



COVID-19: Regulatory Updates and FAQ

Presented by
Kara Govro, JD, SPHR

Webinar 101

- We will send the recording and slides
- Please use the Q&A box for questions
- Please participate in the polls

POLL #1

**Which actions have you already taken in response
to COVID-19?**

(choose all that apply)

POLL #2

What COVID-19 related topics are you interested in learning more about?

(choose all that apply)

Agenda

- Keeping the Workplace Safe
- The Families First Coronavirus Response Act
- Reducing Hours or Closing

Keeping the Workplace Safe

Current CDC Guidance

- Follow CDC's "Interim Guidance for Businesses and Employers"
- Have employees wash their hands at the door and schedule regular handwashing
- Schedule disinfecting of frequently touched surfaces; search "COVID list N"
- Increase ventilation with *outside air*
- Cancel Travel
- Have virtual meetings
- Mandate physical distancing of 6'
- Eliminate shared food
- Stagger customer flow
- Use online transactions where possible
- Remove tables and chairs to create distance
- Encourage tap-and-pay



**Can we take
temperatures or ask
about symptoms daily?**

Yes, but keep it specific to
COVID-19.

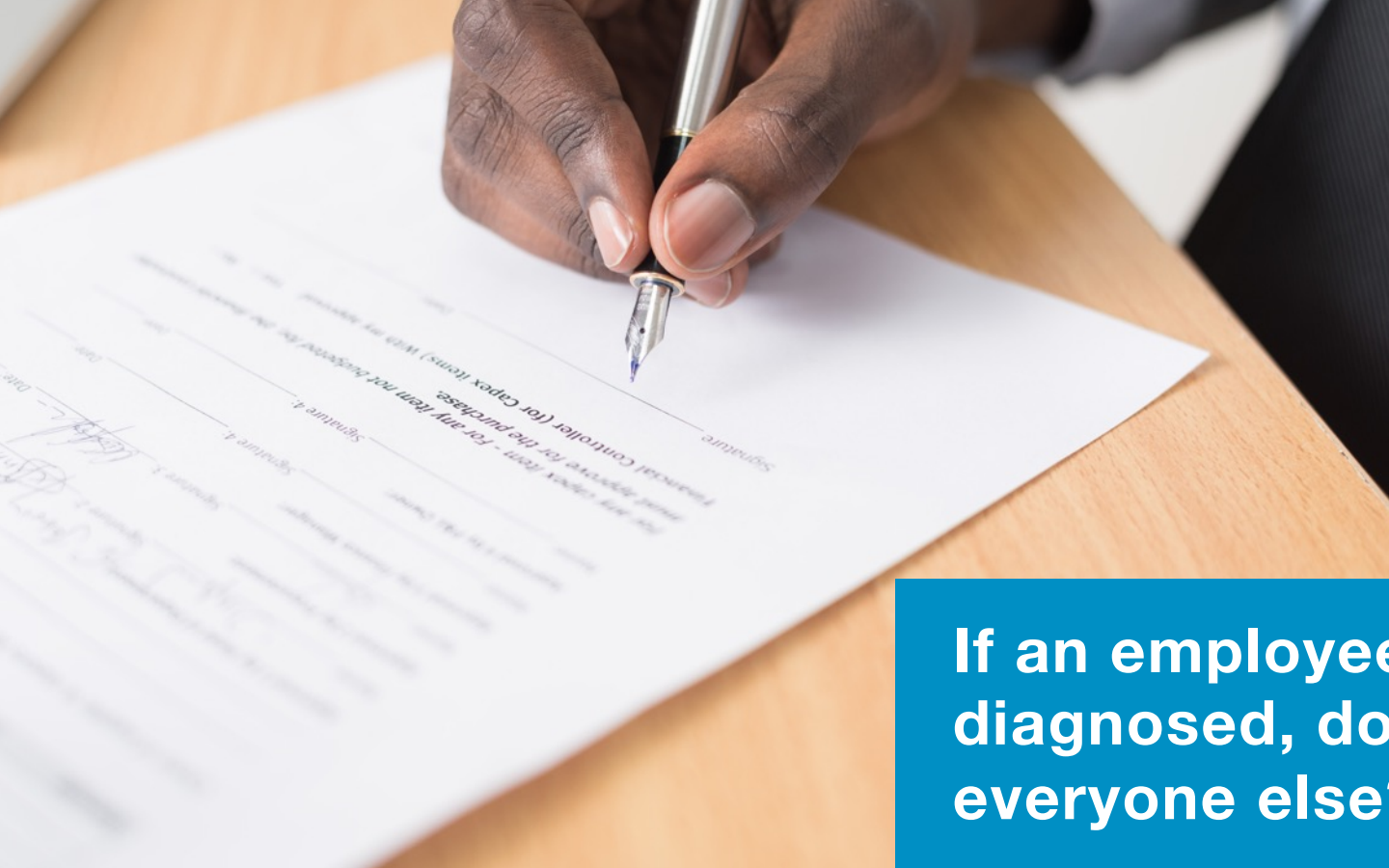


Sick Employees

Sick employees need to go home and stay there, but when can they come back?

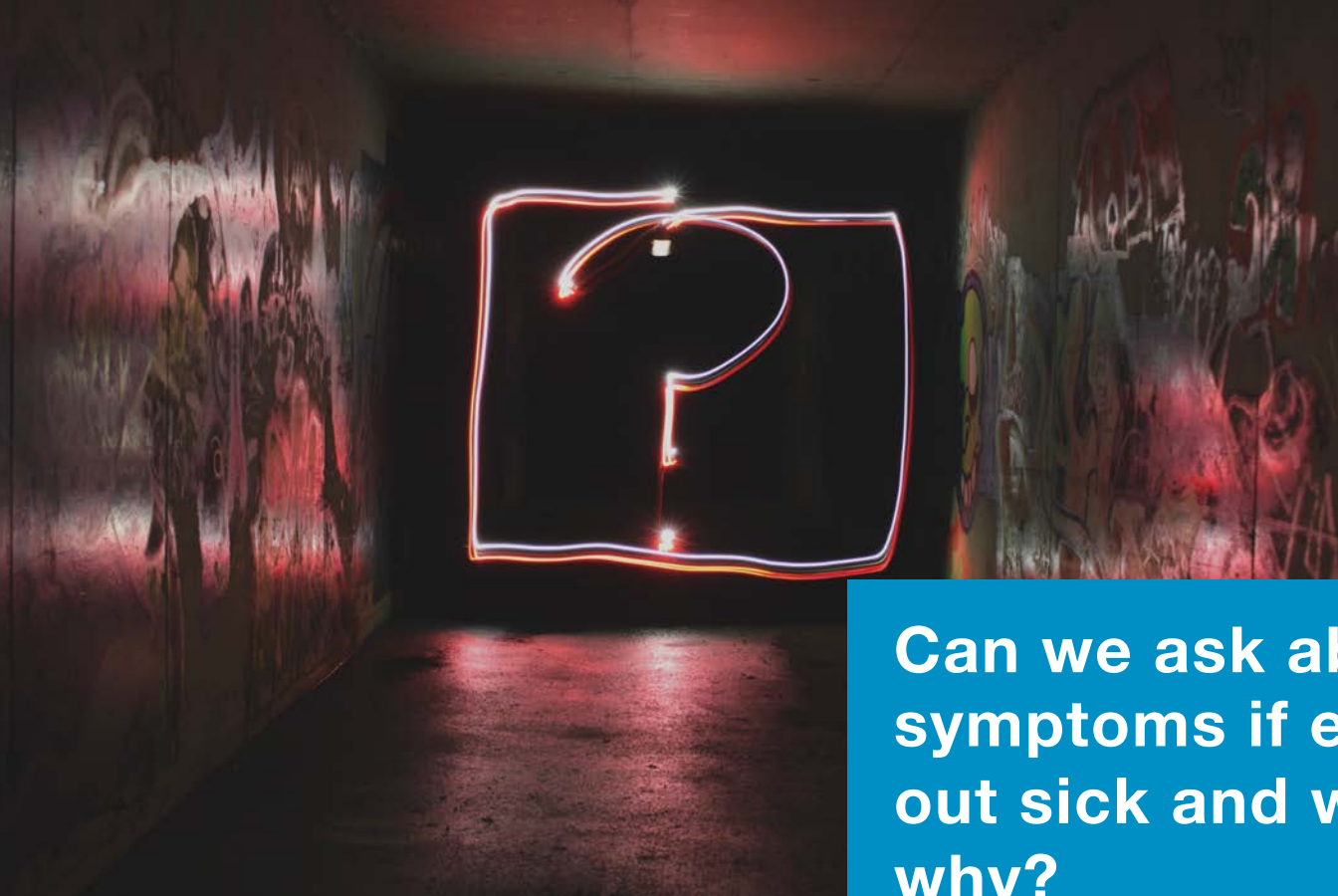
They should talk to their healthcare provider.

- At least 72 hours have passed *since recovery*, defined as resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g., cough, shortness of breath); **and**,
- At least 7 days have passed *since symptoms first appeared*



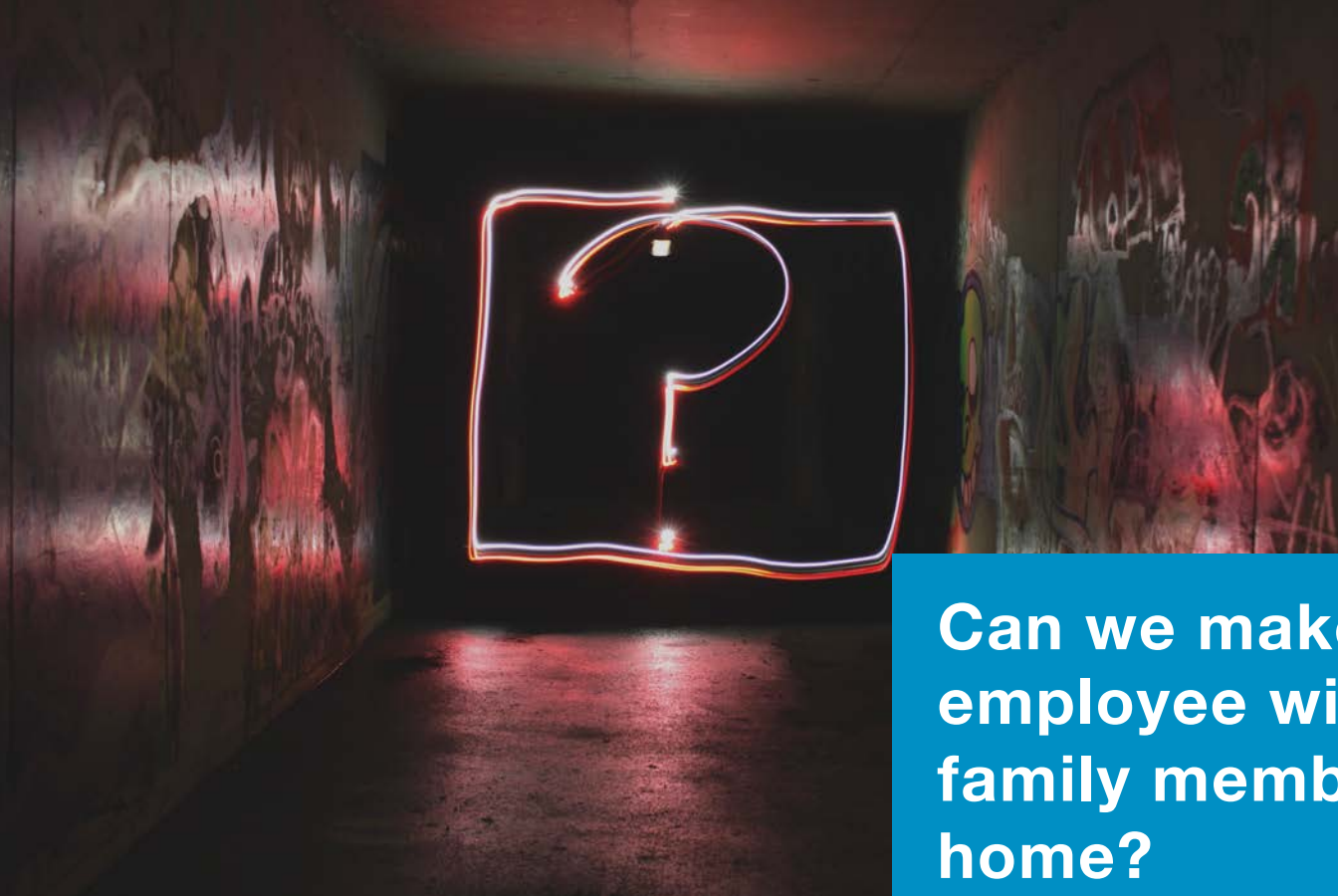
If an employee is diagnosed, do we tell everyone else?

Do notify employees of exposure, but don't reveal who is sick.



Can we ask about symptoms if employees are out sick and we don't know why?

Yes, but keep it specific to COVID-19.



Can we make an employee with a sick family member stay home?

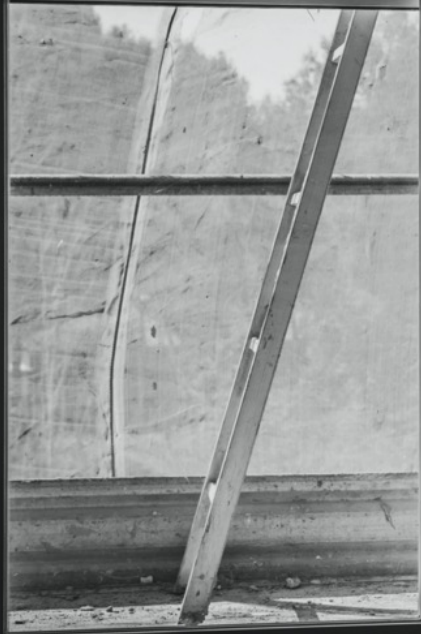
Yes, if the family member is showing symptoms of COVID-19.



Employees with an nth Degree of Separation

The CDC does not currently recommend special scrutiny for people exposed to asymptomatic people with potential exposures to COVID-19.

If you decide to send someone home anyway, we recommend that you find work they can do from home or pay them for the time and not take it from their sick leave or PTO bank.



Employees are afraid to come in. Can we make them?

Yes, as long as there is no legitimate threat and they don't require an accommodation.



Work From Home Policies

1. Hours of work
2. Expectations regarding reachability
3. Expectations regarding productivity
4. Check-ins
5. Office expenses

Families First Coronavirus Response Act



Highlights

- Emergency Paid Sick Leave
- Emergency FMLA
- Exceptions and Exemptions
- Payroll Tax Credit

Emergency Paid Sick Leave

Coverage

- All private employers with fewer than 500 employees
- All employees, no matter how long employed
- Health care providers or emergency responders can be excluded

Interaction with other paid time off benefits

This benefit is in addition to any other PTO or sick leave offered. Employees cannot be required to use other benefits first and employers cannot reduce other benefits in response to the Act.

Emergency Paid Sick Leave

Use

Employees may use leave when they **are unable to work or telework** because:

1. The individual employee is subject to a federal, state, or local quarantine or isolation order (not a general shelter-in-place, stay-at-home, or hunker down orders)
2. They are advised by health care provider to self-quarantine because the provider believes the employee **may** have COVID-19 or is **particularly vulnerable** to COVID-19.
3. They are seeking medical diagnosis for symptoms of COVID-19
4. An individual who qualifies under #1 or #2 requires their care
5. A child whose school or childcare provider is closed or unavailable; this includes nannies, au pairs, babysitters, grandparents, aunts, uncles, or neighbors (anyone who regularly provides care)
6. They are experiencing other substantially similar condition as defined by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor

Emergency Paid Sick Leave

Duration and Pay

- Full time employees (40+ hours per week) get 80 hours
- Part time employees (less than 40 hours per week) get the number of hours worked on average over a 2-week period
- Can be taken intermittently for childcare purposes if employer agrees
- Can be taken intermittently for illness-related reasons *only if teleworking* and employer agrees
- Cap of \$511 per day and \$5,110 total for uses 1, 2, and 3, up to 100% of regular pay
- Cap of \$200 per day and \$2,000 total for uses 4, 5, and 6, up to 2/3 of regular pay

Emergency FMLA Childcare Expansion

Coverage

- Applies to all employers with fewer than 500 employees
- Applies to all employees who have worked at least 30 days for the employer
- Health care providers or emergency responders may be excluded

Uses

If an employee ***is unable to work or telework*** because they will be the only caregiver for a child under 15 (unless special circumstances apply).

Emergency FMLA Childcare Expansion

Duration and Pay

- First 10 days are unpaid, but employees may use *any other leave* they have available during the first 10 days, including EPSL.
- After 10 days, cap of \$200 per day (up to 2/3 of their regular pay) and \$10,000 total
- Can be used intermittently if employer agrees

Interaction with other paid time off benefits

Once the 10 unpaid days are over employers can require an employee to use available paid time off (but not sick leave) to “fill the gap.” The employer would pay 2/3 or \$200 and the employee could be required to use 1/3 of a day of PTO for each full day of leave. Employers can also make this optional.

Appropriate Documentation to Claim Tax Credit

An employer will substantiate eligibility if it receives a written request in which the employee provides:

- The employee's name;
- The date or dates for which leave is requested;
- A statement of the reason the employee is requesting leave; and
- A statement that the employee is *unable to work, including by means of telework*, for such reason.

For a quarantine order or self-quarantine advice, the statement should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if caring for someone else, that person's name and relation to the employee.

For school closing or child care provider unavailability, the statement should include the name and age of the child (or children), name of the school or place of care, and a representation that no other person will be providing care for the child during the period for which the employee is receiving FMLA.

This Does Not Apply to Furloughs Caused by Stay-at-Home Orders

If an employer closes its worksite, even for a short period of time, employees are not entitled to take paid sick leave or expanded family and medical leave. This is true whether the worksite is closed for lack of business **or because it was required to close pursuant to a Federal, State, or local directive.**

Employees will generally be eligible for unemployment insurance benefits and should apply as soon as possible.

The only time the EPSL applies as a result of a Stay-at-Home Order is if the business is still open and still has work for an employee to do, but the *employee* is subject to an order that prohibits them from working.

Exemption from Childcare Leave (EPSL and EFMLA)

Employers with fewer than 50 employees may be eligible for an exemption from the childcare leave provisions if at least one of the three statements below are true:

- Providing leave would result in the small business's expenses and **financial obligations exceeding available business revenues** and cause it to cease operating at a **minimal capacity**;
- The absence of the employee or employees requesting leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their **specialized skills, knowledge of the business, or responsibilities**; or
- There are **not sufficient workers** who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business to operate at a **minimal capacity**.

Exempt Health Care Workers

Anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.

This includes any individual employed by an entity that contracts with any of the above to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. Child welfare workers and service providers also been added to the list.

To minimize the spread of the virus, the DOL encourages employers to be judicious when using this definition to exempt health care providers.

Exempt Emergency Responders

Anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19.

This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

To minimize the spread of the virus, the DOL encourages employers to be judicious when using this definition to exempt health care providers.

How to Pay for Leave

Complete Coverage

Employers will receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability.

Fast Funds

Reimbursement will be quick and easy to obtain.

- An immediate dollar-for-dollar tax offset against payroll taxes will be provided
- Where a refund is owed, the IRS will send the refund as quickly as possible.

Google: IRS FFCRA FAQ

DOL and IRS Resources

DOL Questions and Answers

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Google “FFCRA questions and answers”

Also watch [irs.gov/coronavirus](https://www.irs.gov/coronavirus) (mix of resources)

Google “IRS FFCRA FAQ”

Google “IRS Form 7200” for the form to request an advance and instructions

Reducing Hours or Closing

Reducing Hours or Pay for Non-Exempt Employees

Reducing hours is permissible.

Remember reporting time pay if you send people home before they start or mid-shift.

If reducing employees' hourly rate, provide notice and ensure it is not applied retroactively.

Don't let employees "waive" their right to minimum wage or overtime.



Reducing Hours or Pay for Exempt Employees

You can implement a pay cut, either for everyone or for certain departments or types of jobs. Check for unintentional discrimination.

Employees must remain above the federal minimum salary for exempt employees (\$684/week) or the higher state minimum. *No prorating!*



Reclassifying Exempt Employees as Non-Exempt

This is legal unless done to avoid the salary basis requirements under the FLSA.

Don't do this on a short-term basis (e.g., less than a month).

Provide notice and ensure the change is not applied retroactively.

Remember they now get breaks (probably – check state law) and overtime.





Furloughs: Unemployment Insurance

- Employees will be eligible for UI
- Requirements are relaxed, and waiting weeks waived
- Your SUI is unlikely to be affected



Furloughs: Address Benefits

- Communicate in writing
- Share options for use of paid leave
- Address health insurance options



What if we can't make payroll?

Call an attorney to determine the best course of action under your circumstances in your state.



Staying Afloat - The CARES Act

Google “SBA Relief Options”

[sba.gov/funding-programs/loans/coronavirus-relief-options](https://www.sba.gov/funding-programs/loans/coronavirus-relief-options)

- Emergency grants of up to \$10,000 to cover immediate operating costs.
- Loans up to \$10 million; much of which could be forgiven, provided workers remain employed through the end of June. **Google “PPP Fact Sheet.”**
- Small businesses with existing SBA loans may have up to six months of payments waived.
- Businesses may be eligible for tax credits and tax deferment

POLL #3

Which ThinkHR resources have you found most valuable during the COVID-19 situation?

(choose all that apply)