

Frequently Asked Questions by Businesses about the Coronavirus*



Q: If my company has to lay off employees because of the coronavirus, will they be able to get unemployment benefits? How soon will those benefits begin?

A: The waiting period of seven days for unemployment benefits is being waived for those who are losing their jobs because of COVID-19 and any work search requirements will also be waived while the state of emergency is in effect.

For more information and to file for unemployment please visit: <http://www.kewes.ky.gov/>

Q: Should employees be working from home?

A: It is recommended that if your company has the capability to do so, any employees that can work from home should do so for the foreseeable future. This is a decision currently being made on a company-by-company basis.

If this is not possible in such facilities such as manufacturers, grocery stores, etc. it is recommended to give extra breaks to make sure employees can wash their hands, go outside, etc. It is also recommended to spread out employees as much as possible.

It is also recommended that if you can cut the number of people in the office down at all, to try to do so.

Q: Should we cancel upcoming meetings/seminars/events?

A: The CDC is currently recommending any gathering of more than 10 people be canceled or postponed.

Q: How far in advance should my business cancel an event?

A: According to the CDC guidelines, any events scheduled to be held within at least the next eight weeks should be postponed or canceled.

Q: How long will these restrictions last?

A: We are not sure. But it is important that all businesses take the necessary recommendations during this time in order to flatten the curve and move forward as soon as possible.

The CDC has now said all events with attendance over 50 people need to be canceled, or rescheduled for the next eight weeks.



Q: How do I apply for a Small Business Administration loan?

A: Kentucky is now certified for Small Business Administration (SBA) loans in response to the coronavirus. Click here for the documents needed to apply: <https://www.kychamber.com/sba>.

Q: Can I send an employee home if they are exhibiting symptoms?

A: Yes. If an employee exhibits COVID-19 or flu-like symptoms, the Center for Disease Control (“CDC”) advises that they leave the workplace. In the H1N1 pandemic, the U.S. Equal Employment Opportunity Commission (“EEOC”) did not consider this a violation of the ADA and will likely take the same position regarding COVID-19.

Q: Can I take an employees’ temperature before allowing them to enter the workplace?

A: In a typical workplace, this would be considered a medical test and a violation of the ADA. This is permitted however if (1) the employer can show that it is job-related and consistent with a business necessity, or (2) the employer has a reasonable belief that the employee poses a “direct threat” to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation. The EEOC instructs employers to rely on the latest CDC guidance to determine whether the pandemic would qualify as a “direct threat.” Employers may also recommend that employees who have potentially been exposed check their own temperature as part of an effort to ensure they are still asymptomatic before arriving at the workplace.

Q: If an employee tests positive for COVID-19, or exhibits symptoms, can I inform other employees that they have been exposed?

A: Employers can inform their employees that they may have been exposed but may not identify the infected employee and may not provide any health information about specific employees. If an infected employee is identified, employers must ensure that they do not become the victim of workplace harassment or discrimination. If an employee tests positive, the CDC recommends that the employer send home and quarantine anyone that the infected employee worked closely with during the 14 days before the infected employee started exhibiting symptoms in order to prevent the spread.

Q: Can I request documentation from a healthcare provider while an employee is taking a quarantine-related leave, or before allowing a quarantined employee to return to work?

A: Under many state and local laws, you may require an employee to provide a note from a doctor if they are absent for more than three consecutive workdays. There is currently no formal process for clearing an employee to return to work after a quarantine. The CDC recommends that an infected person can be released from quarantine 14 days after their symptoms subside. As a practical matter, it may be

difficult or impossible for an employee to obtain a note from a healthcare provider in the coming weeks or months if the healthcare system is overwhelmed with COVID-19 patients requiring treatment.



Q: Can I terminate an employee that is on leave because they are quarantined?

A: Generally, no. If an employee has tested positive for the virus, has been instructed by a healthcare provider to quarantine themselves due to symptoms they are exhibiting, or is under a quarantine recommended by the CDC due to travel, they could be considered disabled under the Americans With Disabilities Act (“ADA”) and should not be terminated. If the employee can work from home, that option should be offered as a reasonable accommodation. If not, employers should provide leave to the affected employee under the Family and Medical Leave Act (“FMLA”) or the Families First Coronavirus Response Act.

If an employee is refusing to come to work resulting from a fear of COVID-19, and a reasonable accommodation cannot be made, then termination may be an option depending on the extent of the infection in the area and the specific facts of the case. Under Occupational Safety and Health Administration (“OSHA”), employees are only entitled to refuse to work if they believe they are in “imminent danger” which is defined as “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.”

Q: What leave must I provide to employees under the FMLA and/or the Families First Coronavirus Response Act?

A: Under the FMLA, employers with at least 50 employees within a 75-mile radius must provide up to 12 weeks of unpaid leave annually to eligible employees to recover from their own illness or to care for a family member who has an illness. The Families First Coronavirus Response Act, signed into law on March 18, 2020 is broader. The Act covers employers with fewer than 500 employees; however, employers with less than 50 employees can seek a hardship waiver from the Department of Labor to be exempted from compliance. Under the Act, covered employers are required to provide up to 10 paid sick days to all workers at their regular rate of pay for their own illness (up to \$5,110 total) or at 2/3 of their regular rate of pay to care for a family member (up to \$2,000 total). This applies to employees that are: diagnosed by COVID-19; advised by healthcare provider to self-quarantine; experiencing symptoms and seeking treatment/diagnosis; or caring for an individual that meets these criteria. Parents are eligible for up to 3 months of paid leave if their children’s school or daycare is closed.



Q: Could I face a worker's compensation claim from an employee that claims they were exposed to COVID-19 at work?

A: This varies depending on your state's worker's compensation laws. Typically a contagious disease contracted while working would fall under worker's compensation coverage; however, particularly during a pandemic, it will be difficult to identify the source of an individual's infection. If someone the individual works closely with on a daily basis tests positive, and the individual had extensive contact with that individual during the incubation period, this could be considered in a worker's compensation claim. If your business is a healthcare facility treating COVID-19 patients, your employees are more likely to have a valid claim.

Q: If I reduce an employee's hours or furlough an employee, are there corresponding insurance considerations?

A: This varies based on the provisions of each employer's health plan. A plan will state how long employees who are not working may remain covered by insurance. Once the period expires, active employee coverage must be terminated and a COBRA letter must be sent. Some insurance carriers may agree to temporarily waive applicable eligibility provisions due to the pandemic, but they are not required to do so.

Q: What travel restrictions can I place on my employees?

A: An employer is permitted to restrict business travel, and the CDC is encouraging all employers to do so. As of this writing, the CDC is recommending that employers restrict all nonessential travel to [Level 3](#) areas and to exercise caution regarding Level 2 areas. Many companies, including our firm, have canceled non-essential travel and in-office meetings.

Employers may not prohibit employees' personal travel, but employers can deny the employee's request for leave based on legitimate business disruptions that will be caused by the travel and resulting quarantine. When denying a request for leave, employers need to ensure they are not violating other employment statutes, such as the FMLA which requires some employers to provide up to 12 weeks of unpaid leave to care for an ill family member, or Title VII which prohibits discrimination based on national origin or race. Employees may request that employees inform them of any personal travel that they or their families take to an affected area. Employers may require employees to remain out of the workplace for 14 days after returning from a high-risk area (per the CDC recommendations) and should inform employees about this policy before they travel.

Our firm is requesting that any employee who is traveling outside the US to a Level 3 country that the CDC identifies as having "Widespread Sustained Transmission" report this travel to the human resources department and is encouraging employees to limit international travel at this time.



Q: May an employer encourage or require employees to telework (i.e., work from an alternative location such as home) as an infection control strategy?

A: Yes. The EEOC has [opined](#) that telework is an effective infection-control strategy. The EEOC has also stated that employees with disabilities that put them at high risk for complications of pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

Q: Do employer-instituted quarantines, temporary shutdowns, or mass layoffs entitle workers to unemployment benefits?

A: Yes, workers are generally entitled to unemployment insurance if they are furloughed when a business temporarily shuts down and all other unemployment requirements are met. Many states are enacting laws making it quicker and easier for terminated or furloughed employees to get benefits.

**The responses set forth above are intended to provide general advice to members of the Kentucky Chamber of Commerce and the business community around the state. These answers are not legal or tax advice regarding any particular situation. Many legal and tax analyses are highly fact-specific, and the relevant legal principles are often in flux and, given recent developments, may have changed to a greater or lesser degree since this information was posted. These answers do not purport to be an exhaustive review of all possible arguments in favor of or opposed to any particular legal or tax position. Any reader requiring legal or tax advice regarding a specific situation should contact a qualified attorney or tax advisor.*

Find more resources for Kentucky businesses at kychamber.com/coronavirus.