



ARIZONA
SMALL
BUSINESS
BOOT CAMP &
COLLECTIVE

RESPOND → PLAN → RETURN STRONGER

HR and Personnel Considerations for Reopening and Returning to Work

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The PowerPoint slides do not constitute legal advice and do not cover all legal developments. To obtain legal advice for your particular situation, please contact a Fennemore Craig attorney or other legal counsel.





Overview

- Governor's Executive Order, effective May 16;
 - Employer best practices for rehiring employees and maintaining a healthy workplace during the pandemic;
 - Responding to an employee who tests positive for COVID-19; and
 - A brief primer on the new Federal emergency paid leave requirements.
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GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA



EXECUTIVE ORDER

Executive Order 2020-36

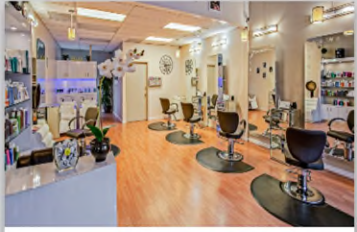
Stay Healthy, Return Smarter, Return Stronger

Governor Ducey's Executive Orders

- Governor Ducey's Stay-At-Home Order expired on May 15.
 - Replaced by new Executive Order called "Stay Healthy, Return Smarter, Return Stronger." Executive Order 2020-36, effective May 16.
 - Follows White House staging guidelines
 - Policy that promotes "physical distancing, while encouraging social connectedness and allows businesses to gradually and safely open in compliance with federal guidelines as the state continues to mitigate and prevent the spread of COVID-19."
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Executive Order continued...

5. Any business, whether for-profit or non-profit, institution, profession or entity that physically operates in this state and serves the public or is an employer shall develop, establish and implement policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19 including the following:
- a. Promoting healthy hygiene practices;
 - b. Intensifying cleaning, disinfection and ventilation practices;
 - c. Monitoring for sickness;
 - d. Ensuring physical distancing;
 - e. Providing necessary protective equipment;
 - f. Allowing for and encouraging teleworking where feasible;
 - g. Providing plans, where possible, to return to work in phases; and
 - h. Limiting the congregation of groups of no more than 10 persons when feasible and in relation to the size of the location.



Barbers & Cosmetologists



Restaurants



Gyms



Pools



Retail



Spas/Massage Therapy



Places Of Worship



Shopping Malls



Theaters



Casinos

Industry Specific Guidelines for Reopening in Arizona

- Governor Ducey's Office and the Arizona Department of Health Services (ADHS) have issued specific reopening guidelines for industries, such as retail, salons and barbershops, gyms. and dine-in restaurants.
- See industry guidance here:
<https://azgovernor.gov/governor/reopening-guidance>

Federal OSHA – Creating a Safe Workplace

- **General Duty Clause:** requires employers to maintain a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees. Section 5(a)(1) of the OSH Act (1970).
- The Department of Labor's Occupational Safety and Health Administration ("OSHA") recommends that businesses develop an Infectious Disease Preparedness and Response Plan.
<https://www.osha.gov/Publications/OSHA3990.pdf>
- Tiered approach to determine potential workplace exposure and provides recommendations based on the exposure. In accordance with risk level (very high, high, medium, and lower risk), OSHA provides recommendations on how to mitigate the likelihood of the virus spreading.
- OSHA also offers industry-specific guidance for industries, such as the construction, meat packing, manufacturing, rideshare and taxi, package delivery and other industries.
<https://www.osha.gov/pls/publications/publication.athruz?pType=Types&pID=10432>

Bringing Employees Back To Work

- Develop a neutral system for choosing which employees to rehire or return to work from layoff or furlough.
- Must be legitimate and non-discriminatory business reasons. Criteria could be based on seniority, past performance reviews, skills needed, or any other objective criteria.
- Don't base re-hiring decisions on perceived higher risk of COVID-19 complications.
- Do not make assumptions about who would like to return to work.

BUSINESS RE-OPENING PLAN

- ① SOCIAL DISTANCE CUSTOMERS
- ② DISINFECT SURFACES
- ③ FREQUENT HAND WASHING
- ④ HAND SANITIZER AVAILABLE
- ⑤ DAILY HEALTH SCREENING
- ⑥ SICK STAFF TAKE SICK DAYS
- ⑦ MASKS AND GLOVES



Best Practices for Creating a Safe Work Environment

- Implement social distancing for employees and customers, including offering telework options where available.
- Consider PPE for your employees.
- Sanitize and disinfect regularly.
- Take temperatures or engage in other screening measures.
- Limit business travel.
- Encourage employees who are sick to stay home.
- Have a plan for minimizing risk.

Social Distancing for Businesses

- Encourage teleworking to reduce the number of employees coming into the workplace.
- Arrange work stations at least six feet apart.
- Assess/wall cubicle heights if employees do not have their own private offices.
- Close common areas to discourage gatherings.
- Close or strictly limit access to small areas like small conference rooms, lounges, etc.
- Limit the number of employees working and customers allowed into a space.
- Stagger start times.
- Bring employees back in phases as the re-opening process continues.
- Best practices will also depend on the particular industry, so be aware of applicable guidance.



Maintain a Healthy Work Environment

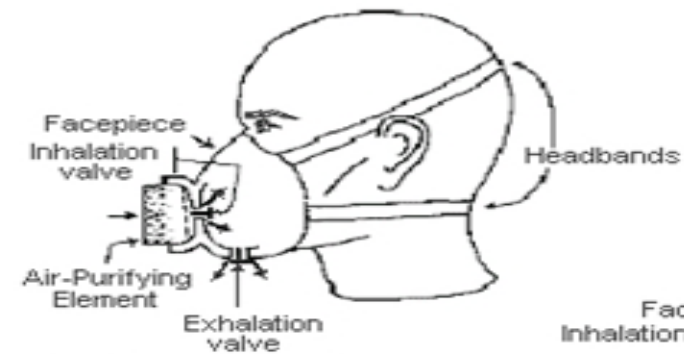
- Continue to encourage sick employees to stay home.
 - Clusters of infected employees at the workplace may require shutting down your business. E.g., meat plants, mines, etc.
 - Emergency Paid Sick Leave is designed to help provide compensation to sick employees who stay home for a variety of COVID-19 related reasons.
- **Consider improving the engineering controls using the building ventilation system.** This may include increasing ventilation rates, ensuring ventilation systems operate properly, and increasing outdoor air ventilation. For more information, see <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Give employees, customers, and visitors what they need to clean their hands and cover their coughs and sneezes



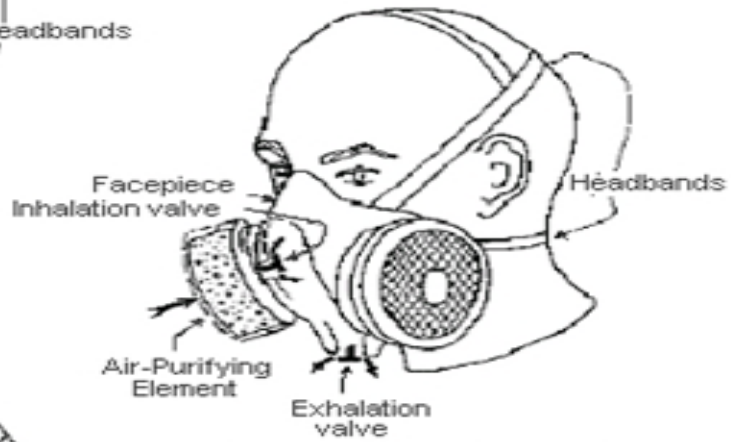
Personal Protective Equipment (“PPE”) at Work

- What is PPE?
 - PPE commonly consists of respirators like an N95 or K95 masks, gowns, shields, surgical masks, and/or disposable gloves.
 - OSHA regulates the use of PPE and sets requirements for the type of PPE appropriate for certain jobs or industries.

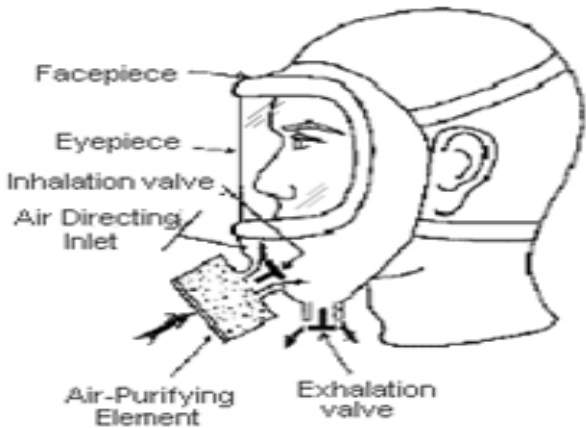
Masks vs. Face Coverings



Typical Quarter-Mask Respirator



Typical Half-Mask Respirator



Typical Full-Facepiece Respirator

- A mask is usually defined by OSHA as either (i) a filtering respirator such as an N95 or K95 or (ii) a specialized medical grade or surgical mask.
 - Should be reserved for health care providers, first responders and essential workers required by OSHA to wear respiratory protection.
- A face-covering is a cloth or bandana that covers the mouth and nose. OSHA guidance does not specify whether a face-covering is truly PPE. The CDC has 5 criteria for effective face-coverings:
 - fit snugly but comfortably against the side of the face
 - be secured with ties or ear loops
 - include multiple layers of fabric
 - allow for breathing without restriction
 - be able to be laundered and machine-dried without damage or change to shape



Note: If you reuse your respirator, wear gloves when inspecting and putting on the respirator. Avoid touching your face (including your eyes, nose, and mouth)



PPE at Work

- In Arizona, if you are not in an industry where OSHA requires the use of PPE, you may require it in the workplace.
 - Some states and municipalities are requiring masks or face coverings at work, so be aware of this if you operate outside of Arizona.
 - Many of Arizona's reopening guidelines encourage or require face-coverings or other forms of PPE at work.
 - OSHA recommends PPE, but cautions that, "[w]hile correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies."
 - PPE should be appropriate to the level of risk, properly fitted, used consistently, regularly inspected and cleaned.
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PPE at Work: Step 1 Risk Assessment

- To determine the type of PPE appropriate for your workplace, you will first need to assess the hazard to your business to determine the appropriate type of PPE. Use the OSHA guide at:
<https://www.osha.gov/Publications/OSHA3990.pdf>
- Risk is determined by the level of contact an employee is likely to have with individuals who may transmit COVID-19:
 - Very high: healthcare workers, deathcare workers and lab personnel
 - High: healthcare delivery and support staff, medical transport workers, mortuary workers
 - Medium: workers whose jobs require frequent or close contact with people who may have COVID-19; in areas with community transmission, this category includes those who interface with the general public
 - Lower: workers whose jobs do not require them to be in contact with people who may have COVID-19; this category includes workers who do not regularly interface with the general public

Step 2: Determine Appropriate Level of PPE

- **Most employees are in the medium-to-lower risk group**
 - Per OSHA, PPE is not required for those in the lower risk group
 - Per OSHA, PPE, but not respirators, are recommended for the medium risk group; a surgical mask would work: “Workers with medium exposure risk may need to wear some combination of gloves, a gown, a face mask, and/or a face shield or goggles. PPE ensembles for workers in the medium exposure risk category will vary by work task, the results of the employer’s hazard assessment, and the types of exposures workers have on the job.”
- If you require PPE in the workplace, make sure you enforce the rules and have a policy in place re: appropriate types of PPE, how to care for it, how to wear it, consequences for failing to wear PPE, etc.
- Employers must provide training on how to appropriately use or wear it. OSHA and the CDC’s website have videos and tutorials about how to properly wear and maintain various types of PPE.
- If employers *require* the use of PPE at work, including face-coverings, employers typically must pay for it.

Employee refusal to wear PPE

- What if someone refuses to wear PPE at work?
 - They can be sent home.
 - However, PPE may need to be modified to accommodate job duties.
 - Employers also have to accommodate employees who refuse to wear PPE, or need modified PPE, for disability or religious reasons.
 - Per the EEOC's guidance: "[T]he employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII."

Can you require *customers* to use PPE?

- **Yes.** Much of Arizona's reopening guidance encourages face-coverings for customers.
- If you have a PPE requirement, make sure it is posted prominently and uniformly enforced for all customers.
- You should also encourage other forms of protection, such as using low-contact methods, social distancing, etc.
- Consider making disposable masks, gloves and sanitizing wipes available to customers.
- This information is evolving constantly, so please keep yourself up to date.





Cleaning and Disinfectants; Hygiene

- Perform routine environmental cleaning
 - Cleaning should be increased with a focus on high-touch surfaces (e.g., counters, door knobs, drawer/cabinet handles, etc.)
 - Use disposable gloves when cleaning. Clean with soap and water first and then use a disinfectant.
 - Educate and encourage proper hand-washing and the use of hand sanitizer. Ensure employees have sufficient supplies and hand-washing facilities.
 - Encourage proper cough and sneeze etiquette, disposal of tissues.
 - The CDC has issued re-opening cleaning guidance at https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Reopening_America_Guidance.pdf
 - Recommendations are constantly changing. For specifics, visit the CDC's website and your local health administration.
-

Screening Measures in the Workplace

- Temperature Checks - These are currently allowed under the Americans with Disabilities Act (“ADA”) because COVID-19 has been declared a pandemic
 - Best practices for conducting them:
 - They should be conducted *before* entering the workplace
 - Employees should be informed that temperature is taken to assess symptoms, not to medically diagnose
 - Confidentiality: Any information collected should be kept in a secure confidential location separate from the regular file for each individual
 - The person taking temperatures should wear PPE
 - The thermometer used should be a no-touch thermometer
 - Set a temperature screening threshold over which employees will not be permitted to enter the workplace. (e.g., 100-100.4°F range typically recommended)
 - For non-exempt hourly employees, businesses should plan to pay employees for time waiting to have their temperatures taken to avoid wage and hour issues
- Screening Certifications (e.g., not feeling sick, no sick household members, took my temperature this morning)
- Any screening methods should be uniformly applied to all employees and performed consistently
- COVID-19 Tests (currently allowed under the ADA, per EEOC guidance)



Vulnerable employees

CDC and other COVID-19 guidance provides that older employees are more vulnerable to COVID-19 and it is recommended that they stay home. Should I exclude them from the first group of employees that are brought off of layoff or furlough?

No. That would likely violate the Age Discrimination in Employment Act (“ADEA”) and/or equivalent state law.

-Let those vulnerable employees raise the issue

What do I do if an employee tests positive for COVID-19?

1. Offer support/express sympathy
 2. Notify employee of availability of Emergency Paid Sick Leave and other available paid leave that may be available
 3. Contact tracing: Ask infected employee what employees he/she has been in “close contact” with for a prolonged period of time over the prior two weeks.
 4. Notify co-workers of potential exposure, require that they self-assess for symptoms per CDC guidance, and direct them to their own healthcare providers. This should be done in a confidential manner and not identify the infected person.
- Speak with individuals who had close contact for a prolonged period with the sick employee-
 - Exposed Non-Essential Business Employees – HR or a supervisor should meet with employees who had close contacts with the sick employee. If this is a non-essential worker, then an employee who has had “close contact for a prolonged period of time” should self-isolate for at least 14 days. CDC Guidance
 - Exposed Essential Business Employees - HR, a supervisor, or an occupational therapist meets with the individual. The individual may still work so long as no symptoms of COVID-19. Need to have good monitoring in place here. <https://www.maricopa.gov/DocumentCenter/View/58714/COVID-19-Business-Guidance?bidId=>
 - CDC also recommends that the exposed essential business employees wear a mask or face-covering at work

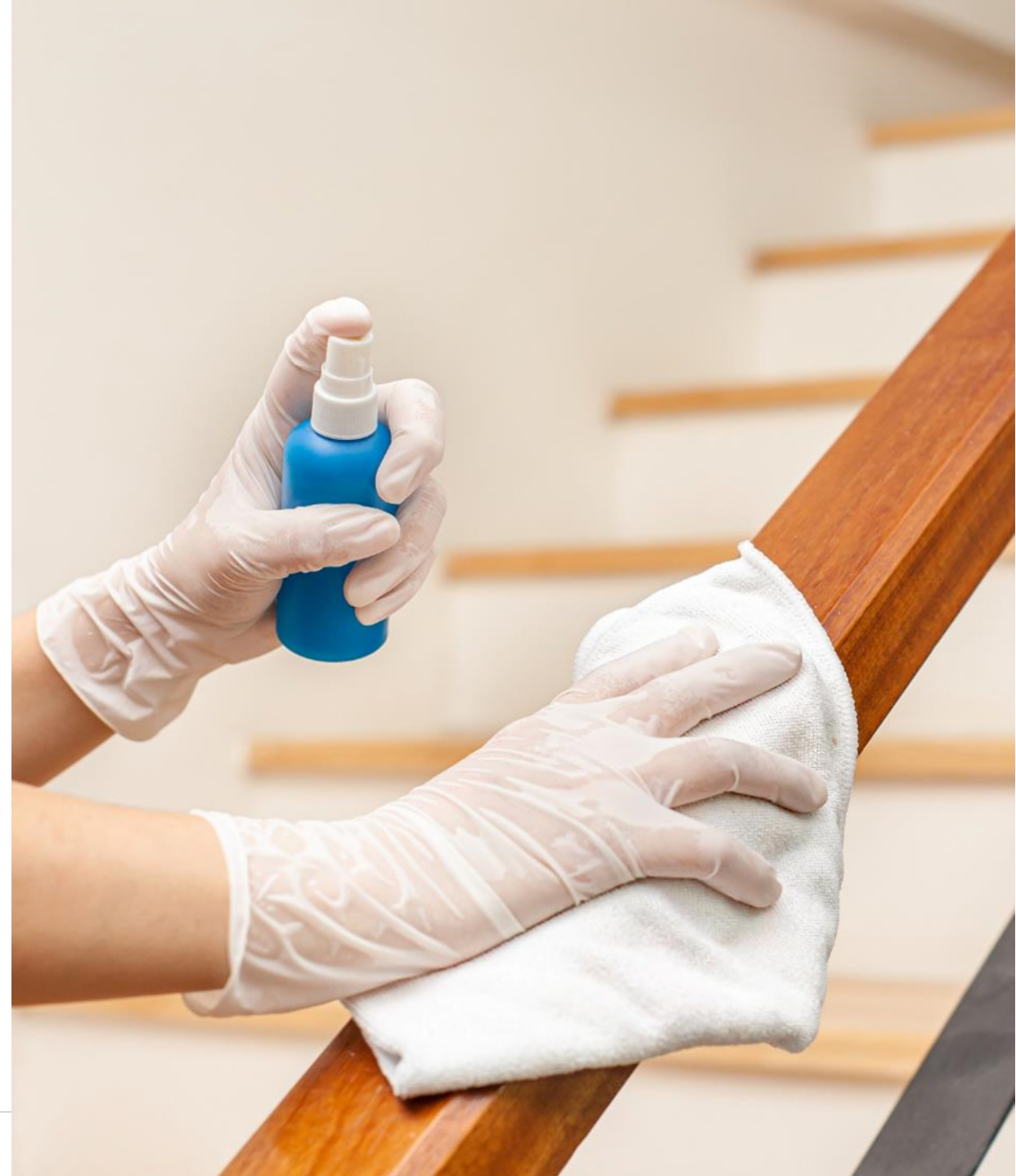
If an employee tests positive for COVID-19 continued...

5. Considering notifying your entire workforce and explain actions that will be taken – best practice via written notice.
6. Notify others (customers/clients/vendors) with whom the infected employee had close contact for a prolonged period.
7. Clean/disinfect the workspace - consider deep cleaning infected employee's work area.

Does my business need to close if an employee tests positive for COVID-19?

No. You need to notify co-workers of potential exposure and follow routine cleaning procedures recommended by the CDC.

<https://www.maricopa.gov/5504/Businesses>





OSHA Reporting

- COVID-19 is a qualified illness that may trigger OSHA reporting requirements for employers.
 - Outside of the healthcare industry, emergency response, and correctional institutions, employers are required to report COVID-19 cases ONLY IF: (1) there is objective evidence that a COVID-19 case may be work related (e.g., a cluster of cases and no other explanation), and (2) this evidence was available to employers.
-



Beware of protected activity by employees

I have an employee who is constantly complaining to me that my company isn't taking proper safety precautions and accusing me of providing an unsafe work environment. Can I terminate him?

NO!! If you do, it may subject your company to a whistleblower or retaliation claim under OSHA.

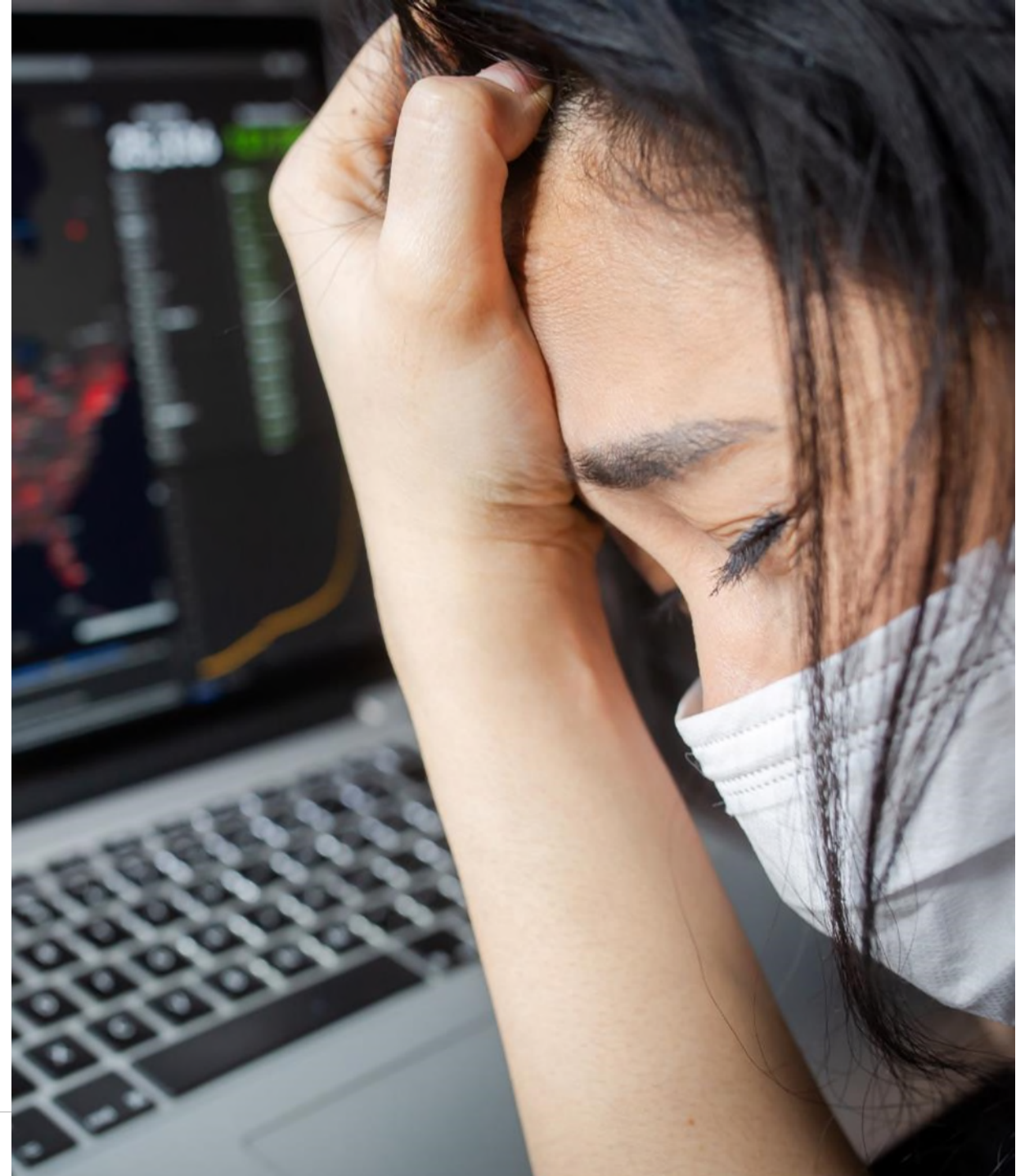
Employee refusal to return to work

May I terminate my employee who is refusing to return to work because he is afraid of getting COVID-19.

Generally, yes, if you have available work and the employee is refusing to do it simply out of fear.

Exceptions:

- If there is objective evidence that the workplace poses a direct threat to the employee's safety and health.
- If the employee is a vulnerable individual (e.g., immunodeficient, elderly, pregnant). A reasonable accommodation may be required.



KNOW THE NEW PAID LEAVE LAWS

- **Emergency Paid Sick Leave Act (EPSLA):** Employers are required to provide up to 2 weeks (80 hours) of paid sick leave for workers dealing with the effects of the coronavirus.
- **Emergency Family and Medical Leave Expansion Act (EFMLA):** Provides for 12 weeks of time off for employees caring for a child due to coronavirus-related school and child care closures. The first 2 weeks are unpaid and the following 10 weeks are paid at 2/3 an employee's regular rate of pay.
- **Effective Period** - April 1, 2020 to December 31, 2020.



EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627



Employer Notice/Posting Requirements

- Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.
- Model notices are available on the DOL's website.
- Notice available here:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- The DOL recommends emailing the notices to employees if they are working remotely.



WHICH EMPLOYERS MUST COMPLY WITH EFMLEA and EPSLA?

- Covered Employers: Employers *with fewer than 500 employees* in the United States and its territories.
 - Number of employees calculated at the time an employee's leave is to be taken.
 - Includes:
 - All full and part-time US employees
 - Employees on leave
 - Temporary employees
 - Does not include:
 - Independent contractors
 - Workers in other countries

WHICH EMPLOYEES ARE COVERED?

- Emergency Paid Sick Leave: **ALL** employees.
- Emergency FMLA: Any employee who has worked for a company for at least 30 days before requesting leave.
- Exception: Employers of health care providers or emergency responders may elect to exclude such employees from coverage under the Acts.





WHAT ARE THE QUALIFYING REASONS FOR EMERGENCY FMLA?

Eligibility: ONLY if the employee is unable to work or telework because the employee is caring for his/her child whose school or place of care is closed due to COVID-19.

*generally a minor child under 18

WHAT ARE THE QUALIFYING REASONS FOR RECEIVING EMERGENCY PAID SICK LEAVE?

Reason One: The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

Reason Two: The employee has been advised by a health care provider to self-quarantine related to COVID-19.

Reason Three: The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

Reason Four: The employee is caring for an individual who is being quarantined or self-quarantined.

Reason Five: The employee is caring for a child whose school or place of care has been closed due to COVID-19 precautions.

Reason Six: The employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

HOW MUCH PAID TIME DOES AN EMPLOYEE RECEIVE?

Emergency Paid Sick Leave:

- A full-time employee may receive up to 80 hours of paid leave.
- A part-time employee may receive the number of hours of leave that the employee works on average over a two-week period.

Emergency FMLA:

- Ten weeks of paid leave. (The first two weeks are unpaid but an employee may use Emergency Paid Sick Leave or other paid leave to substitute paid leave for the unpaid portion.)



WHAT IS THE RATE OF PAY FOR EMERGENCY PAID SICK LEAVE?

An employee will receive 100% of regular rate of pay (not to exceed \$511 per day and \$5,110 total over EPSL period) for the following reasons:

- **Reason One:** The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- **Reason Two:** The employee has been advised by a health care provider to self-quarantine related to COVID-19.
- **Reason Three:** The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

An employee will receive 2/3 the regular rate of pay (not to exceed \$200 per day with a maximum of \$2,000 per employee) for the following reasons:

- **Reason Four:** The employee is caring for an individual who is being quarantined or self-quarantined.
- **Reason Five:** The employee is caring for a child whose school or place of care has been closed due to COVID-19 precautions.
- **Reason Six:** The employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

*Pay for each hour will be the greater of the employee's regular rate of pay or the applicable minimum wage under Federal, State or Local Law.



WHAT IS THE RATE OF PAY FOR EMERGENCY FMLA?

For up to ten weeks:

- A full-time eligible employee will receive $\frac{2}{3}$ the employee's regular rate of pay.
- A part-time eligible employee will receive $\frac{2}{3}$ the employee's regular rate of pay for the number of hours that the employee is normally scheduled to work over that period.
- **CAP** – An employee is capped at \$200 per day and \$10,000 in total.



IS THERE AN EXEMPTION FOR EMPLOYERS WITH FEWER THAN FIFTY EMPLOYEES?

Yes, but it is limited to EFMLA and Reason #5 of EPSL (i.e., caring for a child).

Both Emergency FMLA and EPSL provide that businesses *with fewer than 50 employees* may be able to obtain an exemption from providing paid leave to employees if allowing employees to stay home because their child's school or childcare provider has been closed would jeopardize the viability of the business.

- To elect this exemption, the Employer must document that a determination has been made pursuant to the criteria set forth by the DOL in its regulations (29 CFR § 826.40(b)(1)). The Employer should not send such documentation to the DOL, but rather retain the records in its files.
- Regardless of whether a small Employer chooses to exempt one or more Employees, the Employer is still required to post a notice pursuant to § 826.80.

QUIZ

Phil has already used twelve weeks of FMLA leave between December and February to have a medical procedure and recover from the procedure. Phil's son's school is closed. May Phil use Emergency FMLA leave?

No. Phil may use Emergency Paid Sick Leave but he may not use Emergency FMLA.



QUIZ

Sally has been diagnosed with COVID-19 and she exhausts her two weeks of Emergency Paid Sick Leave. May Sally utilize Emergency FMLA for the next four days until she feels better?

- **No.** Emergency FMLA may only be used where an employee is caring for a child whose school or place of care has been closed due to COVID-19.





Quiz

I asked an employee to return to work and he said he can't because he is a vulnerable individual and has a doctor's note confirming that to be the case. What can I do?

- This employee is eligible for Emergency Paid Sick Leave (up to 80 hours).
 - After that, because this employee may be covered by the Americans with Disabilities Act, the safest option is to provide unpaid leave for the individual for a reasonable duration and he/she will likely be eligible for unemployment during that leave.
-

IF A COMPANY ALREADY PROVIDES 80 HOURS OF PAID SICK LEAVE, DOES THE COMPANY STILL NEED TO PROVIDE EMERGENCY PAID SICK LEAVE?



Yes. This leave under the Families First Coronavirus Response Act is to be provided *in addition* to the leave already provided for under the employer's policies.

Employers may not require an employee to exhaust paid sick leave provided by the employer before utilizing paid sick time under the Act.

Documentation of Need for Leave

Employers must ask for documentation and information to substantiate the need for leave and to ensure reimbursement of the tax credit. Each employee requesting leave is required to provide their employers with the following basic information:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave;
- (4) Oral or written statement that the employee is unable to work because of the qualified reason for leave.

Employees are required to provide certain documentation, depending on the qualified reason for leave. (e.g., a doctor's note for the employee, a quarantine order from the State, Federal, or Local government, a quarantine order from a health care provider, or other similar documentation).

- These documents will be necessary documentation for the tax credit. See 29 CFR § 826.100 for documentation requirements; see also DOL FAQs 15-16: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

TAX CREDITS

Covered employers qualify for a dollar-for-dollar tax credit for all wages paid pursuant to the EPSL and EFMLEA.

- This takes the form of a quarterly offset against the employer's portion of payroll taxes.

The credit is limited to the Social Security and Medicare tax imposed for the relevant quarter on wages paid by the employer with respect to all employees.

- Any excess credit over the amount actually paid in for the quarter is treated as an overpayment that is refunded to the employer.

Self-employed individuals can recover a tax credit too.

TAX CREDIT AMOUNT

- Tax credits are limited to the amounts paid to employees under the EPSL and EFMLEA (subject to the caps for both statutes).
- The credit is increased by the amounts paid or incurred by the employer to maintain health insurance coverage for those on leave under the Acts.
- If an employer decides to pay an employee more than the pay caps, the employer will not recover the additional amount through the tax credit.

Active enforcement by DOL in Arizona

APRIL 23, 2020

[Tucson, Arizona, Company to Pay Back Wages After Denying Paid Sick Leave To Worker Whose Doctor Ordered Coronavirus Quarantine](#)

TUCSON, AZ – After an investigation by the U.S. Department of Labor’s Wage and Hour Division (WHD), Bear Creek Electrical – an electrical company based in Tucson, Arizona – will pay one employee \$1,600 for refusing to provide him sick leave under the newly passed Emergency Paid Sick Leave Act after health care providers ordered him to self-quarantine with potential coronavirus symptoms.

MAY 14, 2020

[Arizona Company to Pay Back Wages After Denying Paid Sick Leave To Employee Whose Doctor Ordered Coronavirus Quarantine](#)

PHOENIX, AZ – After an investigation by the U.S. Department of Labor’s Wage and Hour Division (WHD), Pueblo Mechanical and Controls LLC – an HVAC and plumbing company in Phoenix, Arizona – will pay one employee \$1,000 for failing to provide him paid sick leave after a healthcare provider ordered him to self-quarantine for coronavirus-related reasons.

QUESTIONS?



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