

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1. **With regard to non-essential employees in a medical facility (assisted living), should they be working from home and is there a law that covers that?**
 - a. I see no difference between non-essential employees in a medical facility. Obviously, there is a difference for essential personnel that may impact work-from-home. If the question is whether non-essential can be required to work, that would depend upon the actual job functions of the individual. If he or she can work from home, that is up to the employer. If they cannot, they will need to be laid off.
2. **Can a person be moved from full to part time and still receive unemployment for the difference? Does it matter if they were salaried?**
 - a. The current status of Kentucky Unemployment (assuming question is from Kentucky) is that an hourly employee may be moved from full to part time and would be eligible for unemployment benefits for the difference during the COVID-19 time period. However, you will need to discuss with legal counsel researching the issue after the laws are firmed up. With regard to the salaried employees, you are required to compensate salaried employees full time, and changing them to part-time would be much more difficult because they are not subject to an "hourly" consideration.
3. **Can Business Owners or others considered "overly vested" i.e. daughter/son/spouse of owner, still claim unemployment?**
 - a. There appears to be no difference between related employees and non-related under the current status of unemployment laws.
4. **Can substitute teachers claim unemployment?**
 - a. After April 1, 2020, they may. At this point, probably not, unless they were actively assigned at the time of the shut-down. Then they would need to contact unemployment and verify the applicability of Kentucky law to then-temporary assignments.
5. **Is there any help for private instruction teachers such as musical instrument teachers or karate instructors or installation specialist?**
 - a. The question seems to suggest independent contractors or individual teaching agreements. There is no formal employer, so there would not be a formal unemployment process. However, under the Senate Bill, every single adult, making less than \$75,000, or married with a different threshold, they will each receive monies on a reducing scale after \$75,000. Additionally, there is \$500 per child utilizing the same threshold.
6. **What do I do about employee benefits for people who I am laying off? (Healthcare, Retirement, Dental, Vacation Pay...)**
 - a. It depends upon the timing. If this is done prior to April 1, 2020, the policies then existing will control. Subsequent to April 1, 2020, the contracts you have with each such entity will control, along with COBRA, and certain additional benefits as allocated in HR 6102 (FFCRA).



- 7. If a company utilizes a furlough for now and this extends to a point where that furlough becomes a lay off – how do we manage through the WARN act?**
 - a. You will need to seek legal guidance to assist with a WARN notification. The short answer is that a layoff of more than a percentage of your employees, including more than 50 at one location, triggers an automatic WARN notification. However, in the short term, WARN may not apply, since it would be akin to a natural disaster, where, unless the building is destroyed, and there is no hope of re-opening in the near future, there is not a requirement DURING the disaster, only after it is determined that you will no longer have an operation at that facility, or that it drastically reduces the workforce.

- 8. Did I understand that we can NOT allow people to come into the office? What if they come in at a time at a time no one else is there?**
 - a. No. You cannot have a public facing business (i.e., allowing public to shop, interact, etc.) You can still have people come into the office, practicing social distancing – although it is extremely frowned upon and you need to be extremely careful – or else you will end up causing COVID-19, negative publicity, and potential Workers Compensation liability.

- 9. Although we are larger than 500, does expansion of FMLA apply to employees who don't already qualify for FMLA? In the expansion, employees need to have worked 30 days to be eligible for FMLA, does that now apply accords the board or only to 500?**
 - a. No. No applicability to any entity with 500 or more employees.

- 10. Has there been definitive legislation passed differentiating whether furlough would qualify for unemployment insurance?**
 - a. Not more than the FFCRA. Kentucky is trying to catch up but cannot effectively meet due to COVID-19. Under FFCRA, furloughed/laid off/reduced hourly will receive unemployment insurance under most states, including Kentucky.

- 11. The company is following interim US guidance for risk assessment relating to covid-19. Our interpretation is that unless you have a positive test there is no identifiable risk so they would self-monitor but could return to work with no symptoms and do not have to be off the entire 14 days. Is that correct?**
 - a. This is against CDC policy, but is not “illegal.” However, this could expose the company to unnecessary risk of COVID-19 Workers Compensation, as well as negative publicity in the event of an outbreak caused by this decision.

- 12. If you provided employees with everything they need to work from home, and they choose to not work from home and have to be out of the office, can you force them to take PTO?**
 - a. After April 1, 2020, no. They are entitled to take the first 80 hours without pay, and then you must pay them 2/3 if they are caring for children or dependents, etc. Prior thereto, existing law controls.

- 13. For 12 weeks of expanded FMLA, is this in addition to standard FMLA? What if someone has already taken FMLA?**
 - a. No. The extended FMLA provides additional qualifying reasons for employees to be entitled to leave under the FMLA. It does not expand the total amount of time an employee may take under the FMLA. If a person has exhausted their FMLA Leave for the year, there is no additional leave available under the current FFCRA.

- 14. If employee is part time and only works a couple of days, do we need to find something for them to do?**



- a. If you do not, they will be entitled to part-time unemployment benefits, since the law protects both full and part time employees, based upon historical averages, starting April 1, 2020.

15. Do we still need to pay salaried employee for full time salary if they're not working 40 hours?

- a. Yes.

16. I understand clerical and office staff working from home and paying them, but what about manufacturing?

- a. Under the FFCRA, effective April 1, 2020, if you are unable to identify work from home, and the quarantine continues in effect, employers will be required to provide the leave required under the FFCRA.

17. Do non-profit employees have any help on requested paid sick time and FMLA?

- a. Not as of the current laws.

18. Are employees required to take all 10 days together?

- a. Yes.

19. Where is the best place to get information on who qualifies as healthcare provider/first responders/etc.?

- a. The Kentucky COVID-19 website is probably the best, as it changes every day and is subject to Governor's Executive Orders.

20. Indiana may have just issued a shelter in place order. We have Indiana employees working in Kentucky. How do we determine if our Business is essential?

- a. This is not yet well established, across state lines. However, it would appear that the location of the business determines the essential nature of the business.

21. Must you add 10 days of sick time if you already have a more generous policy?

- a. No. You must allow the employee to determine, however, whether they want to use it or have it as unpaid and bank their then-existing sick leave. You cannot force your employees to take paid leave.

Please note that the laws surrounding Covid-19 are constantly evolving. This advice was provided as of March 26, 2020.