

HR Best Practices for Small Businesses Responding to COVID-19



Helping Small Businesses Run

CDC Guidance for Employers



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CDC Guidance for Workplace Safety

Hand washing

- Stop using handshakes
- Have employees wash hands thoroughly upon arrival
- Schedule regular hand washing reminders throughout the workday

Regularly disinfect surfaces

- Especially doorknobs, tables, desks, hand railings, water coolers, microwaves, refrigerators, etc.

Increase ventilation

- Open windows, turn on fans, or adjust AC to promote air circulation

Encourage work from home where possible

Utilize video conferencing for meetings

If meeting in person is necessary, take precautions:

- Adjust or postpone meetings for large groups
- Meet in well-ventilated spaces
- Maintain 6 feet of distance between attendees

Eliminate shared food in the workplace

Cancel travel if possible

Hang posters from the CDC

Keeping public space safe

Stagger customer flow with booking and scheduling

- Reduce customer interaction
- Allow ample time between bookings to sanitize

Disinfect touched services between every customer

- Common touch points include pin pads, self-checkout touch screens, shopping carts and baskets, door handles, etc.

Provide hand sanitizer and/or disinfecting wipes at key locations like the front door or cash register

Make transactions online or phone pre-orders when possible

- Eliminate point-of-sale contact
- Handoff orders curbside or at the door

Encourage customers to use tap-and-pay

Limit attendance at larger gatherings

Remove tables and chairs to reduce capacity and create distance

Employer FAQs on Illness and Quarantine



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As an employer, am I allowed to take temperatures or ask about employee health?

Yes, but be reasonable.

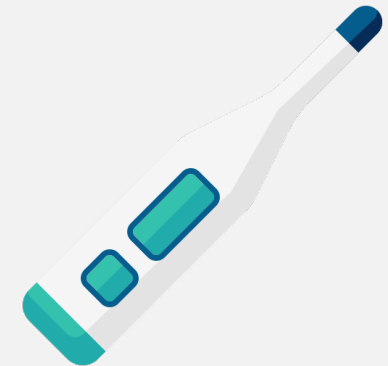
Based on current CDC guidance, you can take an employee's temperature when they arrive to work.

If you ask health questions, keep them very specific to symptoms of COVID-19. Do not ask open-ended health questions.

Remember that not all COVID-19 carriers will immediately display symptoms.

Checking temperatures is not a fail-safe way to protect employees; maintaining all of your other safety precautions is critical.

The average incubation period of is 5 days, but can be up to 14.



How should I handle a sick employee?

Send them home.

You're entitled to send employees home anytime you believe someone to be sick with something contagious — whether it's COVID-19, the flu, or anything else that other employees are at risk of catching.

Have them determine with their healthcare provider when it's safe to come back to work.

The decision to discontinue home isolation precautions should be made on a case-by-case basis, in consultation with healthcare providers and state and local health departments.



Can I require a note for an employee to return after sick leave?

Technically, yes. But the CDC asks that you don't.

While you can ask for a formal doctor's note, the CDC is asking employers not to.

Healthcare providers are under intense strain right now, and these requests add more to their workloads at a time when they should instead be prioritizing time towards patient care.

Generally, an individual with COVID-19 should be able to safely to return to work 24 to 48 hours after the symptoms have subsided.



Can I require an employee with a sick family member to stay home?

Yes — only if the family member is showing symptoms of or has tested positive for COVID-19.

Individuals in contact with a family member with COVID-19 symptoms have likely been exposed and should self-isolate in line with the CDC's recommendations.

You cannot send an employee home for having a family member with any other illness or condition.

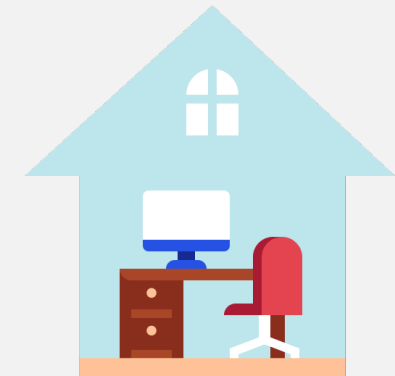


Employees don't want to come to work. Can I require them to?

Yes, you can require them to come in — as long as there's no legitimate threat and they don't require accommodation.

You can enforce attendance policies if there's no legitimate threat to employees coming in to work.

If someone willingly discloses that they are concerned because they are immunocompromised — or live with someone who is — it's strongly recommended to let that person work from home or take leave.



An employees has multiple degrees of separation from a possible COVID-19 exposure. Can I require them to go home?

Technically yes, you can send them home.

This decision is up to you as the employer.

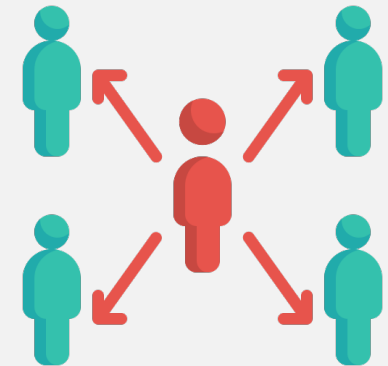
You can send them home as long as it's a non-discriminatory reason.

Try to let them work remotely if possible.

Right now, the CDC does not recommend special scrutiny for people exposed to asymptomatic people with potential COVID-19 exposure.

If you send someone home who can't work remotely, it's recommended you pay them for the time and not take it from their sick leave or PTO.

If you don't pay them, you could run the risk of an ADA discrimination claim.



Reminders About Pay and Policies



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Work from Home Policies

If at all possible, the CDC encourages you to let employees work from home at this time. When creating a work from home policy, consider defining:

- **Hours of work:** During what hours do you expect them to be online or working?
- **Expectations regarding reachability:** Do you need them to be available by phone, a messenger app, email, or something else?
- **Expectations regarding productivity:** You can set expectations on work output, but try to be mindful of realistic challenges employees may have while working remotely (i.e. kids at home due to cancelled school or childcare).
- **Check-ins:** Outline any set times or frequency expectations for check-ins.
- **Office expenses:** In most cases, it's recommended that employers should cover reasonable and necessary office expenses. Outline any approval requirements you may have.

Reminders about pay: Non-exempt employees

Remember that non-exempt employees must be paid for all hours worked, even at home.

Even if hours are severely reduced and they are only working periodically or checking in for meetings, those hours must still be paid.

De minimis rule: If an employee is doing so little work that it'd be unreasonable to track it, you don't have to pay in those cases.

If you send them home before their shift is over (even if they're symptomatic), you may owe reporting time pay.

Reporting time pay requirements vary by state.

Reminders about pay: Exempt employees

If an exempt employee does any work in a workweek (including at home), they are entitled to their full weekly salary.

This includes if you are sending them emails that they respond to, scheduling calls, or any other time they work.

There are a few exceptions when a full day deduction may be made from the full workweek pay:

Full day deductions may be taken if they take time for personal reasons.

Full day deductions may be taken if they are actually sick, do no work, and you offer a bona fide sick leave plan (requires 5 paid days off that can be used for sickness).

You can't take a partial day deduction from their wages, even if they get sent home.

You can fill it in with paid time off, if they have some available.

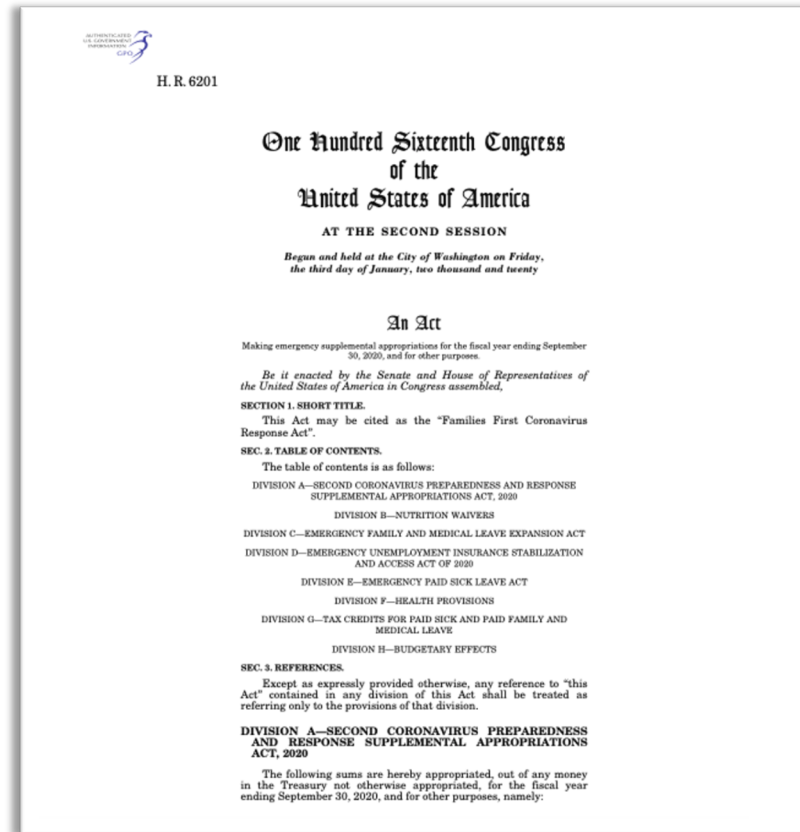
The Families First Coronavirus Response Act



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The Families First Coronavirus Response Act

Effective: April 1, 2020 - December 31, 2020



- ✓ Provides relief to individuals and businesses in response to the COVID-19 outbreak in the US
- ✓ Sections employers should take note of:
 - ✓ Family and Medical Leave Act (FMLA) Expansion
 - ✓ Emergency paid sick leave
 - ✓ Payroll tax credit

FMLA Expansion

Adds leaves for:

- Care for a child under 18 if their school or place of care is closed for public health emergency.

Coverage

- Applies to all employers with less than 500 employees — even those under 50
- There are two exceptions:
 - Businesses with fewer than 50 employees will be eligible to apply for an exemption from some leave requirements if they would jeopardize the viability of the business. The Department of Labor is expected to describe how exemptions will work soon.
 - Employers of health care providers or emergency responders may elect to exclude those employees from the expanded paid or family leave benefits.

FMLA Expansion

Pay details

- The first 10 days of leave are unpaid. The employee may opt to use any other leave they have available to them in that time, including the new emergency sick leave.
- After 10 days, the employer is required to pay at two-thirds their regular rate of pay for the number of hours the employee would normally be scheduled to work, up to \$200/day and \$10,000 total.
- Employers will get this money back as a payroll tax credit. More details are coming from the IRS.

Job protection

- Job restoration is required, except for employers with fewer than 25 employees if:
 - The job no longer exists because of changes affecting employment caused by a public health emergency; AND
 - Reasonable efforts to find equivalent positions were made (and failed), and employees are contacted if any positions come up within a year

Emergency Paid Sick Leave

Coverage

- All employees are covered, regardless of how long they've been employed.
- Applies to all private employers with less than 500 employees.
- The same two exceptions apply:
 - The Secretary of Labor may issue regulations to exempt businesses with fewer than 50 employees if it would jeopardize the viability of the business.
 - Employers of health care providers or emergency responders may elect to exclude those employees from emergency paid sick leave.

Emergency Paid Sick Leave

It can be used when the employee is:

1. Subject to a federal, state, or local quarantine or isolation order
2. Advised by a health care provider to self-quarantine
3. Seeking medical diagnosis for symptoms of COVID-19
4. Caring for an individual who qualifies under #1 (eligible for two-thirds pay)
5. Caring for a child whose school or care is closed (eligible for two-thirds pay)
6. Experiencing other substantially similar conditions (eligible for two-thirds pay)

Emergency Paid Sick Leave

Pay details

- Full time employees get 80 hours worth of pay (or two-thirds pay for conditions 4, 5, 6)
- Part time employees get paid for the number of hours worked on average over a 2-week period (or two-thirds pay for conditions 4, 5, 6)
- Maximums:
 - Capped at \$511/day and \$5,110 total for conditions 1, 2, 3
 - Capped at \$200/day and \$2,000 total for conditions 4, 5, 6

Handling Reduced Hours and Closures



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Reducing hours or pay: Non-exempt employees

If you're reducing their hours, non-exempt employees only need to be paid for hours they actually worked.

- Note that if you send people home after they've already arrived at work for the day, they may be eligible for reporting time pay.

If you're reducing their hourly wage, that may require more notice under state law and cannot be retroactive mid pay-period.

- The employee is entitled to notice so they can decide if they want to keep working under the new pay rate.

Reducing hours or pay: Exempt employees

Implement a pay cut — but check for unintentional discrimination.

- Implement a pay cut for everyone, certain departments, or specific types of jobs.
- Document how these decisions are made if pay cuts are not the same for all employees to demonstrate that it is non-discriminatory.
- Make sure the employee's pay still remains above the federal minimum salary for exempt employees (\$684/week) or the higher state minimum depending on your location.

Reclassify exempt employees as non-exempt

If an exempt employee is doing so little of their usual work due to the circumstances, you can classify them as non-exempt

- This is legal — so long as it's not done to avoid the salary basis requirements under the FLSA
- Don't do it on a short-term basis (i.e. three weeks or less) — you can't switch the classifications back and forth
- Make sure to meet state notice requirements, and it can't be applied retroactively if you're halfway into a pay period

Furlough and layoffs: What's the difference?

Furlough: Temporary reduction in hours of work or weeks of work.

- Typically means there is an estimated date of reopening or return to normal hours worked.
- Furloughed individuals are still considered employees and stay on the payroll.
- Even though they remain employees, they are typically eligible for unemployment insurance.

Temporary layoff: A layoff with the intention to rehire, typically within six months.

Permanent layoff: A layoff with no intention or anticipated rehire.

Furloughs: Things to consider

Communicate furloughs in writing.

- Explain the intent to employees — why the furlough is happening and any timelines

Share options for how they can make use of paid leave.

- Let them know if they can use any accrued PTO time they have.
- If they have a sick leave bank, you could offer to let them use it for furlough as well.

Furloughed employees may lose their existing health insurance coverage — it depends on your plan.

- Check with your provider to understand your plan's provisions. If furloughed employees do lose coverage, they are likely eligible for coverage like federal COBRA or state mini-COBRA.

Most furloughed employees will be eligible for unemployment insurance.

What if we can't make payroll?

Call an attorney.

- You may want some legal advice to decide the best course for action for your business.
- Liability can vary based on federal, state, and local laws where you operate, so you'll want professional legal advice.

Coronavirus Aid, Relief, and Economic Security (CARES) Act



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The CARES Act

The \$2.2 trillion CARES Act offers wide-reaching regulations, loans, and grants that impact small businesses, their employees, major corporations, and individual taxpayers.

There are three parts that will be particularly relevant to many small businesses:

- ✓ [Payroll tax credits](#) to give business owners incentive to keep employees on the payroll.
- ✓ [Delayed payment of social security taxes](#) to decrease the short-term cost of paying employees
- ✓ [Paycheck protection loans from the SBA](#) to give small businesses (and select others) easier access to loans

CARES Act: Employee retention tax credits

Certain employers are eligible to have 50% of up to \$10,000 in wages paid if their business has been financially impacted by COVID-19

Eligibility:

A) The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.

— OR —

B) The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter. These measures are calculated each calendar quarter.

— AND —

c) Under this law, companies that take an SBA loan under the CARES Act are not permitted to utilize the Employee Retention Tax Credits.

CARES Act: Employee retention tax credits

How is the credit calculated?

Wages paid after March 12, 2020, and before January 1, 2021, are eligible for the credit.

Depending on the size of your company, qualifying wages can vary. Note that the size of your company is based on the average number of employees a company had in 2019.

| Company size | 100 or fewer employees in 2019 | More than 100 employees in 2019 |
|-----------------|--|---|
| Qualified wages | <p>All employee wages (up to \$10,000 per employee)</p> <p>The credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full-time work, the employer still receives the credit.</p> | <p>Wages from employees who are not providing services due to circumstances related to COVID-19 (up to \$10,000 per employee)</p> <p>The credit is allowed only for wages paid to employees who did not work during the calendar quarter.</p> |

CARES Act: Employee retention tax credits

- ✓ Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter.
- ✓ If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200](#), Advance Payment of Employer Credits Due to COVID-19.
- ✓ Eligible employers can also request an advance of the Employee Retention Credit by submitting [Form 7200](#).

CARES Act: Delayed social security taxes

Delayed social security and self-employment taxes

Instead of paying the 6.2% employers' portion of social security taxes each quarter, employers have the option of making delayed payments:

- 50% on December 31, 2021
- 50% on December 31, 2022

Keep in mind that the delay of payments is optional

- Medicare taxes (1.45% of wages) are *not* deferred
- The employee portion of social security and Medicare taxes is *not* deferred

CARES Act: The Paycheck Protection Program

Many small business employers will be able to receive loans of up to \$10 million through the Paycheck Protection Program (PPP) authorized by the CARES Act.

PPP loans are an update to the SBA's existing 7(a) loan program intended to be easier for small businesses to obtain.

- ✓ Funds can be used to pay payroll costs including benefits or interest on mortgages, rent, and utilities.
- ✓ Funds will be provided as loans that can be fully forgiven when used for these purposes.
- ✓ Payroll costs covered by these loans will be capped at an annual salary of \$100,000 for each employee.
- ✓ And at least 75% of the forgiven amount must be used for payroll.
- ✓ No collateral or personal guarantees are required for these loans.

Loan forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels.

Note: As of 4/16/2020 you may no longer be able to apply for a PPP loan due to lack of available appropriations funding with the SBA.

CARES Act: The Paycheck Protection Program

Which small businesses qualify for PPP loans?

Under the CARES Act, a “qualified business” is any business that:

- ✓ Doesn't have more than 500 employees or the maximum number of employees specified in the current SBA standards, whichever is greater; or
- ✓ If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with “72” (Accommodation and Food Service); or
- ✓ Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- ✓ Has received financing from a Small Business Investment Corporation

Note: *Sole proprietorships, self-employed individuals and certain nonprofit organizations may qualify under this program.*

Note: As of 4/16/2020 you may no longer be able to apply for a PPP loan due to lack of available appropriations funding with the SBA.

CARES Act: The Paycheck Protection Program

How do I apply for a Payroll Protection Program loan?

Small businesses and sole proprietorships can now apply for and receive loans. Starting April 10, 2020, independent contractors and self-employed individuals will be able to apply.

Applicants may apply through any approved lender or any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.

The SBA provides a [list of approved lenders](#). Note that the SBA is actively approving new lenders, so you may want to check with your preferred lender to see if it is accepting SBA loan applications.

You can apply by completing the Paycheck Protection Program loan application and submitting it with the required documentation to an approved lender. [Here's a downloadable copy of the application.](#)

Note: As of 4/16/2020 you may no longer be able to apply for a PPP loan due to lack of available appropriations funding with the SBA.

SBA Economic Injury Disaster Loan program

The Small Business Administration (SBA) is working to provide targeted, low-interest loans to small businesses and nonprofits severely impacted by COVID-19.

Working capital loans of up to \$2 million to provide economic support to help small businesses overcome this temporary loss of revenue.

Go to [SBA.gov/Disaster](https://www.sba.gov/disaster) to learn more.

Additional relief for individuals

The CARES Act includes three provisions that will be important for many small business owners and their employees:

- ✓ **Enhanced unemployment benefits:** In addition to state unemployment benefits, unemployed workers can get an extra \$600 per week for up to four months.
- ✓ **Stimulus checks:** Individuals who earn less than \$99,000 (and couples filing jointly who earn less than \$198,000) will receive stimulus checks from the federal government. Checks can be up to \$1200 for individuals, \$2400 per couple, and \$500 per child, but the amount goes down as income increases.
- ✓ **Special rules for accessing funds in retirement plans:** The CARES act creates new rules for how people can take distributions and borrow money from their retirement plans. This may be interesting to small business owners who need short-term liquidity.

FFCRA, CARES & Your Business

If you have questions about how the CARES Act or FFCRA specifically impacts your business, please consult your accountant, legal advisor, or tax professional.

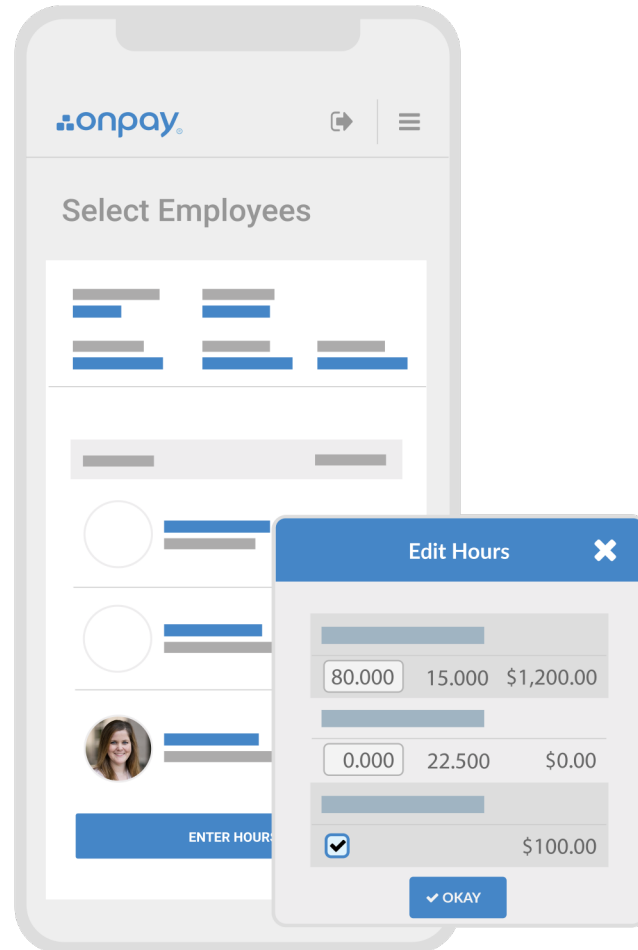
Find our latest resources and guidance at:
onpay.com/covid-19



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About OnPay

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