

Coronavirus Questions and Answers: What Do Employees Need to Know

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May 3, 2021

Updated May 3, 2021

While COVID-19 is first and foremost a public health crisis, it has increasingly become an economic crisis with devastating effects for workers across the country. Recommendations from public health experts and resulting government dictates have led Americans to implement “social distancing” in an effort to “flatten the curve” of the spread of the virus; in other words, avoiding coming into close contact with other individuals to slow the spread of COVID-19 to ensure that our hospitals are not stretched to the breaking point. These steps have rocked several industries, such as the hospitality, travel, retail, and service sectors, and have also had substantial ripple effects in industries that support those sectors, such as the marketing industry.

COVID-19 has left many vulnerable workers questioning what protections they have against employer actions linked to the pandemic. This article will attempt to address some common questions we have received from workers who have been affected by COVID-19. Readers should understand that the answers below do not attempt to address any moral obligations that employers may owe their employees, nor do they suggest wise decisions an employer may make to retain valuable employees over the long term. Instead, this article seeks only to outline an employer’s existing obligations under federal law relating to COVID-19.

If I am quarantined because of COVID-19, am I entitled to paid time off?

In general, the answer to this question is no: individuals who are quarantined because of COVID-19 are not entitled to paid time off. At the moment, federal law does not require employers to provide workers with paid sick leave (setting aside the question of whether a quarantine would qualify an employee for such leave). In addition, the federal Family and Medical Leave Act (“FMLA”) (a) does not entitle workers to paid leave; and (b) likely does not extend to preventative efforts like quarantine. In other words, while COVID-19 likely qualifies as a “serious health condition” that would entitle a worker to unpaid leave under the FMLA, an individual’s efforts to avoid contracting COVID-19 - or avoid spreading the virus - would not entitle her to those same benefits.

Under the Families First Coronavirus Response Act (“FFCRA”) signed by the President on March 18, 2020, and effective April 2, 2020, many employees *will* be entitled to paid time off due to COVID-19-related quarantine. The FFCRA entitles employees of employers with under

500 employees to up to 12 weeks of leave for, among other things, caring for a child under age 18 if the child's school has closed or the child's caretaker is unavailable due to COVID-19 restrictions. Ten weeks of that leave must be paid at two-thirds of the employee's normal rate of pay. All full and part-time employees are eligible if they have worked for an employer for 30 days.

TA separate sick leave provision of the FFCRA requires employers with under 500 employees to provide employees with at least two weeks of paid sick leave if they are subject to a government-ordered quarantine order, if a doctor has recommended that they self-quarantine, or if they are showing any COVID-19 symptoms. Alternatively, the bill provides that covered employers must pay employees two-thirds of their normal pay for two weeks if they are caring for an individual or child who is subject to a quarantine.

Update: The mandatory leave under the FFCRA expired on December 31, 2020, but employers were permitted to continue providing paid leave voluntarily through March 31, 2021. The [American Rescue Plan Act of 2021 \(ARPA\)](#) was signed by President Biden on March 11, 2021, and it permits employers who choose to grant paid leave for qualifying reasons to receive tax credits for providing paid leave through September 30, 2021. ARPA creates additional grounds for taking paid sick leave and paid family leave beyond the reasons in the FFCRA. The FFCRA permitted paid leave if (1) an employee is subject to a federal, state, or local quarantine or isolation related to COVID-19; (2) an employee has been advised by a healthcare provider to self-quarantine; (3) the employee is experiencing COVID-19 symptoms; (4) an employee is caring for an individual subject to a quarantine or who is self-quarantining; (5) an employee is caring for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19; or (6) an employee is experiencing any substantially similar condition specified by the Secretary of Health and Human Services. Under the ARPA, employers may now provide paid leave if (1) an employee is seeking or awaiting the results of a diagnostic test for, or medical diagnosis of COVID-19 and after an exposure to COVID-19 or a test or diagnosis at the employer's request; (2) an employee is obtaining immunization related to COVID-19; or (3) an employee is recovering from any injury, disability, illness, or condition related to a COVID-19 immunization. Under ARPA, an employee may qualify for either FFCRA sick leave or FFCRA family leave for any of these nine reasons.

Can my employer require me to use paid sick leave if I am quarantined for COVID-19?

Yes. Because federal law does not require employers to provide paid sick leave, the government also does not regulate an employer's practices with respect to the types of absences covered by that leave. Under the FFCRA, employers would only be required to pay employees during their first 14 days of absence associated with a COVID-19-related quarantine.

Can I refuse to go to work if I feel at risk for contracting COVID-19?

Probably not. However, there may be circumstances under which an employee could make

such a refusal. Employers may be required to separate employees who are or should be quarantined (e.g., because of contact with a COVID-19 carrier) from other employees under the federal Occupational Safety and Health Act (the “OSH Act”). The OSH Act’s General Duty Clause, found at 29 U.S.C. § 654(a)(1), 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.” An employer who attempted to force an employee to come into work when that employee had justifiably self-quarantined – or where, for instance, another employee was a known carrier – may be acting in violation of the OSH Act. If an employee opposed her employer’s efforts to force her to work under those circumstances, she may be protected from retaliation under Section 11(c) of the OSH Act, which prohibits an employer from discriminating in any manner against an employee because she, among other things, exercised on her own behalf or on behalf of others any rights afforded under the OSH Act.

What paid leave options are available if I have to stay home with my children while schools are closed?

Yes, under the FFCRA, parents of children whose schools have been closed due to COVID-19 will be entitled to up to 12 weeks of leave, 10 paid at two-thirds of their normal rate. As set forth above, an employer is not required to pay for the first 10 days of that leave – although an employee may use her paid sick leave, including those days available to her under the FFCRA, to cover that initial period.

Outside of the FFCRA several counties and municipalities already extend paid leave to individuals who are forced to take time away from work to care for a child whose school has been closed due to a “public health emergency” like COVID-19. Those jurisdictions include New York, New York; Montgomery County, Maryland; San Diego, California; Chicago, Illinois; Minneapolis, Minnesota; and Pittsburgh, Pennsylvania.

What if I have to care for a family member who has COVID-19?

The federal FMLA guarantees most workers the right to take up to 12 weeks unpaid leave to care for a family member with a serious health condition. However, the FMLA only covers employees who have been working for their employer for at least one year and worked at least 1,250 hours during the year. Moreover, it only covers employers with at least 50 employees within 75 miles of the employee’s worksite.

The FFCRA substantially strengthens the rights and protections available to workers who find themselves caring for a family member with COVID-19. Employees of employers with fewer than 500 employees are guaranteed up to 12 weeks of leave to care for a family member with COVID-19, all but 14 days of which will be paid at a rate equal to two-thirds or more of the employee’s regular rate of pay.

Finally, several states require employers to provide paid family leave to their employees, which would extend to caring for a family member with COVID-19. These include Washington, D.C., California, New York, Connecticut, Massachusetts, Washington, New Jersey, Oregon, and Rhode Island.

What protections do I have if I am retaliated against for using sick leave due to COVID-19?

As set forth above, under certain circumstances, an employee may be able to advance a claim of retaliation under the OSH Act. In addition, depending on the circumstances of the retaliation, an employee may have a claim for wrongful termination in violation of public policy. Although it is uncommon, courts in some states have found that employers may not terminate an employee because that employee opposed or refused to engage in actions that threatened public or workplace safety.

If an employee requests an extended period away from work to treat her own case of COVID-19, or to care for a family member who contracted the virus, she may be protected from retaliation under the federal FMLA. Moreover, under the FFCRA, employees would be protected from retaliation for taking sick leave or extended FMLA leave for a broad range of situations associated with COVID-19, including self-quarantine.

Is my employer allowed to fire me because of the impact COVID-19 has had on its business?

Yes, with limited exceptions. Employers in many industries are likely to be forced to terminate or cut back hours for many workers as a result of the measures being taken to grapple with COVID-19. Employees in 49 of the 50 states are considered “at-will,” which generally means that an employer may terminate an employee for any reason or for no reason at all, except for an illegal reason. There are no states that have passed laws prohibiting an employer from terminating an employee due to a substantial disruption to the employer’s business like the one caused by COVID-19. Even Montana – the one state in which workers are not employed “at-will” – permits an employer to terminate an employee for a “legitimate business reason.”

The primary exception to this general rule arises in cases where an employee is working under a contract. Contractual employees are not “at-will” employees; the terms and conditions of their employment are set forth in writing. The most common example of contractual employees are union employees, who have collectively bargained with their employers to secure certain rights and protections. In some cases, those rights and protections may insulate workers from the vicissitudes of the economy and ensure that an economic downturn does not result in them losing their job.

How should I report fraud related to Coronavirus economic stimulus programs?

Whistleblowers who witness [fraud related to economic stimulus programs](#) or any other government spending can blow the whistle under the False Claims Act. The FCA prohibits false or fraudulent claims made to the government, and information provided by a whistleblower is often critical to the U.S. Attorney General’s decision to file an FCA lawsuit. Additionally, whistleblowers can file [qui tam lawsuits](#), which private individuals bring in the name of the government. Under the FCA, whistleblowers are entitled to between 15% and 30% of any settlement or judgment won on behalf of the government.

To learn more about employment and whistleblower developments stemming from

Coronavirus-related laws and programs, take a look at these informative resources:

[COVID-19 Vaccinations: What Employees and Employers Need to Know](#)
[Employment Law Blog](#)

[The Federal Government is Taking Action Against COVID-19 Fraud](#)
[Public Health and Safety Whistleblowers_](#)

[Coronavirus Stimulus Fraud](#)

[Strong Whistleblower Protections are Vital During COVID-19](#)

[Renewed Importance of False Claims Act Enforcement Under CARES Act](#)
[Whistleblower Law Blog](#)

[SEC Whistleblower Law Blog](#)