



## EMPLOYER ALERT - EMERGENCY PREPAREDNESS IN THE WORKPLACE - GUIDE TO PREPARE FOR COVID-19

In the midst of dealing with an emerging situation in the workplace, which can include natural disasters, mass shootings, or pandemic such as COVID-19, employers may have questions related to their workplace and their employees. This Alert is designed to address common questions that affected public entity employers may be asking in the midst of such a situation – and remember we are here to help!

### **We have some concerns around health and safety issues and related OSHA requirements. What steps should we be taking?**

Public entity employers have a duty to provide a safe and healthy workplace. In situations that are hazardous to one's health or life, OSHA explains that employees do have the right to refuse to do a job that they believe in good faith exposes them to imminent danger. In some instances, employers may be required to report illnesses to OSHA if an employee was infected on the job. In instances of contagious disease, employers should have guidelines for what employees should do if they have been exposed; they should actively encourage sick employees to stay home, and separate sick employees who have reported to work and send them home immediately.

Additional steps to take to promote hygiene and prevent illness in the workplace:

- Place posters that encourage staying home when sick, cough and sneeze etiquette and hand hygiene at the entrance to your workplace and in other workplace areas where they are likely to be seen (i.e., restrooms, sinks, break rooms, etc.).
- Encourage hand and other hygiene by providing tissues and no-touch disposal receptacles for use by all in the workplace, and provide soap and water in restrooms and alcohol-based hand sanitizer (with minimum alcohol percentage contents) of at least 60% in multiple locations or in conference rooms; ensure adequate supplies and instruct employees to clean their hands often using the hand sanitizer or washing with soap and water for at least 20 seconds.
- Perform routine environmental cleaning by cleaning frequently touched work surfaces (workstations, countertops, doorknobs). Provide disposable wipes for employees to use to do the same.

**Our organization is considering the possibility of closure and moving to remote work temporarily. What issues should be considered?**

- Workers' Compensation coverage for remote workers
- Coverage of organizational losses if organization needs to close temporarily
- Reimbursement of internet usage for remote workers
- Communication plans
- Data security

Any insurance issues or concerns should be discussed with the organization's insurance broker(s).

**Are public entity employers required to pay employees for time when the organization is closed due to a temporary shutdown?**

The answer depends on the employee's classification as exempt or not. If employees are non-exempt, they generally only need to be paid for the hours that they spend working (assuming no contract or collective bargaining agreement requires they be paid otherwise). So, even if non-exempt employees may be otherwise ready, willing and able to come to work, if they cannot work because the employer does not make work available, as may occur if the employer is unable to open for operations, there is no obligation to pay them for this time. The same is true for non-exempt employees who may want to report for work but are unable to safely do so. If they do not work, they are not entitled to be paid. Note that employees who may work remotely do need to be paid for such time.

If employees are exempt from minimum wage and overtime requirements, they are entitled to their FULL weekly salary for any week in which ANY work is performed. When an exempt employee is ready, willing and able to work, the employer cannot withhold or deduct pay from an exempt employee's weekly salary for employer-mandated closures of less than one week. However, such employees need not be paid for any full workweeks in which they perform no work at all, even if this is due to a organization closure, again absent a contract or collective bargaining agreement indicating otherwise.

Depending upon the nature of the emergency, there may be changes to federal and state unemployment insurance benefits for employee who are impacted by an organization closure or loss of income.

For guidance on furloughs and temporary organization closures, please see the DOL's Guidance at <https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs>.

**We have determined that our physical location will be closed, and workers will be required to work remotely: What steps should we take to keep communication working effectively?**

- A “hotline” or centralized point of contact should be set up where employees can get information and updates.
- Employees should be advised of where, how and when to communicate with the employer.
- Employers should be willing to make exceptions to policies given extenuating circumstances, keeping in mind the importance of making employee-related decisions in a consistent manner. Be open-minded about requests for reasonable accommodations relating to relocation to be with family during an organizational shutdown.
- Employees who are working remotely should still comply with any dress/grooming codes as they may be called on to join in videoconferences.
- Staying connected to employees by video conference or other group meetings should help keep morale high in difficult circumstances.

**It is not feasible for our organization to shut down completely – what steps should we be taking to ensure as safe a work environment as possible?**

Employers should consider identifying essential staff, staggering shifts or rotating workers so that they report to an empty office, which in the event of pandemic would assist with “social distancing” and limiting exposure to contagious disease. Employers might also want to consider allowing essential personnel to work at night or off hours – again to minimize the risks of working in larger groups in the event of an emergency situation that necessitates this type of measure.

**Several employees who are reservists in the military and members of the National Guard have voluntarily responded to a federal call for military personnel. Do I have to grant these employees time off to voluntarily respond to search and rescue efforts?**

Yes. If you have military service employees who are responding to a federal call for help either on a voluntary or involuntary basis then the employer's obligations in this instance are governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA entitles employees to take up to five years of job protected leave in connection with military service. For this purpose, "service in the uniformed services" includes "all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war." Military leave under USERRA is generally unpaid unless the employer has a policy, practice or contract that requires payment of wages during such time off. Employees on military leave can have the option, but should not be required, to utilize paid vacation or similar paid time off benefits as may otherwise be available to them through their employer.

## **Some employees may request special accommodations or Family and Medical Leave (FMLA). Does contracting a contagious disease create obligations under FMLA or possibly the Americans with Disabilities Act?**

Because contagious diseases are usually transitory, they may not rise to the level of disability. However, employees who are vulnerable due to other health issues may be entitled to accommodations if they are otherwise considered to be qualified individuals with a disability.

If the FMLA applies to your organization, employees who have a serious health condition or are needed to care for a family member with one may be entitled to leave under the Act. Employers should determine if FMLA or similar state laws apply. Document each situation to avoid claims of disparate treatment when dealing with other leave requests.

Employers need to take care to avoid retaliation and/or discrimination claims on the basis of disability, exercise of statutory rights, or other protected characteristic. Discrimination can occur, for example, when people associate a disease with a population or nationality, even though not everyone in that population or from that region is specifically at risk for the disease. Training staff and managers in this regard is an important step in preventing discrimination.

## **Someone in the organization has notified HR that they have contracted a contagious disease. Can we notify other staff they have worked with?**

Inform employees of possible exposure and conduct risk assessments as needed, but individual employee confidentiality must be maintained as required by the Americans with Disabilities Act.

## **COVID-19 Resources**

In view of the recent COVID-19 pandemic and national state of emergency, employers are directed to review the following resources for additional information. Given the fluidity of this rapidly changing situation, we recommend reviewing these resources continuously as they are frequently updated.

[CDC Risk Assessment](#)

[CDC Employer Guidance](#)

[EEOC COVID Alert](#)

[Pandemic Preparedness in the Workplace and the ADA](#)

[COVID-19 and FMLA](#)

[Unemployment Flexibilities During COVID-19 Outbreak](#)

[OSHA Guidance on Preparing Workplaces for COVID-19](#)

[Find Your State Health Department](#)

### **Posters**

[CDC Workplace Posters](#)

[CDC Cough and Sneeze Etiquette](#)

[Hand Washing Fact Sheets/Posters](#)