



THE COVID-19 PANDEMIC

A RESOURCE FOR
EMPLOYERS

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BY THE CRITCHFIELD COVID-19 TASK FORCE

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The COVID-19 Pandemic – A Resource for Employers

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The COVID-19 (Coronavirus) pandemic has raised complex and unprecedented issues for employers to consider. Advice from federal health officials changes daily. Some of the key employment issues are discussed below. We will update this article, as needed, as new developments with COVID-19 and the government's response to the virus continue to unfold.

ADA and COVID-19

In this section, we discuss the impact of the Americans with Disabilities Act (ADA) on employment strategies in preparing for and handling the COVID-19 pandemic. The ADA impacts these strategies in several ways: (1) it regulates the employer's ability to ask applicants and employee disability-related questions, and to require medical examinations; (2) it prohibits covered employers from excluding disabled employees from the workplace unless the employees impose a "direct threat;" and (3) it requires employers to provide reasonable accommodations for applicants and employees with disabilities unless doing so would impose an undue hardship.

In an effort to help employers remain compliant with these ADA requirements while taking steps to deal with COVID-19, the U.S. Equal Employment Opportunity Commission (EEOC) posted a [statement](#) on its website home page under the caption, "What You Should Know about the ADA, the Rehabilitation Act, and the Coronavirus." The post includes the following:

The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the Centers for Disease Control (CDC) or state/local public health authorities about steps employers should take regarding COVID-19.

The EEOC has provided [guidance](#), consistent with these workplace protections and rules, which can help employers implement strategies to navigate the impact of COVID-19 in the workplace.

The linked guidance document, titled, "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act," is referred to below as the "EEOC Guidance."

The first 11 questions and answers below are based upon the EEOC Guidance.

(Updated January 7, 2021)

1. May an ADA-covered employer send employees home if they display COVID-19-like symptoms during a pandemic?

Yes. The CDC indicates that employees who come to work ill or who become ill with symptoms of COVID-19 at work (fever, cough, shortness of breath, difficulty breathing, muscle pain, sore throat, new loss of taste or smell, nausea, diarrhea) should leave the workplace. If the employee cannot leave immediately, he or she should be separated from other employees immediately. If the employee later is confirmed to have COVID-19, the employer should inform fellow employees of their potential exposure, but the employer must maintain the confidentiality of the ill employee, as required by the ADA. The employer cannot identify the ill employee.

(Updated January 7, 2021)

2. During a pandemic, how much information may an ADA-covered employer request from employees who report feeling ill at work or who call in sick?

ADA-covered employers may ask such employees if they are experiencing COVID-19-like symptoms, such as fever, cough, shortness of breath, difficulty breathing, muscle pain, sore throat, or new loss of taste or smell. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

(Updated January 7, 2021)

3. During a pandemic, may an employer take its employees' temperatures to determine whether they have a fever?

Generally, measuring an employee's body temperature is a medical examination not permitted under the ADA, with limited exceptions. However, the EEOC has stated that in a pandemic recognized by federal public authorities (such as COVID-19), employers may measure body temperature of employees. This must be done in a private and confidential manner. Employees refusing to take their temperature, or who refuse to permit their temperature to be taken, can be sent home from work, according to the EEOC. This is a temporary allowance that will not remain after the pandemic.

Employers should be aware that some people with COVID-19 do not have a fever.

(Updated January 7, 2021)

4. When an employee returns from travel during a pandemic, must an employer wait until the employee develops COVID-19 symptoms to ask questions about exposure to COVID-19 during the trip?

No. These would not be disability-related inquiries. If the CDC, state, or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have COVID-19 symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal.

Similarly, with respect to the current COVID-19 pandemic, employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons. This can include barring employees from returning to an office environment for a recognized quarantine period under certain circumstances.

(Updated January 7, 2021)

5. During a pandemic, may an ADA-covered employer ask employees who do not have COVID-19 symptoms to disclose whether they have a medical condition that the CDC says could make them especially susceptible to COVID-19 complications?

No. Making disability-related inquiries or requiring medical examinations of employees *without* symptoms is prohibited by the ADA. However, under these conditions, employers should instruct employees who experience COVID-19-like symptoms to stay at home, which will benefit all employees including those who may be at increased risk of developing complications.

If an employee voluntarily discloses (without a disability-related inquiry) that he/she has a specific medical condition or disability that puts him/her at an increased risk of complications if he/she contracts COVID-19, the employer must keep this information confidential. The employer may ask him/her to describe the type of assistance he/she thinks will be needed (e.g. telework or leave for a medical appointment). Employers

should not assume that all disabilities increase the risk of COVID-19 complications. Many disabilities do not increase this risk (e.g. vision or mobility disabilities).

If COVID-19 becomes more severe or serious according to the assessment of local, state, or federal public health officials, ADA-covered employers may have sufficient objective information from public health advisories to reasonably conclude that employees will face a direct threat if they contract COVID-19. Only in this circumstance may ADA-covered employers make disability-related inquiries or require medical examinations of asymptomatic employees to identify those at higher risk of COVID-19 complications. However, as was stated in Question 3, the EEOC has expressly permitted employers to measure employees' temperatures in order to combat the spread of COVID-19. Measuring employees' temperatures usually is prohibited under the ADA, but because COVID-19 poses a direct threat to the safety of others in the workplace, this type of medical test is permitted at this time.

(Updated January 7, 2021)

6. May an employer encourage employees to telework (i.e., work from an alternative location such as the home) as an infection-control strategy during a pandemic?

Yes. Telework is an effective infection-control strategy that is also familiar to ADA-covered employers as a possible reasonable accommodation.

In addition, employees with disabilities that put them at high risk for complications of COVID-19 may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

In its most recent guidance, the CDC stated that persons who are immunocompromised or with a serious underlying health condition, particularly a condition affecting heart or lung function, should stay home and away from other people.

(Updated January 7, 2021)

[NOTE: See Question 14, below, for additional information regarding work from home.]

7. During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace?

Yes. Requiring infection control practices, such as regular hand washing, coughing, and sneezing etiquette, and proper tissue usage and disposal do not implicate the ADA. Such practices were required in all workplaces permitted to remain open under Ohio's Stay at Home Order. Although Ohio's Stay At Home Order has been lifted, such practices remain on the Ohio Department of Health's Business/Employer - COVID-19 Checklist which is intended to be post-mandate guidance for Ohio workplaces. The Business/Employer - COVID-19 Checklist can be found [HERE](#).

(Updated January 7, 2021)

8. During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., facemasks, gloves, or gowns) designed to reduce the transmission of pandemic infection?

Yes. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

Ohio Department of Health's Business/Employers - COVID-19 Checklist restates that employers have been ordered to require their employees to wear masks, unless they are prohibited by law or regulation in the particular industry, they are in violation of documented industry standards or safety policies, they are not advisable for health reasons, or there is a practical reason for a mask not to be worn. Masks are not required when the employee works alone in an assigned work area.

(Updated January 7, 2021)

9. During a pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship?

Yes. An employer's ADA responsibilities to individuals with disabilities continue during a pandemic. Only when an employer can demonstrate that a person with a disability poses a direct threat, even after reasonable accommodation, can it lawfully exclude him/her from employment or employment-related activities.

If an employee with a disability needs the same reasonable accommodation at a telework site that he/she had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

Example: An accountant with low vision has a screen-reader on her office computer as a reasonable accommodation. In preparation for telework during a pandemic or other emergency event, the employer issues notebook computers to all accountants. In accordance with the ADA, the employer must provide the accountant with a notebook computer that has a screen-reader installed.

(Updated January 7, 2021)

10. During a pandemic, may an employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

Example: During a pandemic, an employer directs a supervisor to contact an employee who has not reported to work for five business days without explanation. The supervisor asks the employee why he is absent and when he will return to work. The supervisor's inquiry is not a disability-related inquiry under the ADA.

11. May an ADA-covered employer require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

Yes. Such inquiries are permitted under the ADA because either they would not be disability-related or, because the pandemic is truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

As a practical matter, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have or has recovered from COVID-19.

(Updated January 7, 2021)

[CCJ NOTE: This concludes the list of questions and responses excerpted from the EEOC Guidance. The following information is derived from other sources.]

12. What should an employer do if a symptomatic employee comes into contact with other employees?

The employer should find out from the symptomatic employee who he/she has had close contact with at work. The CDC defines “close contact” as someone being within 6 feet of an infected person, for a cumulative total of 15 minutes or more, over a 24-hour period. Some factors to consider when determining exposure include proximity, the duration of exposure, and if the symptomatic employee has coughed or sneezed while close to someone. The CDC’s newest recommendation is that those in “close contact” should be sent home to self-monitor for COVID-19 symptoms (fever, cough, shortness of breath, difficulty breathing, muscle pain, sore throat, new loss of taste or smell, nausea, diarrhea), and to call a health care provider if symptoms develop. The CDC currently recommends a 14-day quarantine period, but a 10-day quarantine period is also acceptable if the person in quarantine experiences no symptoms of COVID-19 during that time. Under Ohio law, those ordered home by their employer for COVID-19 reasons during the pandemic would be eligible immediately for unemployment benefits.

(Updated January 7, 2021)

Other Workplace Issues

13. What if an employee has a sick family member at home with COVID-19?

Originally, the CDC recommended that employees who are asymptomatic but currently have a sick family member at home with the COVID-19, should notify their supervisor and refer to the CDC guidance for how to assess their potential exposure. Specific guidance on this issue has not been consistent through the pandemic, but an acceptable response is to require the employee to stay away from the office until an appropriate quarantine period (outside of close contact with the ill family member) has run its course. If the employee is unable to work from home, under current Ohio law the employee generally would be eligible for unemployment benefits if required by the employer to stay at home.

(Updated January 7, 2021)

14. Should an employer allow its employees to work from home? What are the issues?

In certain business sectors such as manufacturing and transportation, working remotely is not an option for most employees. Other businesses might allow for remote work. The Ohio Department of Health tells employers to permit work from home when possible. Following are some issues to consider:

- **Planning:** If an employer is going to permit its employees to work from home, the employer should plan ahead for everything they might need at home. This can include computers, phones, office supplies, and similar materials.
- **Computer security:** The employer should rely upon IT professionals to make sure work-related information is managed in a secure manner, and that confidential information is just as secure as at the office.
- **Personal electronic devices:** It is preferred that remote workers use company-owned devices. Recovering work information from a personally owned device can be difficult. If an employee must use his or her own device, the employer

should take measures to ensure the device is secure and that all information may be recovered by the company and deleted by the user when appropriate.

- **Supervision:** The employer needs to trust its employees will fulfill their responsibilities from home. Reasonable productivity should be expected, but the employer should not stress about counting every minute. It is advised that a supervisor talk to an employee at least daily to ensure the employee still feels connected to the business.
- **Selection of employees:** In the absence of a union contract, employment agreement or other binding contractual commitment, the employer is free to assign some employees to work from home and keep some at the office, based upon reasonable business needs and public health considerations.
- **Pay:** Non-exempt employees must be paid for all time worked. With few exceptions, exempt employees must be paid their full week's salary for any week in which they perform any work.

(Updated January 7, 2021)

15. Should an employer consider altering its sick leave or paid time off (PTO) policy?

Yes. This is an unprecedented event. Many disruptions will occur, in people's business and social lives. It will not benefit business for people to come to work sick. Employers should be flexible. Employers should require employees to stay home if showing signs consistent with COVID-19, and they should require employees to stay home if they have been in close contact with someone with COVID-19. To encourage employees to stay home if they are sick or have been exposed to COVID-19, employers should consider suspending attendance policies and deviating from sick leave and PTO policies, provided that any such deviations have limited and defined published parameters, in order to avoid the creation of a precedent.

The Ohio Department of Health tells employers that they should tell employees to stay at home until at least 10 days have passed since symptoms first began AND at least 24 hours have passed since there has been no fever (without the use of medication) AND other symptoms have improved. Or, in the alternative, if a doctor confirms the cause of a fever or other symptoms is not COVID-19 and approves an employee's return to work, then the employee can return.

Under prior law, an employer is not required to pay hourly employees when they do not work, except as set forth in the employer's sick leave or PTO policy. On March 18,

2020, Congress passed and President Trump signed the Families First Coronavirus Response Act, which is effective April 1, 2020 to December 31, 2020, which provides for paid sick leave of up to two weeks in many COVID-19-related instances, including caring for children at home because of school closures. Payments under this new law will be recoverable by the employer through tax credits. Note that leave under the Families First Coronavirus Response Act will change in 2021. Please see Question 24 for a discussion of the legislation.

An employer who does not currently have a generous sick leave can adopt such a policy on a one-time basis without binding itself to such a policy forever.

Among the changes to consider are:

- Creating a sick leave policy, if the employer does not already have one, or approving a current sick leave policy on a one-time basis for COVID-19;
- Providing additional paid time off;
- Permitting time off without debiting sick leave or PTO accounts;
- Permitting time off to care for sick family members. This is already a requirement for businesses operating under the Family Medical Leave Act (FMLA), and its requirements are expanded under certain circumstances due to COVID-19, as explained further in Question 20.

(Updated January 7, 2021)

16. Can an employer require employees who test positive for COVID-19 to notify the employer, even if the employee is working remotely at the time?

Yes. This information is needed so the employer can notify other employees who may have been exposed, and to comply with health department reporting requirements.

17. Must employees be paid if they are sent home or if they take leave for reasons related to COVID-19?

Employers with fewer than 500 employees are covered by the Families First Coronavirus Response Act, which is effective April 1, 2020 to December 31, 2020. See Critchfield's summary of the Act [HERE](#). Note that leave under the Families First

Coronavirus Response Act changed in 2021. Please see Question 24 for a discussion of the legislation.

Additionally, in many circumstances, a person sent home for COVID-19-related reasons may be eligible for unemployment compensation after the expiration of any other pay.

(Updated January 7, 2021)

18. Could an employer receive an OSHA citation if an employee contracts COVID-19?

Not necessarily. The federal Occupational Safety and Health Act (OSHA) requires employers to provide a safe working environment for employees. Currently, there is no specific OSHA standard covering COVID-19.¹

However, according to OSHA some OSHA requirements that may apply to prevent occupational exposure to COVID-19 include:

- OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection.²
 - When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134).³
- The General Duty Clause, Section 5(a)(1) of OSHA, 29 USC 654(a)(1), which requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”⁴
- OSHA’s Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit COVID-19. However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard.⁵

¹ <https://www.osha.gov/SLTC/covid-19/standards.html#directives>, Accessed December 29, 2020.

² <https://www.osha.gov/SLTC/covid-19/standards.html#directives>

³ <https://www.osha.gov/SLTC/covid-19/standards.html#directives>

⁴ <https://www.osha.gov/SLTC/covid-19/standards.html#directives>

⁵ <https://www.osha.gov/SLTC/covid-19/standards.html#directives>

Employers are prohibited from retaliating against workers for raising concerns about safety and health conditions. Accordingly, if an employee raises a concern about being exposed to COVID-19 at work, it is imperative that the employer not retaliate against the employee.

19. Can an employee receive workers' compensation benefits if he/she contracts COVID-19 while at work?

It is possible, but an employer should approach such claims with caution. An occupational disease claim generally results from repeated work-related exposure per Ohio Revised Code §4123.01(F). The work-related exposure has a harmful effect on the employee and there is a causal relationship between the exposure and the harmful effect that is confirmed by a medical diagnosis. The conditions of employment create a greater hazard to the worker than to the general public. Mere exposure to or contact with a disease-causing agent is insufficient to allow an occupational disease claim.

Given these limitations, it might be difficult for an employee to be entitled to workers' compensation benefits due to suspected exposure to COVID-19 in the workplace (with health care workers and first responders possibly being the exemptions.) If an employee files a workers' compensation claim relating to COVID-19, the employer should seek the advice of legal counsel as to whether the employer should dispute the claim.

Readers should be aware, however, that legislation has been introduced in the Ohio General Assembly which would create a rebuttable presumption that a person required to work outside the home while Ohio is declared to be in a state of emergency, and who contracts COVID-19 during that time, would be eligible for workers' compensation benefits unless the employer could establish that the virus were not contracted at work. We will monitor this legislation and will report if it is passed into law.

(Updated January 7, 2021)

20. Does FMLA apply to absences related to COVID-19?

Leave taken by an employee for the purpose of avoiding exposure to COVID-19 would not be protected under the FMLA. However, COVID-19 would qualify as a serious health condition for FMLA purposes if the patient has been hospitalized or

incapacitated for more than three days with continuing treatment by a health care provider. If an FMLA-qualifying employee is diagnosed with the virus, or if the employee is needed to care for a family member with the virus, the employer should designate the employee's leave as FMLA leave, and send the required notices to the employee. If medical certification of the illness is not immediately available, it is recommended that the designation be labeled "Conditional, pending receipt of medical certification," and revised later if appropriate.

In addition, FMLA was amended in the Families First Coronavirus Response Act, which is effective April 1, 2020 to December 31, 2020. The Act created a new, temporary type of emergency FMLA leave intended to cover the sole instance of a parent staying at home to care for a son or daughter whose school or day care provider was closed due to the COVID-19 outbreak. After a two-week unpaid waiting period, an employee is entitled to two-thirds of regular pay for up to an additional 10 weeks, subject to some income caps. Employers can credit their federal tax obligations (income tax withholdings and Social security tax withholdings), dollar for dollar, to offset this cost. If the offset does not fully recover the amounts paid for sick pay and expanded FMLA, an employer can seek a prompt refund for any remaining deficit. Note that leave under the Families First Coronavirus Response Act changed in 2021. Please see Question 24 for a discussion of the legislation.

(Updated January 7, 2021)

21. *Should an employer ban employees from traveling during the pandemic?*

An employer can certainly prohibit its employees' work-related travel. However, banning employees from personal travel may violate restrictions on the employer's ability to control employees' off-duty activities. Instead, an employer should notify employees that they may be required to quarantine for 14 days before returning to work after returning from travel to areas designated as high-density outbreak areas. The Ohio Department of Health has released a travel advisory urging that those entering Ohio after travel to a state reporting positive testing rates of 15% or higher for COVID-19 self-quarantine for 14 days. To view Ohio's COVID-19 travel advisory, click [HERE](#).

(Updated January 7, 2021)

22. Can an employee be fired for refusing to come to work because of concerns about contracting COVID-19?

This situation requires a case-by-case analysis. If the employee has a reasonably objective concern about exposure to a dangerous condition for which the only reasonable accommodation would be to stay away from the workplace, termination would not be appropriate. However, if the danger is merely potential, and the concerns are not objectively reasonable, termination may be defensible. Caution is urged, and legal counsel should be consulted prior to termination under these circumstances.

In a case where an employee has been receiving unemployment benefits declines a request to return to work, employers are permitted to notify the Ohio Department of Job and Family Services that an offer has been made and rejected. A form for these purposes has been posted [HERE](#).

(Updated January 7, 2021)

23. If a group of employees refuses to work or is critical of the employer's policies, can they be terminated?

The National Labor Relations Act protects employees – even those in non-union shops – who engage in certain protected group activity, such as joining together for mutual aid and protection or complaining about dangerous work conditions. Discharge of employees in such situations would expose the employer to potential liability. Employers are advised to consult a labor attorney before taking any action against employees in such situations.

24. What is the Families First Coronavirus Response Act, and what does it Require Employers to do?

The Families First Coronavirus Response Act was signed by President Trump on March 18, 2020, and became effective on April 1, 2020. It expired December 31, 2020. More detailed information is available [HERE](#). The legislation provided two COVID-19-related, paid leave benefits for employees of employers with fewer than 500 employees, as well as a corresponding tax credit for employers.

- All employees, full and part-time, were entitled to up to two weeks of paid sick leave if the employee (a) was subject to a government quarantine or isolation order; (b) had been advised by a health care provider to self-quarantine; (c) was experiencing COVID-19-related conditions and is seeking a medical diagnosis; (d) was caring for a person subject to a government quarantine or isolation order or who has been advised by a health care provider to self-quarantine; (e) was caring for a son or daughter whose school or daycare is closed due to the pandemic, or (f) was experiencing any “substantially similar condition” specified by the U.S. Department of Health and Human Services as qualifying for emergency paid sick leave. This leave could have been taken prior to taking any other paid leave provided by an employer. Leave for reasons (a) through (c) were paid at the employee’s regular rate of pay. Leave for reasons (d) through (f) were paid at two-thirds of the regular rate of pay.
- Employees who had been employed more than 30 calendar days were entitled to emergency family medical leave to care for their children who were at home because their school or daycare were closed due to COVID-19. The first two weeks of this leave were unpaid, and the balance (up to 10 additional weeks) was paid at a rate of two-thirds of the regular rate of pay. Employees had reinstatement rights upon return to work.
- There were caps and limitations on how much overall paid leave a worker received under the paid leave and emergency family leave provisions.
- Some small businesses (fewer than 50 employees) could claim an exemption from providing paid leave for employees taking care of their homebound children if they could demonstrate that payment would jeopardize the viability of the business. This was intended to be a very narrow exemption.
- Employers could recoup amounts required to be paid under the legislation by offsetting their payroll tax obligations that were otherwise due to be remitted to the IRS. They also could receive a tax refund if the amount of paid leave exceeded payroll tax obligations.

As of January 1, 2021, FFCRA leave is no longer required, but if covered employers voluntarily provide these leave benefits through March 31, 2021, they are eligible to take the tax credit for the leave. However, if the employee has already used the maximum amount (80 hours) of paid sick leave, the employer may not take the tax credit for additional emergency paid sick leave provided in 2021.

(Updated January 7, 2021)

25. Can an employee continue his/her health coverage under a group plan with reduced hours or while on furlough or temporary layoff caused by the COVID-19 pandemic?

Under certain circumstances, yes, for employees in Ohio. On March 20, 2020, Ohio's Superintendent of Insurance ordered all insurers to comply with new requirements put in place in response to the COVID-19 pandemic. The new requirements may allow certain eligible employees to continue their health coverage even if their hours have been reduced below ordinary thresholds for eligibility, or if they have been temporarily laid off or furloughed due to the pandemic, so long as consistent with plan documents. For more information please see the article [Health Insurance Update: Flexibility for Ohio Employees and Employers During COVID-19](#).

(Updated January 7, 2021)

Current Status of Business Closings in Ohio

26. What has been closed in Ohio?

All businesses deemed non-essential were required to cease general operations at work pursuant to the Stay at Home Order of the Director of the Ohio Department of Health, effective from 11:59 p.m. March 23, 2020, until 11:59 p.m. May 2, 2020. Starting May 3, 2020, additional businesses were slowly permitted to reopen, subject to social distancing observances. This included personal services, dining, day care and related businesses. A current listing of public health orders governing specific businesses is available at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/public-health-orders/public-health-orders>.

The Ohio Department of Health has lifted many of the mandatory business requirements put in place in response to the COVID-19 pandemic, and has subsequently provided general guidance through a Businesses/Employers-COVID-19 Checklist, and specific guidance for certain sectors under Responsible Restart Ohio. For a list of specific sector requirements, click [HERE](#).

(Updated January 7, 2021)

Questions Relating to Unemployment

The following questions are based upon information provided by the Ohio Department of Job and Family Services and include typical questions asked by employers today.

27. Will workers qualify for unemployment benefits if the coronavirus (COVID-19) causes an employer to shut down operations or lay off employees?

New Ohio legislation expanded flexibility for Ohioans to receive unemployment benefits through March 13, 2021. Unemployment benefits will be available for eligible individuals who are requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19, even if they are not actually diagnosed with COVID-19. In addition, the waiting period for eligible Ohioans to receive unemployment benefits will be waived.

In addition, Federal Pandemic Unemployment Compensation was extended under the *Consolidated Appropriations Act, 2021*, to provide an additional \$300 weekly benefit to eligible claimants for the weeks between December 27, 2020, and March 13, 2021.

[NOTE: ODJFS expects to be able to issue Federal Pandemic Unemployment Compensation payments by the third week in January for PUA claimants who previously were approved to receive up to 39 weeks of benefits. System programming will be needed to apply the supplement for other claimants. All claimants will receive all benefits they are eligible for, retroactive to as early as December 27, 2020.]

(Updated January 7, 2021)

28. If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, will the employer's unemployment taxes increase?

For contributory employers, charges during Ohio's emergency declaration period will be mutualized, meaning the benefits will be charged to the state's mutualized account rather than the account of the individual employer whose employees filed for unemployment benefits. The mutualized account is funded by a tax collected at a uniform rate from all contributory employers. Employers who pay on a reimbursement basis may be eligible for relief of up to 50 percent from their standard dollar-for-dollar

payment obligations under the CARES Act signed by President Trump on March 27, 2020.

(Updated January 7, 2021)

29. *If an asymptomatic employee imposes a self-quarantine because of the coronavirus, will they 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. However, the facts of each circumstance are important. If the employer allowed this individual to telework, they would not qualify for benefits because they would not be unemployed. If the employer required the individual to stay home but did not offer telework, the individual might be eligible for benefits if they met the monetary and weekly eligibility criteria.

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

Yes, an executive order issued by Governor DeWine states that employees who are quarantined are considered to be unemployed. The Ohio General Assembly has enacted legislation incorporating this provision of the executive order.

(Updated January 7, 2021)

31. *If COVID-19 creates a situation that causes an employer to submit quarterly reports and/or payments late, will the filing deadline be extended?*

The filing deadline was not extended, however, an executive order issued by Governor DeWine waives penalties for late reporting and payments during Ohio's emergency declaration period.

(Updated January 7, 2021)

32. *Should employers pay out paid time off to employees that are being laid off?*

When/if PTO is paid at the time of layoff depends on what the company policy states. If a policy states it is due to be paid to the employee, be aware that doing so may delay the date the employee will first be eligible for unemployment benefits, which can eliminate the benefit of the waived waiting period for eligibility. If the layoff is anticipated to be temporary, the employees may wish to save the paid time off for their return. It is also likely to be less of a cash outlay for the employer if the paid time off is not all paid to all laid off employees at the same time.

This being said, it is unclear how the Ohio Department of Job and Family Services will treat an employer's non-payment of PTO for which an employee is otherwise eligible, so this answer, as with other answers, is subject to change based on future developments.

(Updated January 7, 2021)

What are the State and Federal Government Offering to Help Businesses Impacted by COVID-19?

33. Is there any financial help for small businesses?

Yes. The federal government has passed multiple pieces of legislation that can provide significant assistance to small businesses. The changes create new programs and expand existing ones. Programs available include:

Paycheck Protection Program (PPP). This program provides a forgivable loan to eligible small businesses affected by the COVID-19 pandemic. Loan amounts used for payroll and other qualified expenses during the relevant eight-week measuring period will be forgiven to the extent businesses keep (or re-hire) employees and maintain payroll. Additional information can be found [HERE](#).

While the application period for the initial PPP has closed, the program is revived through the *Consolidated Appropriations Act, 2021*, a new coronavirus relief package that was signed by President Trump on December 27, 2020, which sets forth the PPP 2.0 program. The PPP 2.0 allows new PPP loan requests from eligible businesses that didn't obtain a loan in the initial round, and it also allows eligible businesses that currently have a PPP loan or have had one previously who need additional support to obtain another PPP loan, or a "PPP second draw." Second draw loans are available to small businesses with less than 300 employees who can show a 25% or more drop in gross receipts in the first, second or third quarter of 2020 compared to the same quarter in 2019. Second draw loans are anticipated to be available within the month of January 2021.

Some changes that come with the revived PPP program include additional eligible expenses that qualify for forgiveness, automatic forgiveness of PPP loans under \$150,000, confirmation of tax deductibility for both PPP and PPP 2.0 loan forgiveness expenses, and more. March 31, 2021 is the new deadline to apply for and receive a PPP loan under the revived PPP program.

Employee Retention Tax Credit. This credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the

same quarter in the prior year. The credit is a 50% refundable payroll tax credit on up to \$10,000 of qualified wages per employee. Additional information can be found [here](#).

Economic Injury Disaster Loan (EIDL). This program offers funding of up to \$2 million in assistance per applicant. Unlike the PPP, loan amounts are not forgivable and come directly from the U.S. Treasury. Interest rates are equal to 3.75% for small businesses and 2.75% for qualifying nonprofits. Loan funds provide working capital and can be used in a variety of ways, including meeting ordinary and necessary financial obligations that cannot be met as a result of the pandemic. Additional information can be found [HERE](#).

Emergency EIDL Grants. The SBA is also offering emergency grants of \$10,000 for businesses with 500 or fewer employees. This grant money need not be repaid and can be used for things like: paying sick leave to employees unable to work, maintaining payroll, rent or mortgage payments, and repaying obligations that cannot be met due to revenue loss. All of the EIDL grant funds had been allocated, but through funding under the *Consolidated Appropriations Act, 2021*, this program will be reopened on a limited basis. In addition, EIDL advances are no longer taxable, nor do they offset forgiveness related to PPP loans.

Businesses impacted by the current health crisis can contact BusinessHelp@Development.Ohio.gov for more information. Additional details about the various SBA programs are available at [SBA.gov](https://www.sba.gov).

(Updated January 7, 2021)

34. Does my company qualify as a "small business" for purposes of the SBA Economic Injury Disaster Loan Program?

Size standards vary by industry and are generally based on the number of employees or the amount of annual receipts the business has. For more information please see <https://www.sba.gov/document/support--table-size-standards>

(Updated January 7, 2021)

35. *What about childcare services for medical workers that can't stay home?*

On March 17, 2020, Governor DeWine signed an order allowing temporary licenses to be issued to provide childcare for those working in healthcare, safety, or essential services during the COVID-10 outbreak. The licenses last for 120 days and can be obtained by existing child care centers or new ones created to fill a community need.

As of May 31, 2020, child care providers were permitted to reopen in accordance with the guidelines of Responsible Restart Ohio. Click [HERE](#) for the most recent child care guidelines.

(Updated January 7, 2021)

36. *Is there an alternative to layoffs for employers?*

SharedWork Ohio is an alternative that allows workers to remain employed and employers to retain staff during times of reduced business activity. Under a SharedWork Ohio plan, employers reduce hours to avert a layoff. The participating employee works the reduced hours, and the Ohio Department of Job and Family Services provides unemployment insurance benefits proportionate to their reduced hours.

For more information, visit JFS.Ohio.gov.

(Updated January 7, 2021)

37. *Are there any training opportunities for employees during the COVID-19 outbreak?*

The State of Ohio has a TechCred program that allows employees to complete training programs online. TechCred offers employers up to \$2,000 in reimbursement for every technology-focused credential earned by an employee, up to \$30,000 per employer.

The upcoming application period is open from January 4, 2021 to January 29, 2021, at TechCred.Ohio.gov. For further information, email Workforce@OWT.Ohio.gov.

(Updated January 7, 2021)

38. *Is there any relief for bars and restaurants?*

The Bar and Restaurant Assistance Fund was a grant program designed to assist Ohio's on premise liquor permit holders. Those who have had an active on premise permit as of the close-of-business October 23, 2020 were eligible to apply to receive \$2,500 per each unique business location. Applications for this program were accepted through December 30, 2020. The deadline, however, was recently extended until January 31, 2021.

The Ohio Department of Commerce instituted a one-time liquor buyback option to support bars and restaurants. Bars and restaurants were permitted return their unopened, high-proof liquor products to the agency where they purchased the product. The one-time Liquor Rebate Program ended on August 31, 2020.

Ohio also implemented an emergency rule to allow establishments with an existing on-premises liquor permit to sell and deliver alcohol, including high-proof liquor, in limited quantity of two drinks per meal in closed containers for off-premises consumption as set forth more fully in our post, "[Ohio Liquor Control Commission Emergency Rule.](#)" however, that rule expired on November 29, 2020.

(Updated January 7, 2021)

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