

FAQs FOR EMPLOYERS RELATING TO COVID-19

Emergency Paid Leave for Employees

Q: What is the Families First Coronavirus Response Act and when would it apply?

A: The Families First Coronavirus Response Act requires employers of fewer than 500 employees to provide their employees up to two weeks of fully or partially paid sick leave for COVID-19-related reasons. These provisions will apply from April 1, 2020 through December 31, 2020.

Q: Under what specific circumstances would an employee be entitled to leave, and what amount of money must I pay to the employee during the leave?

A: This chart illustrates the reasons an employee would be entitled to take leave and the paid leave entitlements for each reason:

Reasons for Leave	Paid Leave Entitlements
(1) Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 (2) Employee has been advised by a health care provider to self-quarantine related to COVID-19 (3) Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis	Up to two weeks (80 hours for a full-time employee; two-week equivalent for a part-time employee) of paid sick leave based on the higher of the employee's regular rate of pay, or the applicable state or federal minimum wage, paid at 100%, up to \$511/daily and \$5,110 total
(4) Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)	Up to two weeks (80 hours for a full-time employee; two-week equivalent for a part-time employee) of paid sick leave based on the higher of the employee's regular rate of pay, or the applicable state or federal minimum wage, paid a $\frac{2}{3}$, up to \$200/daily and \$2,000 total
(5) Employee is caring for his/her child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons	Up to 2 weeks of paid sick leave and 10 weeks of expanded family and medical leave (if the employee has been employed for at least 30 days before his/her family leave request) paid at $\frac{2}{3}$, up to \$200/daily and \$12,000 total
(6) Employee is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services	Up to 12 weeks (80 hours for a full-time employee; two-week equivalent for a part-time employee) of paid sick leave based on the higher of the employee's regular rate of pay, or the applicable state or federal minimum wage, paid a $\frac{2}{3}$, up to \$200/daily and \$2,000 total

Q: Are there particular types of employees for whom an employer need not comply with the Families First Coronavirus Response Act?

A: Yes. Employers of healthcare providers or emergency responders may elect to exclude such employees from eligibility.

Q: Can I require my employees to use their accrued sick leave, vacation or paid time off instead of providing them with sick leave under the Emergency Sick Leave Law?

A: No.

Q: Under what circumstances may an employer with fewer than 500 employees not be required to provide family leave due to school closings or if childcare is unavailable?

A: A business with fewer than 50 employees may be exempt from the requirement of providing family leave due to school closings or if childcare is unavailable, when the leave requirement would jeopardize the viability of the business as a going concern.

Q: If I furlough employees before these new laws become effective on April 1, 2020, are those furloughed employees entitled to paid sick or family leave?

A: No.

Q: Must an employer provide paid leave or family leave when the employee is not able to work from home?

A: Yes. Employers must provide paid leave to employees who cannot work *or telework* due to certain circumstances related to COVID-19.

Federal Stimulus Package

Q: What type of financial assistance does the CARES Act offer employers?

A: Eligible employers may obtain business loans to pay qualified payroll and other expenses.

Q: What employers are eligible for this loan?

A: In general, any employer with 500 or fewer employees is eligible for this loan. A lender providing a loan under this law must consider whether the business (i) was in operation on February 15, 2020, and (ii) had employees

or independent contractors for whom the business had paid salaries, compensation and payroll taxes.

Q: What amount of a loan may my business receive?

A: In general, the amount of the loan is calculated by multiplying 2.5 times the employer's average total monthly payroll costs for the preceding 12-month period, up to a maximum of \$10,000,000. Wages in excess of \$100,000 for an individual employee are not included in calculating the average payroll costs.

Q: Does a loan under this law require a personal guarantee?

A: No.

Q: What is the maximum interest rate of a loan under the law?

A: 1%

Q: Is a loan under this law forgivable?

A: Employers can apply for loan forgiveness to the extent that the proceeds were used for the first eight weeks to pay qualified payroll and other expenses. The amount of forgiveness is reduced based upon any reduction of the employer's workforce or reduction of pay in excess of 25% for any employee if the reduction is not eliminated by June 30, 2020.

Q: Does the CARES Act provide unemployment benefits to terminated or furloughed employees?

A: Yes. The CARES Act provides eligible employees an extra \$600/week in unemployment benefits, in addition to what they are eligible to receive under existing state programs. This additional payment will last for approximately four months until its current expiration date of July 31, 2020. Additionally, the CARES Act provides for an additional 13 weeks of continued \$600 weekly payments for individuals who remain unemployed after exhausting their state unemployment benefits (which most states cap at 26 weeks).

Q: Do unemployment benefits provided under CARES cover reduction in hours or part-time work?

A: Under Texas law, employees who experience a reduction of hours, including those whose status is changed from full-time to part-time, may be eligible for unemployment compensation. If the Texas Workforce Commission determines that an employee is entitled to receive

unemployment compensation, then the employee will also receive the additional \$600 due under the CARES Act.

Q: Can furloughed employees accept temporary work and still be eligible for unemployment benefits?

A: Yes. Furloughed employees can accept temporary work and still be eligible for unemployment benefits; but, their unemployment compensation will be reduced. These employees must report any compensation they receive to the appropriate state agency (e.g., Texas Workforce Commission).

Shelter-in-Place

Q: What should employers know about their local shelter-in-place orders?

A: State and local governments across the United States have enacted shelter-in-place and stay-at-home orders, to contain the spread of COVID-19 in their communities. Generally, these orders require all non-essential businesses to cease activities in their place of business, and employees of those businesses to stay at their homes. The specifics of state and local orders vary. Employers should be aware of the orders to which they and their employees are subject, what constitutes essential businesses, and how this designation can affect their employees.

Q: By which orders must employers abide?

A: Employers must comply with all orders in effect in their place of business. For example, an employer in Dallas, Texas is subject to both the Dallas County and City of Dallas orders.

Q: By which orders must employees abide?

A: Employees, regardless of where they work, are subject to the effective orders in their place of residence, even if their employer is not subject to the same orders. In practice, this means that an employee who lives in a county that has imposed a shelter-in-place order cannot go to work in another county, even if the county in which the employer is located allows for business operations.

Q: Which employers are exempt under these orders?

A: In general, businesses deemed “essential” are exempt. The exact definition of “essential” varies by order. Links to the order among the four main counties in the Dallas-Fort Worth Metroplex are as follows:

- [Dallas County](#)
- [Collin County](#)
- [Tarrant County](#)
- [Denton County](#)

The New York Times' updated list of orders around the country can be found [here](#).

Q: How are the orders enforced?

A: Violations of an order could result in civil or criminal penalties. For example, in Dallas County, a violation of the shelter-in-place order is punishable by a fine not to exceed \$1,000 and/or confinement in jail for a term not to exceed 180 days.

Mass Layoff Notification Requirements

Q: Must an employer provide advance notification of a mass layoff?

A: Yes. Employers must provide written notice at least 60 calendar days in advance of covered plant closings and mass layoffs. This notice must be provided to the following:

- Each employee (or his/her union representative, if applicable);
- The state entity designated to carry out rapid response activities (e.g., Texas Workforce Commission); and
- The chief elected official of the local government where the closing or layoff is to occur.

Q: Under what circumstances must an employer send this notice?

A: Employers must send this notice if there will be a mass layoff resulting in an employment loss (defined below) at the worksite during any 30-day period for (i) 500 or more employees, or (ii) 50-499 employees if they make up at least 33% of the employer's active workforce. Also, employers must give this notice if a worksite will be shut down resulting in an employment loss of 50 or more employees during a 30-day period.

The WARN Act defines "employment loss" as any one of the following occurrences: (1) an employment termination, other than a discharge for cause, voluntary departure, or retirement; (2) a layoff exceeding six months; or (3) a greater than 50% reduction in an employee's work hours in each month of any 6 month period.

Q: Do layoffs or plant closings necessitated by the COVID-19 Pandemic require advance notice?

A: Probably not. Advance notice is not required when there are “unforeseeable business circumstances.” The COVID-19 Pandemic would likely be considered an unforeseeable circumstance that would excuse a lack of advance notice.

Q: If an employer does not provide advance notice based on “unforeseeable business circumstances,” what must the employer do?

A: The employer must still provide advance notice, as soon as is practicable, to the recipients identified under the law. The notice to the affected employees should include a brief statement of the reason for reducing the 60-day notice period.

If you have any questions concerning this alert, please contact:

Monte K. Hurst
Shareholder
[Email](#)
214.922.4111

Molly B. Cowan
Attorney
[Email](#)
214.922.4102

Kristen A. Brumbalow
Attorney
[Email](#)
214.922.4107

Hallett & Perrin, P.C. provides this information as a service to clients and friends for educational purposes only. It should not be construed or relied on as legal advice or to create an attorney-client relationship. Readers should not act upon this information without seeking advice from an attorney.