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COVID-19-Driven Furloughs, Layoffs, Unemployment and Recall

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TOPICS INCLUDE:

- Paid Leave Entitlements
- Furlough, Layoff and Reduction in Force Terminology
- COVID-19 Analysis of Furloughs, Layoff and Pay Cuts
- Disruptions in Exempt Employees Pay Due to COVID-19
- Recall-Related Q & A on Various Workplace Scenarios
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- Failure to Return to Work After Recall - Employer Options and Sample Termination Letter
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Introduction



Introduction

If, prior to the FFCRA's effective date (April 1, 2020), an employer sends an employee home and stops paying an employee because it does not have work for the employee to do, the employee will not be eligible to receive paid sick leave or expanded family and medical leave. This holds true whether the employer closes a worksite for lack of business or because it is required to close pursuant to a federal, state, or local directive.



Introduction

If an employer closes after the FFCRA's effective date (April 1, 2020), it will not be required to pay paid sick leave or expanded family and medical leave to its employees (even if an employee requested leave prior to the closure). This holds true whether an employer closes a worksite for lack of business or because it was required to close pursuant to a federal, state or local directive.



Introduction

In either of the preceding scenarios, an impacted employee may be eligible for unemployment insurance benefits.

Introduction

If an employer furloughs an employee because it does not have enough work or business for the employee, the employee is not entitled to then take paid sick leave or expanded family and medical leave.

Introduction

If an employer closes while one or more employees are on paid sick leave or expanded family and medical leave, the employer must pay the employee or employees for any paid sick leave or expanded family and medical leave used before the employer closed.

Introduction

As of the date the employer closes the worksite, the employee or employees are no longer entitled to paid sick leave or expanded family and medical leave.

Introduction

If an employer reduces an employee's work hours because it does not have work for the employee to perform, the employee may not use paid sick leave or expanded family and medical leave for the hours that the employee is no longer scheduled to work.



Introduction

An employee may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents the employee from working her full schedule. If so, the amount of leave to which the employee is entitled is computed based on the employee's work schedule before the hours were reduced.



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Paid Leave Entitlements

Paid Leave Entitlements

Paid Sick Leave under EPSLA is available in six situations. First, paid sick leave is available if **employees are unable to work because they are subject to a federal, state, or local COVID-19 quarantine or isolation order**. The regulations clarify that this qualification applies to employees who cannot work or telework due to shelter-in-place orders. However, leave is only available if the employer had work for the employee to do. For example, if a coffee shop closes temporarily or indefinitely due to a downturn in business related to the pandemic, a cashier of the business who is subject to a stay-at-home order would not be able to take paid sick leave. That is because the lack of work is due to the closure, not the cashier's inability to leave home.



Paid Leave Entitlements

The regulations also emphasize that employees subject to shelter-in-place orders may not take paid sick leave if they are able to telework, provided that there is work for the employee to do, the employer allows the employee to telework and there are no extenuating circumstances that prevent the employee from performing that work (such as a COVID-19 related power outage).



Paid Leave Entitlements

The second reason for paid sick leave applies when **employees are unable to work because they have been advised by a health care provider to self-quarantine for a reason related to COVID-19.** The advice must be based on the health care provider's belief that the employee has COVID-19, may have COVID-19 or is particularly vulnerable to COVID-19. Also, the self-quarantining must prevent the employee from working, even remotely.



Paid Leave Entitlements

The third reason for paid sick leave applies when an **employee is experiencing symptoms of COVID-19 (as identified by the U.S. Centers for Disease Control and Prevention) and is seeking a medical diagnosis**. Leave taken for this reason is limited to the time employees are unable to work because they are taking affirmative steps to obtain a medical diagnosis. This includes time spent making, waiting for or attending an appointment for a COVID-19 test. It also includes employees who seek a test, are told that they do not meet the criteria for testing, but are advised to self-quarantine, if that prevents the employee from working or teleworking and work would otherwise be available. It does not include employees who are self-quarantining without seeking a medical diagnosis. Nor does it include employees who are waiting for test results but are able to and allowed to telework (unless the COVID-19 symptoms prevent them from doing so).



Paid Leave Entitlements

The fourth reason for paid sick leave applies where **employees are unable to work because they need to care for someone who is either: (a) subject to a Federal, State, or local quarantine or isolation order; or (b) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.** This reason only applies if, but for the need to care for an individual, the employee would be able to work. It would not apply if the employer does not have work for the employee.



Paid Leave Entitlements

The regulations also emphasize that the need to care for the individual must be genuine. The individual being cared for must be an immediate family member, roommate or someone similar with whom the employee has a relationship that creates an expectation that the employee would provide care. The person being cared for must also: (a) be subject to a Federal, State, or local quarantine or isolation order; or (b) have been advised by a health care provider to self-quarantine based on a belief that he or she has COVID-19, may have COVID-19 or is particularly vulnerable to COVID-19.



Paid Leave Entitlements

The fifth reason for paid sick leave applies when an **employee is unable to work because they need to care for a son or daughter if: (a) the child's school or place of care has closed; or (b) the childcare provider is unavailable, for COVID-19 related reasons.** As before, the employee must be able to work but for the need to care for their son or daughter. So the leave would not apply if the employer had no work for the employee. Also, the paid sick leave is only available if the employee needs to care, and actually is caring, for his or her child. It is not available if someone else, such as a co-parent, guardian or childcare provider, is available to provide the care.



Paid Leave Entitlements

The sixth reason for paid sick leave applies if the **employee is unable to work because they are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.** No such conditions have yet been identified.





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What is the difference between a furlough, a layoff and a reduction in force?

Introduction

What is the difference between a furlough, a layoff and a reduction in force?

All three of these terms describe actions that are intended to achieve cost savings by reducing a company's payroll costs. Even though the words have been used interchangeably, their true meanings are quite different.



Furlough

A furlough is considered to be an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid time off. For example, an employer may furlough its nonexempt employees one day a week for the remainder of the year and pay them for only 32 hours instead of their normal 40 hours each week. Another method of furlough is to require all employees to take a week or two of unpaid leave sometime during the year. Employers must be careful when furloughing exempt employees so that they continue to pay them on a salary basis and do not jeopardize their exempt status under the Fair Labor Standards Act (FLSA). A furlough that encompasses a full workweek is one way to accomplish this, since the FLSA states that exempt employees do not have to be paid for any week in which they perform no work.



Furlough

An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. Generally, the theory is to have the majority of employees share some hardship as opposed to a few employees losing their jobs completely.

Layoff

A layoff is a temporary separation from payroll. An employee is laid off because there is not enough work for him or her to perform. The employer, however, believes that this condition will change and intends to recall the person when work again becomes available. Employees are typically able to collect unemployment benefits while on an unpaid layoff, and frequently an employer will allow employees to maintain benefit coverage for a defined period of time as an incentive to remain available for recall.



Reduction in Force

A reduction in force (RIF) occurs when a position is eliminated without the intention of replacing it and involves a permanent cut in headcount. A layoff may turn into a RIF or the employer may choose to immediately reduce their workforce. A RIF can be accomplished by terminating employees or by means of attrition.

Reduction in Force

When an employee is terminated pursuant to a reduction in force, it is sometimes referred to as being "rified." However, some employers use layoff as a synonym for what is actually a permanent separation. This may be confusing to the affected employee because it implies that recall is a possibility which may prevent the employee from actively seeking a new job.





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COVID-19 Furloughs, Layoffs and Pay Cuts

COVID-19 Furloughs, Layoffs and Pay Cuts

Businesses that are seeing significant revenue losses due to the coronavirus pandemic are weighing some stark options: furloughs, reductions in hours and pay cuts, or layoffs. Furloughs often are the best option for those that can afford them. But for some, layoffs will be unavoidable.



COVID-19 Furloughs, Layoffs and Pay Cuts

A furlough is a mandatory, temporary, unpaid leave. A layoff is a full separation from the company.

Furloughs help companies weather a financial storm in a number of ways. Unlike layoffs, furloughs reduce labor costs without adding new costs such as severance packages and outplacement services. When business improves, employers do not have to pay for recruiting, selecting, socializing and training new employees because the furloughed workers can pick up where they left off. Unfortunately, furloughs bring financial and psychological hardship to the affected workers.



WARN Act

Any employer considering layoffs or a furlough must carefully consider:

- All state and local laws.
- The state emergency declarations and laws issued under the pandemic.
- Federal law, including any relief package.
- Notice obligations under the Worker Adjustment and Retraining Notification (WARN) Act.



WARN Act

The WARN Act requires advance notice when a mass layoff or plant closing occurs that results in employment loss for a requisite number of people. It is important to know the applicable thresholds for WARN Act coverage. The federal WARN Act covers employers of 100 or more full-time employees and layoffs of 500 or more employees. It also covers employers of 50 to 499 employees if those workers constitute at least one-third of the workforce.



WARN Act

An "employment loss" is defined to include not only terminations but also furloughs that last for more than six months and significant reductions in hours. So a furlough may trigger the WARN Act's advance-notice requirements and those imposed by state WARN Acts if the furlough is conducted for a longer time period and affects enough people.

Layoffs

Some companies will have to resort to layoffs.

Employers are more likely to permanently lose laid-off employees, and layoffs can also have more-significant implications for company morale than furloughs. Since coronavirus is a temporary event, which will hopefully come under control in the coming months, furlough is the better response for many employers.



Layoffs

But if employers decide to lay off workers, they must select whom to lay off. If a workforce is not unionized or when unions don't specify how people are to be selected (e.g., last in, first out), many employers prefer using performance-based criteria for layoffs in order to retain their highest performers. However, some believe layoffs shouldn't be used to try to weed out poor performers.

Layoffs

The challenge is that performance-based decisions can also be the most subjective, which makes them most susceptible to subsequent legal challenges. If employers use performance-based criteria for layoffs, then decisions should be made based on documented performance reviews that have already been conducted rather than ad hoc evaluations conducted for purposes of making layoff decisions.

Ideally, decisions can be based on the most objective elements of those reviews, such as numerical performance scores, rather than supervisors' free-form narratives.



Reduced Hours, Pay Cuts

Employers generally have the flexibility to offer hourly employees fewer hours and workdays. But employers can't reduce weekly hours and correspondingly reduce compensation for exempt employees. Employers must pay exempt employees the same amount for each pay period in which they work, regardless of how many hours they work. Employers can have exempt employees work fewer pay periods while fully paying them for each pay period in which they work.





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Recall-Related Q & A



Recall-Related Q & A

What's the main workplace safety guidance we should follow?

The Occupational Safety and Health Administration (OSHA) recently published Guidance on Preparing Workplaces for COVID-19, outlining steps employers can take to help protect their workforce. OSHA has divided workplaces and work operations into **four risk zones**, according to the likelihood of employees' occupational exposure during a pandemic. These risk zones are useful in determining appropriate work practices and precautions.



What's the main workplace safety guidance we should follow?

Very High Exposure Risk:

- Healthcare employees performing aerosol-generating procedures on known or suspected pandemic patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected pandemic patients.



What's the main workplace safety guidance we should follow?

High Exposure Risk:

- Healthcare delivery and support staff exposed to known or suspected pandemic patients.
- Medical transport of known or suspected pandemic patients in enclosed vehicles.
- Performing autopsies on known or suspected pandemic patients.



What's the main workplace safety guidance we should follow?

Medium Exposure Risk:

- Employees with high-frequency contact with the general population (such as schools, high population density work environments, and some high-volume retail).

Lower Exposure Risk (Caution):

- Employees who have minimal occupational contact with the general public and other coworkers (such as office employees).



Recall-Related Q & A

What precautions are needed for individuals who are taking the temperatures of employees, applicants or customers?

To protect the individual who is taking the temperature, you must first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction.



What precautions are needed for individuals who are taking the temperatures of employees, applicants or customers?

Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs. Further information can be found at OSHA's website, examining the guidance it provides for healthcare employees (which includes recommendations on gowns, gloves, approved N95 respirators, and eye/face protection).



Recall-Related Q & A

We are hiring employees during the outbreak; what steps can we take to protect our workforce?

The EEOC has confirmed that you may screen applicants for symptoms of the COVID-19 coronavirus after you make a conditional job offer, as long as you do so for all entering employees in the same type of job. You can also take an applicant's temperature as part of a post-offer, pre-employment medical exam after you have made a conditional offer of employment.



We are hiring employees during the outbreak; what steps can we take to protect our workforce?

The EEOC has also said you may delay the start date of an applicant who has COVID-19 or symptoms associated with it. According to current CDC guidance, an individual who has the COVID-19 coronavirus or symptoms associated with it should not be in the workplace. In fact, the EEOC has also said you may withdraw a job offer when you need the applicant to start immediately but the individual has COVID-19 or symptoms of it.



Recall-Related Q & A

What steps can we take to minimize risk of transmission for returning employees?

Repeatedly, creatively, and aggressively encourage employees and others to avoid exposure. The messages you should be giving to your employees are:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.



What steps can we take to minimize risk of transmission for returning employees?

- Avoid close contact with others, especially those who are sick.
- Refrain from shaking hands with others for the time being.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Perhaps the most important message you can give to employees: stay home when you are sick.



What steps can we take to minimize risk of transmission for returning employees?

As an employer, you should be doing the following:

- Ensure that employees have ample facilities to wash their hands, including tepid water and soap, and provide alcohol-based hand rubs containing at least 60% alcohol where hand-washing is not available.
- Accelerate your third-party cleaning/custodial schedules.
- Evaluate your remote work capacities and policies. Teleconference or use other remote work tools in lieu of meeting in person if available.
- Limit worksite access to only essential workers, if possible.



What steps can we take to minimize risk of transmission for returning employees?

- Consider staggering employee starting and departing times, along with lunch and break periods, to minimize overcrowding in common areas such as elevators, break rooms, etc.
- Have a single point of contact for employees for all concerns that arise relating to health and safety, and encourage workers to report any safety and health concerns.
- Discourage workers from using other workers' phones, desks, or other work tools and equipment.
- Regularly clean and disinfect surfaces, equipment, and other elements of the work environment.



Recall-Related Q & A

Can an employee refuse to come to work because of fear of infection?

Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” OSHA discusses imminent danger as where there is “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.”



Can an employee refuse to come to work because of fear of infection?

The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

Recall-Related Q & A

Are there any specific criteria we must follow when beginning to recall employees to work?

Seniority will be subject to the least amount of scrutiny. However, absent any collective bargaining agreement obligations stating otherwise, companies can recall employees per a performance-based system or per the operational needs of the company.



Are there any specific criteria we must follow when beginning to recall employees to work?

Companies using performance as a base should create an internal document outlining the specific parameters being used (e.g., attendance, overall grade on the employee's most recent evaluation) and the order in which employees will be recalled based on the selected standards. The list should then be reviewed to ensure the criteria do not have a disparate impact on any specific group. Similarly, when recalling employees based on operational need, the employer should be prepared to justify why those being recalled (versus those not being recalled) are needed by the business at that time.



Are there any specific criteria we must follow when beginning to recall employees to work?

Employees Returning from Leave

In most situations, an employee returning after taking paid leave under the EPSLA or EFMLEA will be entitled to return to the same or an equivalent position to the same extent as an employee returning from FMLA leave. Employees who would have been laid off for reasons unrelated to their taking leave are not protected. The burden will be on the employer to show that the employee would have been laid off regardless of taking the leave. If the employer subsequently recalls some laid off employees and does not recall the employee who took leave, it has the same burden of showing that the employee would not have been recalled if he or she never took the leave.



Are there any specific criteria we must follow when beginning to recall employees to work?

These restoration requirements do not apply to employers with fewer than 25 employees if they can show that:

- The employee took leave to care for his or her son or daughter whose school or childcare was closed or unavailable;
- The employee's position no longer exists due to economic or operating conditions that:
 - › affect employment and
 - › are caused by a public health emergency (i.e., due to COVID-19 related reasons) during the employee's leave;

(continued)

Are there any specific criteria we must follow when beginning to recall employees to work?

- The employer made reasonable efforts to restore the employee to the same or an equivalent position;

AND

- If the employer's reasonable efforts to restore the employee fail, the employer makes reasonable efforts for a period of time to contact the employee if an equivalent position becomes available. The period of time is one year beginning on the date the leave ends or the date 12 weeks after the leave began, whichever is earlier.

In addition, the FMLA provisions regarding restoration of “key” employees apply to leave taken under the EFMLEA.





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Layoff and Recall Sample Policy *(see "Handouts")*



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Recall from Layoff or Furlough



Recall from Layoff or Furlough

As employers apply for the federal government Paycheck Protection Program (PPP), a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll during the COVID-19 crisis, they are also taking action to recall their laid off and furloughed employees.



Recall from Layoff or Furlough

To recall an employee from a laid-off or furloughed status, employers should send the employee a formal recall notice to return to work that the employee should complete before resuming work.

Recall from Layoff or Furlough

Some employers have reported employees who have been laid off or furloughed are declining the employer's invitation to come back to work due to the fact that the employee is earning more income on unemployment than they previously did working for the employer. Aside from income, the perceived safety of the employee and the employee's family provided by staying home is another motivator for employees to stay put.



Recall from Layoff or Furlough

However, if the employer has work and there is no known risk at the workplace of COVID-19, fear can't be the basis to refuse work and continue unemployment. If a copy of the recall notice to the employee is received by a state's unemployment agency, it's possible the agency will discontinue the employee's unemployment benefits due to the work available to the employee.



Recall from Layoff or Furlough

[Date]

[Name]

[Street]

[City, State, Zip]

Dear [Employee Name]:

I am pleased to notify you that [Company Name] once again has work available and would like to recall you and offer you back [your previous position/the following position]. We would like you to resume work on [date].

This offer letter supersedes any previous offer letter or terms of employment. Should you accept this offer of recall, the terms of your employment will be as follows:

Job Title: [Job Title]

Supervisor: [Supervisor Name]

Responsibilities will include but not be limited to: [Responsibilities or see attached job description]

Monthly Salary or Hourly Wage: \$[amount]

Employment Classification: [Full-time/Part-time] and [Exempt/Nonexempt]

Employment is at-will, meaning you are not guaranteed employment for any period of time and either the Company or you can end the relationship at any time, with or without notice, and with or without cause.



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Recall from Layoff or Furlough

Your seniority will not be affected, and your benefits will be restored without condition. Your previously accrued but unused paid time off and sick leave, if applicable, will also be available upon your return. The Company may modify job titles, pay, and benefits from time to time as it deems necessary.

We're committed to doing everything we can to maintain a safe and healthy workplace. [Spell out the safety methods the company has put in place (e.g. scheduled handwashing, frequent disinfection of surfaces, social distancing rules, reduced customer capacity, staggered shifts, or more extreme measures if warranted by your industry)]. We are relying heavily on CDC and local health department information in establishing safe working conditions and will continue to make our best efforts to keep the workplace safe.

To accept the position offered above and be recalled to work, please return a signed and dated copy of this letter by [due date]. If you are receiving this as a paper document, we have included two copies, so you have one for your records. If this letter is not signed and returned by that date, we will assume you are turning down this offer to return to work and we will treat this as a voluntary quit. If you are declining this offer for a COVID-19 related reason, please specify why.

You may contact me if you have any questions or concerns about our current safety procedures or your personal safety, or if you need any type of assistance to be able to return to work.

Recall from Layoff or Furlough

Sincerely,

[Company representative signature]

[Name]

Check one box below. This can be done by clicking in the box within the Word document if you are reviewing and returning this offer letter electronically:

- I accept the terms of this recall letter and will return to work.
- I decline recall.
- I decline recall for a COVID-19 related reason due to: _____

_____.

(If signing electronically, type your full name followed by “e-signed.”)

Signature: _____

Name (print): _____

Date: _____





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CDC and Recall and Taking Employee Temperatures



CDC and Recall and Taking Employee Temperatures

As employers prepare for the successful revitalization of their business, conversations around ensuring the safety of employees as they return to the workplace have begun. One of the measures some employers are considering includes taking temperatures of employees.

CDC and Recall and Taking Employee Temperatures

Generally, measuring an employee's body temperature is a medical examination under the Americans with Disabilities Act (ADA), and thus is prohibited. Because the Centers for Disease Control and Prevention (CDC) acknowledged community spread of COVID-19 and issued precautions, the EEOC issued guidance temporarily relaxing its position on the topic and allowing employers to measure employees' body temperature.

CDC and Recall and Taking Employee Temperatures

The CDC or OSHA may issue further guidance on this topic.

Information below is as of April 15, 2020.

CDC and Recall and Taking Employee Temperatures

For employers opting to take employees' temperatures, the following procedures are recommended:

- Establish a threshold for which employers will not permit employees to work onsite; the CDC considers someone to have a fever if their temperature is greater than 100.4 degrees Fahrenheit.
- Identify a private room where employee temperatures can be taken. This is important to ensure the privacy of all employees and the outcome of their results.



CDC and Recall and Taking Employee Temperatures

- Determine who will be responsible for taking employee temperatures and ensure this person is properly trained, wearing personal protective equipment, and properly sanitizing the testing area. Some organizations might also include an onsite nurse, occupational health or safety directors in this process. Individuals who are taking employees' temperatures should have the authority to send employees home if their temperature is above the designated threshold.
- Develop a staggered start time (if needed) to accommodate the extra time it will take to get multiple employees tested before they can begin work.



CDC and Recall and Taking Employee Temperatures

- Communicate expectations to employees in advance. Inform employees of the new process, why it is important, where and when temperatures will be taken, and how information will be kept private. Employers should also communicate what will happen if an employee has a fever and consequences if an employee refuses to have his or her temperature checked.
- Calibrate and test the thermometer being used daily. To minimize the risk of spreading germs, touchless thermometers are recommended.
- Keep a record of an employee's temperature if you are sending that individual home due to his or her temperature being above the designated threshold. That record must be maintained confidentially.



CDC and Recall and Taking Employee Temperatures

- Ensure employees practice social distancing while awaiting their temperature to be checked.
- Time spent waiting for temperatures to be checked is considered compensable work time.

Employers should also be aware that some individuals with COVID-19 do not have a fever. Employers who are considering implementing temperature checks who are unable to follow these recommended procedures may wish to consult with their legal counsel to ensure defensibility of their process.

CDC and Recall and Taking Employee Temperatures

Options for Business

The CDC adds some employers may apply more stringent criteria to allow staff members to return to work, which may be based on whether a “higher threshold to prevent transmission is warranted.”

CDC and Recall and Taking Employee Temperatures

These could include requiring:

- A longer time after recovery before an employee returns to work, *and/or*
- Requiring employees are tested for COVID-19, then adhering to the guideline's criteria before they are allowed to return



CDC and Recall and Taking Employee Temperatures

For healthcare providers and those who work in critical infrastructure or those with “high-value human assets (i.e. military) where introduction of COVID-19 could cause major disruptions or reduce national security,” separate guidelines have been created.

CDC and Recall and Taking Employee Temperatures

EMPLOYERS SHOULD REQUIRE ANY STAFF MEMBER WHO BECOMES ILL DURING THE WORKDAY TO GO HOME IMMEDIATELY. DISTANCING AS MUCH AS POSSIBLE, MAINTAINING CLEAN SURFACES, AND WEARING MASKS OR OTHER PERSONAL PROTECTIVE EQUIPMENT (PPE) IF DEALING WITH THE PUBLIC SHOULD ALSO BE REQUIRED.



CDC and Recall and Taking Employee Temperatures

How can businesses recall workers?

Organizations should look to recall staff members on a case-by-case basis. They may consider bringing back employees who have had no symptoms of COVID-19 during their furlough/layoff initially.



CDC and Recall and Taking Employee Temperatures

The next wave of staffers for recall could be based on the CDC criteria: staff members who were ill and have recovered, either from COVID-19 or another illness, could be returned to work based on the timelines and guidelines provided above. Asymptomatic employees who tested positive for COVID-19 but did not fall ill could also be returned following the CDC protocols.

CDC and Recall and Taking Employee Temperatures

When returning these staffers to the job, safe work practices should be observed. Businesses may consider taking employees' temperatures before they enter the building, but should remember that not all COVID-19 patients experience a fever. Employers should require any staff member who becomes ill during the workday go home immediately. Distancing as much as possible, maintaining clean surfaces, and wearing masks or other personal protective equipment (PPE) if dealing with the public should also be required.





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Failure to Return to Work

Failure to Return to Work

The best process to follow is to complete and send the letter previously addressed in the Recall Letter section. If you receive a decline without a COVID-19 related reason, you should proceed with the letter which follows. You should also notify your state unemployment agency in writing and send a copy to the employee.



Failure to Return to Work

If you receive a decline with a COVID-19 related reason, you should request the appropriate documentation depending on the COVID-19 issue that was identified. Many of these situations are covered by the FFCRA and those rules must be adhered to.

Here are the most common COVID-19 reasons:

Failure to Return to Work

1. I have been diagnosed with COVID-19.
2. I am experiencing any of the following symptoms:
 - Cough
 - Fever
 - Tiredness
 - Difficulty Breathing
3. I am under a quarantine or isolation order from a governmental authority or a health care professional.
4. A member(s) of my household is diagnosed with COVID-19.
5. I have a son or daughter who is unable to attend school or their place of care because it is closed, or their childcare provider is unavailable due to COVID-19.



Failure to Return to Work

[Date]
[Name]
[Street]
[City, State, Zip]

Dear [Employee Name]:

As of [date], you have not responded to [Company Name] 's recall notice by agreeing to return to work following a temporary layoff or furlough, nor have you specified why you cannot return to work due to a COVID-19 related reason. Failure to respond to your recall to work notice indicates that you are no longer interested in employment with us and that you have voluntarily terminated your employment with [Company Name].

Therefore, your termination of employment is effective [date]. You will receive payment for any unused, accrued leave that may have been earned (per company policy). Your final paycheck/statement will be mailed to you/direct deposited by [date]. Notification of your rights to continue your health insurance through COBRA and termination information from our retirement programs will be sent to you in a separate mailing.

If there were any circumstances that prevented you from contacting us, please notify [Name, Phone Number, Email] no later than [date]. We wish you the best in your future endeavors.

Sincerely,

[Name]
[Title]

cc: Personnel File



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Failure to Return to Work

If the employee has specified a COVID-19 reason other than fear previously addressed, what do you do? If the employee indicated reason 1, 2 or 4 applies, you probably shouldn't let them return. If the reason is 3 or 5 and they can't telework, you can't force them to return.





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COVID-19 and Unemployment Insurance: How to Manage Employees who Decline to Return to Work

Unemployment insurance and employees who decline to return to work

In response to COVID-19 and its economic consequences, the state and federal governments have expanded unemployment insurance funding and coverage. As a result, employers are facing previously uncommon questions, as more employees have sought and received benefits.

One of those questions, for example, arises when employers once again have a need for work previously performed by employees who were laid off due to COVID-19, or who perhaps were sent home so the employer's facility could be sanitized. What happens when employers recall those employees to work, but they refuse to come back in order to keep receiving benefits?



Unemployment insurance and employees who decline to return to work

Under standard unemployment insurance rules, when employees quit work or refuse an offer of work without good reason, they may become ineligible for benefits. Be aware that most states consider refusal to be a “good reason” if the refusal is based on a COVID-19 reason as specified by that state. Further, if the offer of work is refused in order to keep receiving unemployment benefits, the individual could be found to have committed fraud on the state unemployment insurance system.



Unemployment insurance and employees who decline to return to work

Thus, unemployment insurance claimants must file each week to receive their benefits. When they do, they are asked if they refused an offer of work, such as an employer recalling them back into work when business operations resume. If they answer “yes,” the unemployment insurance staff will investigate to determine whether the refusal was with or without good cause.



Unemployment insurance and employees who decline to return to work

However, employers that believe claimants refused the recall offer in order to keep obtaining benefits can take another step by submitting an “eligibility notice.” The eligibility notice provides additional information to the unemployment insurance staff to assist them in determining whether the employee remains eligible for benefits or if the refusal constituted fraud.





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Eligibility Criteria for COVID-19 Unemployment Benefits

Minnesota Eligibility Criteria for COVID-19 Unemployment Benefits

- You have temporarily or permanently lost your job or had your hours reduced because of COVID-19.
- A healthcare professional or health authority recommended or ordered you to avoid contact with others due to COVID-19.
- You have been ordered not to come to their workplace due to an outbreak of COVID-19.
- You have received notification from a school district, daycare, or other childcare provider that either classes are canceled or your usual childcare is unavailable, as long as you made a reasonable effort to find other childcare and requested time off or other accommodation from your employer and no reasonable accommodation was available.



Wisconsin Eligibility Criteria for COVID-19 Unemployment Benefits

If the claimant is perceived by an employer as exhibiting COVID-19 symptoms preventing a return to work or the claimant is quarantined by a medical professional or under local, state or federal government direction or guidance, and one of the following applies:

Wisconsin Eligibility Criteria for COVID-19 Unemployment Benefits

- a. The employer has instructed the claimant to return to work after the employee no longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the quarantine is over.
- b. The employer has not provided clear instruction for the claimant to return to work.
- c. The claimant would be available for other work with another employer but for the perceived COVID-19 symptoms preventing a return to work or the quarantine.



Wisconsin Eligibility Criteria for COVID-19 Unemployment Benefits

If I impose a self-quarantine because of the coronavirus, will I be eligible for unemployment benefits?

In most cases, no. Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. In this example, the individual – not the employer – is choosing not to work and, therefore, would be ineligible.



Wisconsin Eligibility Criteria for COVID-19 Unemployment Benefits

My child is off from school and I have to stay home to care for them. May I receive unemployment benefits?

If you are capable of performing full-time work if it is made available to you, you would be considered available for work and may be eligible for unemployment.



Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

Can I get unemployment benefits if I am laid off due to issues related to COVID-19?

Yes. Iowa unemployment benefits (“Benefits”) are available to individuals who are unemployed through no fault of their own. If an employer must shut down operations and no work is available, its employees would be eligible for unemployment benefits if they meet the monetary criteria.



Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

If an employer lays off employees due to the loss of production caused by COVID-19, will the employees be eligible for unemployment insurance benefits?

Yes. Benefits are available to any individual who is unemployed through no fault of his/her own. If an employer must lay off employees due to the loss of production caused by COVID-19, individuals may be eligible for unemployment benefits if they meet the monetary criteria.



Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

Can an employer require a worker to stay home for the COVID-19 incubation period?

Yes. Your employer can require you to stay at home for 14 days if you have traveled abroad or had contact with someone who visited an affected region.



Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

If an employee is in mandatory quarantine because of suspicion of having COVID-19, will they be eligible for unemployment benefits?

If the suspicion of having COVID-19 is legitimate and the facts show there is a high likelihood of being infected, the worker may be eligible for benefits for the incubation period of the virus.

Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

What if I have a fear of work or doing my job because I fear that I may come into contact with COVID-19? I don't have an underlying medical condition; I just don't want to work while this is going on. If I leave work or refuse to work, would I be eligible for unemployment benefits?

No, the individual – not the employer – is choosing not to work and therefore would be ineligible.



Iowa Eligibility Criteria for COVID-19 Unemployment Benefits

What if my dependent family member or child has school cancellations and I have to stay at home and care for them, would I be eligible for unemployment benefits?

Please contact your employer regarding potential telecommuting, sick leave, PTO, FMLA, disability and other options they may be offering. If those options are not available, you may file for unemployment insurance benefits to determine your eligibility.



South Dakota & North Dakota Eligibility Criteria for COVID-19 Unemployment Benefits

Will my employees be eligible for benefits if they cannot work even if my business remains open and I have work for them?

Yes, generally your employees will be eligible for benefits if they cannot report for work because they no longer have childcare available to them.



South Dakota & North Dakota Eligibility Criteria for COVID-19 Unemployment Benefits

Would I be eligible for Unemployment Insurance benefits if I am quarantined and cannot work?

Yes, if you are quarantined and physically able to work but cannot work from the quarantine location due to other reasons, you would be eligible to receive benefits based upon recent federal guidance relating strictly to COVID-19.



South Dakota & North Dakota Eligibility Criteria for COVID-19 Unemployment Benefits

Would I be eligible for Unemployment Insurance benefits if I become ill with COVID-19 and cannot work?

Yes, if you cannot work due to contracting COVID-19 but will be returning to your employer, you would be eligible to receive benefits based upon recent federal guidance relating strictly to COVID-19.



South Dakota & North Dakota Eligibility Criteria for COVID-19 Unemployment Benefits

Would I be eligible for benefits if my employer shuts down or lays me off because of the COVID-19 situation?

If your employer shuts down or lays you off due to lack of work caused by the impact of COVID-19 on the business, you will generally be eligible for Unemployment Insurance benefits.



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Nebraska Eligibility Criteria for COVID-19 Unemployment Benefits

Employers will be eligible if they need to stay home because of:

- possible exposure of the worker or an immediate family member to Covid-19
- quarantine ordered by a public entity or health care provider
- caring for a family member in quarantine
- closure of schools or daycare due to Covid-19





NEW!

North Risk Partners Value-Added Services Hotline **(888) 667-4135**

Call the hotline to get personalized advice from HR and safety professionals on a variety of topics, including state and federal compliance, employer best practices, workplace programs and more.

*You may also reach Synergy Human Resources by emailing hr@northriskpartners.com



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