

The World Health Organization (WHO) has now classified COVID-19, also known as coronavirus, as a worldwide pandemic. While other countries are seeing more fatal impacts than we are in the US, the situation here grows more serious and wide-spread every day.

With COVID-19 impacting people and businesses across the country and around the world, many companies are trying to figure out their options of how best to balance business needs with employee health. It is becoming more likely that every business will be impacted in some way. To help you prepare and hopefully mitigate any lasting damages, we have compiled some important information for you to consider in handling your employees during this escalating situation.

The situation:

The CDC offers a lot of up-to-date information regarding [COVID-19](#) however the information is always changing. The physician to the Congress advised members of Congress that current trends show 70 – 150 million people in the US will become infected with COVID-19. While approximately 80% of those exposed will experience mild to moderate symptoms, a low estimate of 14 million people will suffer serious and possibly fatal complications.

Until more is learned about this strain of coronavirus (such as incubation period and means of transmission), health officials are taking measures to try to contain it to reduce the potentially catastrophic effects to the most vulnerable population. These measures include quarantines and closing schools which in turn affect everyone in some way, including:

- Employee absences due to illness, dependent's illness, quarantine, or closing of child's school
- Travel restrictions which may limit ability of employees to travel for business
- The need to shut down your office or facility due to an employee or visitor testing positive for COVID-19
- Civil liability if a business or an employee violates mandated restrictions and quarantines which causes the virus to spread to others.

We will discuss these topics in further detail below, but here are answers to the most common questions we are receiving:

- **Can I send an employee home who shows up to work sick?** *Yes*
- **Am I required to pay an employee who is home under quarantine?** *If they are performing work for you while at home, yes. If they are not, generally no.*
- **Do employees have to use their PTO?** *No, unless it is required under state law. See more below.*

- **Can I require those who are “at risk” due to their existing health condition to stay home for their own protection?** *Generally, no. Just as with the Americans with Disabilities Act, you can only provide accommodations to those that request them. You cannot impose them. See more below.*

General recommended actions:

While every company is different, below are some precautionary actions to consider while facing a potential emergency. Please note that you can implement any Company policy as a limited-time practice due to special circumstances so do not fear that making temporary accommodations will create a regular commitment or precedent. Be sure you clearly state that these practices will be revoked by the company in a certain date or once the emergency has passed and then follow up to notify the date the policy or practice expires.

Protect your most vulnerable employees: If you have any employees who are more susceptible to serious symptoms, namely the elderly, those with serious chronic medical conditions or pregnant women, assist them in making plans to stay healthy. Consider allowing them to work from home or granting time off without penalty so they can reduce their exposure. If you are considering this option, you should ask the employee if they would like a workplace accommodation, rather than insisting upon one for them and be sure to keep any medical information confidential.

Advise sick employees to stay home: Make it clear to employees who experience symptoms (fever, deep cough, wheezing, and shortness of breath) and/or have been exposed to the coronavirus that they need to go home and stay out of the workplace until given the all-clear by their doctor or a public health authority. As an employer, in most circumstances you are within your rights to send a sick or potentially exposed employee home. While inconvenient, it is better to handle the absence of one employee than having several people out sick or, even worse, having your business shut down for 14 days or more for quarantine and deep-cleaning. If you are considering this option, know in advance if you will be paying them while on leave, requiring that they use their sick leave/PTO and what happens if their required leave extends beyond their amount of available paid leave.

Understand the situation of your employees: If you have an employee whose child’s school is closed or who is put under quarantine while traveling or at home, offer whatever assistance you can. Perhaps extend leave time and/or allow them to work from home so they are not losing wages and you are not missing their productivity while keeping them from infecting your other employees.

Provide tools for a more sanitary workplace: Implement strict cleaning procedures by requiring employees to clean their work stations and high-use areas such as the break room regularly with

Company-provided disinfecting wipes. Make hand sanitizer readily available. Move meetings to larger rooms so employees are not sitting too close together and consider postponing large gatherings. Do not hold meetings with more than 250 employees at a time. Invest in technology to allow for video conferencing and virtual meetings. Eliminate handshakes and other unnecessary contact. Eliminate pot-lucks, birthday celebrations, etc. where people share food.

Create, expand, or modify your paid-time-off policies: If you have paid-time-off (PTO) policies, consider relaxing them or providing extra days off to encourage employees to stay home when needed and help them compensate for lost wages. If you do not have PTO or sick leave policies, consider creating something for a special circumstance such as a state of emergency.

Implement a PTO-sharing policy: Consider creating an option to allow employees to donate some of their PTO to employees who may be more at-risk for illness or may not have enough PTO to cover mandated time off. This can eliminate the added costs of giving additional paid days off and build a sense of community among the employees. No employee should be pressured so structuring the policy correctly is crucial. Contact Affinity HR Group (contact@affinityHRGroup.com) for assistance.

Create a PTO borrowing or wage advance program: Consider implementing a limited-time program to allow employees to borrow from future wages and not-yet-accumulated PTO. Limits should be established and a detailed “Wage Advance” form should be used outlining amount borrowed, repayment plans, and how to recoup advanced but unearned wages (or unaccumulated PTO) if the employee does not work long enough to repay. Affinity HR Group (contact@affinityHRGroup.com) can help you research options allowed under federal and state law and/or draft a form for you to use.

Institute work-from-home policy and procedures: Review your operations and determine if there are positions and duties that can be handled remotely. If so, develop policies and procedures to allow employees to work from home. Invest in the technology to share files, route calls, and video conference when necessary. Consider “practice” work from home days to make sure your infrastructure is working prior to having to use it in an actual emergency.

Review business travel policy: If you have employees who travel for business to visit clients or vendors or to attend conferences, balance each interaction to determine the value and need with the risk for exposure and workplace contamination. You also need to evaluate where and how the employee will be traveling as some areas and modes of transportation have higher incidents of exposure than others. Again, consider investing in readily-available technology to allow for video conferencing and virtual meetings to replace business travel and in-person meetings.

Ensure continuity of work and information: Prepare your company for the long-term absence of one or more employees or the departure from regular procedures. Be sure everyone is backing up information and leaving necessary materials and files in the office unless they will be working remotely. Cross-train employees to cover if one person is absent. Use web conferencing or conference calls instead of in-person meetings.

Suggested courses of action:

Since every company is different and there is no one-size-fits-all solution for guiding your company through this growing state of emergency, we have developed some suggested courses of action and policies based on each situation. Please contact us at Affinity HR Group (contact@affinityHRGroup.com) if you need help customizing any of these courses of action or corresponding policies to fit your circumstances.

Overall, remember to treat employees consistently but also on a case-by-case basis depending on their situation and to consider all mandated federal, state and local laws which may apply (see *the "Leave Laws" and "Additional considerations" sections for some to consider*).

If you have an employee who shows symptoms or who is knowingly exposed to COVID-19:

- **Send them home:** You have the right and responsibility to protect other employees by sending an obviously sick person home. You can require them to leave even if they do not want to go due to concerns about lost wages, sick leave, workload, etc.
- **Have their work area thoroughly cleaned:** Whether you have a professional cleaning service or cleaning is done in-house, use approved disinfecting products to clean the area to kill the virus. If doing the cleaning in-house, be sure to provide protective equipment such as gloves to minimize exposure. If you use a cleaning service, notify them of the possible exposure so the cleaners can take appropriate precautions with the necessary protections to keep them safe.
- **Advise the employee of their available benefits:** Update the employee on how much paid time off they have available and how you will be paying it out. Remind employees of their insurance or short-term disability benefits as well as how deductions for premiums will be handled while they are out.
- **Process the employee for applicable leaves:** If the employee will be missing significant time (usually more than 3 days), process them for any leaves or disability they may be entitled to under law, including disability and family medical leave if applicable. While an employee only in quarantine may not be eligible for normal leaves, anyone who will be sick for several days should be processed accordingly.
- **Implement work-from-home procedures:** If the employee's position allows for working remotely and the employee has the infrastructure to do so effectively, provide them the work

and information they need to stay productive. Again, consider “practice” work from home days to ensure your infrastructure will work in an actual emergency.

- **Remind the employee they are prohibited from moonlighting while on leave:** If the employee is out on leave for any reason, remind them they cannot use the time to work for another company that they have not previously been approved or that conflicts with company business.
- **Require doctor’s note releasing the employee back to work:** As with any extended time off for illness or injury, you should be sure to get a release from the employee’s health care provider to protect other employees and to reduce the chance of a Workers’ Comp claim if they become ill or injured again.

If you have to close the business, temporarily reduce your workforce, or send employees home who are not sick and are able to work:

- **Communicate your plans as soon and as clearly as possible:** Let employees know the company’s plans and timeline for re-opening to the best of your ability. Keep them up-to-date on when you expect work to resume.
- **Pay according to wage-and-hour laws: (see “Additional considerations” for more detail)**
- **Follow predictive scheduling requirements:** Some states, counties, and cities have laws which require employers to pay employees if their work hours differ from their scheduled hours. There are variations to these laws so it may not apply to every situation even within these locations. Contact Affinity HR Group at contact@affinityHRGroup.com if you need assistance determining if these laws apply to you.
- **Offer pay and benefit continuation:** Few people can afford to not work for an extended period of time so any income would help them during this time away. While not always possible, try to offer employees some compensation and/or continuation of their benefits while the workplace is closed. Consult your benefit provider for COBRA requirements and let employees know the impacts and expectations to keep their benefits active.
- **Assist employees with unemployment, if eligible:** As with any reduction in workforce, employees who are willing and able to work but whose hours are reduced or eliminated by their employer may be entitled to unemployment. They need to meet criteria established by each state but, if they are eligible, it may help them with lost wages. Some states are looking at options to change unemployment rules to cover the current situation so this may become easier.

If you have employees who can work from home:

- Create and implement comprehensive telecommuting policies
- Ensure non-exempt employees are properly tracking all time they are working

- Remind them that this is not a replacement for child care and they cannot perform outside work while on the clock for the company
- Clarify infrastructure requirements, means of contact, and availability expectations

If you have employees who cannot work from home:

- Review your paid time off and leave policies with employees so they know what to expect
- Consider expanding PTO offerings to minimize the financial impact on your employees, especially those that are lower wage and may live paycheck-to-paycheck
- Keep in contact with them as to when they will be released back to work or when you expect work to be available. A text thread, group chat, phone tree or email thread may assist with this

Leave laws:

There are several regulatory requirements to consider when dealing with employees who are or whose family members are sick or in quarantine. In addition to any paid time off benefits (i.e., vacation, sick, and/or personal days) you may offer, you often have to manage multiple laws at the same time.

Large employers (50 or more employees):

Family and Medical Leave Act (FMLA): FMLA provides qualified employees up-to-12-week (in most cases) of unpaid job- and benefit-protection that usually runs concurrently with any paid time off or leaves. There are very strict requirements for employers to follow regarding notification, tracking, and documentation to stay in compliance so timely response and accurate tracking are crucial. FLMA can also be taken in small increments and the overall length of protected leave is determined by a certification from the health care provider. Administering FLMA correctly can be confusing so contact Affinity HR Group at contact@affinityHRGroup.com if you need assistance in complying with FMLA.

Mid-size employers (15 or more employees):

Americans with Disabilities Act and the Amendments Act of 2008 (ADA and ADAAA): ADA and ADAAA requires employers offer reasonable accommodation such as a leave of absence to employees who are disabled, even if temporarily. Depending on the severity of symptoms, an employee's need for leave may be covered under the ADA or ADAAA and therefore providing a reasonable accommodation of leave may be required.

All or most employers:

State family and medical leave laws: Some states (California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and Washington DC) have laws similar to FMLA which may have different parameters including covered reasons for leave, protected leave times and different look-back periods. These leaves run concurrently with FMLA and other paid time off or leaves. Notifications are strictly regulated and length of leave is determined by a health care provider through a certification. As some of these laws are new and may be confusing, contact Affinity HR Group at contact@affinityHRGroup.com and let us help you verify your obligation.

State and local sick leave laws: While there is no federal law mandating sick time, 12 states (Arizona, California, Connecticut, Maryland, Massachusetts, Michigan, Nevada, New Jersey, Oregon, Rhode Island, Vermont, and Washington) and Washington DC as well as several cities and counties have implemented sick leave laws covering most employers with variations in number of employees, amount of time off and whether leave is paid or unpaid. Contact Affinity HR Group if you need assistance in determining whether a local leave law applies to your workplace.

State paid disability leave: Some states (California, Hawaii, New Jersey, New York, and Rhode Island) have paid disability laws to cover employees for extended absences. These insurance programs are usually run through the state but employers must notify employees of the benefit and may need to assist them with paperwork.

Additional considerations:

Wage-and-hour laws: [FLSA](#) regulations establish very specific guidelines on when you need to and do not need to pay employees. To stay in compliance, be sure that you are paying employees correctly as determined by their pay status (hourly or salary) and classification (exempt or non-exempt) as well as any commitments or agreements you may have with them.

- *Hourly, non-exempt employees* are only paid for time actually worked so they usually do not need to be paid if they are sent home or not called into work at any point.
- *Salaried, exempt employees* must be paid their full salary for any week in which they do any work with a few exceptions. One exemption test is being paid a [salary](#) (defined as “a wage guarantee” to cover time worked in an established increment of time) so reducing their salary for a partial week when they are willing and able to work may

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jeopardize their exempt status (therefore making them non-exempt and entitled to overtime). To be in compliance, exempt employees must be paid their full salary for any week in which they perform any work unless they are not willing and able to work.

- *Salaried, non-exempt employees* are paid a salary (a “wage guarantee”) so are entitled to their full week’s salary when they work. However, since they are non-exempt, reducing their salary to reflect the reduced hours works would not jeopardize any exemption so it may be possible. [Note: If you choose to reduce their salary for reduced weeks, you should revisit your pay practices, possibly moving them to hourly.]

Determine if you are going to require employees to use all of their PTO during a quarantine or business closing or if you will allow them to take the time unpaid: Some companies require employees to use all of their available PTO for any absence while some allow employees to take the unexpected time off unpaid, both have pros and cons:

- Requiring employees to use all available PTO when time off is out of their control:
 - Pro: Controls how many days off the employee will take during the year so you will not be understaffed at any point.
 - Con: May create an incentive for employees to show up sick in order to preserve PTO.
 - Con: Forces employees to cancel future plans such as vacation or scheduled surgery.
- Not requiring employees to use all available PTO when time off is out of their control:
 - Pro: Does not penalize employees for any time off that is out of their control
 - Con: May stretch your staffing needs as employees will not be working the number of days expected within a year

As a compromise, consider giving employees a set number of days off without pay or penalty but allow them the option to substitute PTO available with them knowing this will reduce the time they have off later in the year.

Protect the confidentiality of your employees: If you have employees who become ill or who you are worried about due to medical conditions, be sure to keep all communication and records confidential. Do not tell anyone outside of the “need-to-know” group except with the employee’s permission.

Remember employment is at-will: Employees not under a contract are free to look for another job at any time, including when the office is closed, so you may lose good employees before work can resume. Open communication during these uncertain times may help reduce this possibility.

Sample policies:

Below are some sample policies you may want to implement for a limited-time or as a regular practice. Language can be changed as needed or contact Affinity HR Group (contact@affinityHRGroup.com) to help you develop a custom policy or procedure for your workplace.

Temporary work from home

In response to a declared state of emergency, a mandated quarantine, and/or the closing of a child's school or day care, [COMPANY NAME] will implement this temporary work-from-home policy for regular employees who can perform some or all of their job duties away from the worksite. Employees needing or wanting to work from home should contact [TITLE OF MANAGEMENT] for approval prior to working from home.

Employees are responsible for having enough work at home to be productive for their expected number of hours and should be available to management, co-workers, and/or clients during regular work hours when possible. Employees must have the proper connections such as phone and internet which will not be provided at any cost to the Company. Non-exempt employees must track all hour worked and no off-the-clock work will be allowed.

There will be no expectation for the continuation of the work-from-home arrangement upon conclusion of the emergency situation.

Sending sick employee home

As a reminder, to meet our obligation for providing a healthy and safe workplace for all employees, the Company has the right to send employees who are exhibiting symptoms of illness home. Employees who are sent home may or may not receive pay and will be allowed to use available paid time off for missed time. Before returning to work, employees [will be / may be] required to provide a release to work from a health care provider.

Leave of absence

In response to recent events, [COMPANY NAME] will offer all employees (except temporary employees) who have completed at least six (6) months of continuous service an unpaid leave of absence for up to four (4) weeks. Employees [will be / will not be] required to use available [vacation, sick, personal / PTO].

During the leave, [COMPANY NAME] will hold the employee's job and will continue to provide any active health insurance benefits. The employee will be responsible for paying their portion

of the premium payment to the Company. No paid time off, including vacation, will accumulate during this time. Employees on an approved unpaid leave may not perform work for the Company, may not perform work for another Company (with or without pay), and/or conduct a search for another job.

A doctor's note or communication from a health official detailing the circumstances and duration of leave may be required for approval.

If the leave of absence lasts longer than four (4) weeks, [COMPANY NAME] will no longer hold the employee's position unless a prior agreement has been made. Also, health and life insurance coverage will no longer be continued and the employee will be eligible to continue them under COBRA.

If the employee's leave is due to their illness, a doctor's return-to-work note will be required before the employee may return to work.

Emergency time

To assist employees during the current state of emergency, [COMPANY NAME] is offering regular employees (not temporary) [NUMBER] days of [additional] emergency time off to help replace income lost. Emergency time pay will be based on the number of hours the employee is regularly scheduled to work.

This emergency time will be available to any employee who is impacted by COVID-19 through illness, quarantine, or lack of childcare. Employees needing this time off should request the time off as soon as need is known and may be required to provide documentation (i.e., doctor's note or notice from health official or school).

Employees needing additional time off [can/must] use their available paid time off or take the time unpaid.

Emergency time must be used in whole-day increments and is not considered time worked for the purposes of overtime calculation.

Emergency time [will /will not] be paid in lieu of taking the actual time off. Unused emergency time will not carry over beyond the state of emergency and will not be paid out upon termination.

Housekeeping

In an effort to maintain a healthy workplace for all employees, [COMPANY NAME] is implementing strict housekeeping requirements. Employees must regularly:

- wash their hands in accordance to [CDC handwashing guidelines](#);
- use hand sanitizer (Company-provided);
- wipe down touched surface areas with disinfectant cloths (Company-provided);
- minimize close contact such as handshakes; and
- minimize meetings in confined or closed-door spaces or with large groups.

Employees failing to meet and keep these standards will face disciplinary action.

If you have any questions about establishing policies, handling employee absences or creating a long-term plan, please reach out to Affinity HR Group (contact@affinityhrgroup.com), or call us at 877-660-6400 to help you strategize a plan based on the options and requirements of your particular circumstance.

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