

# What is FFCRA?

05/11/2020



Families First Coronavirus Response Act



Signed on March 18, 2020



Effective April 1 through December 31, 2020



For employers there are several sections of the law to be aware of:



Expanded FMLA protection



Paid Sick Leave



Paid FMLA leave for Public Health Emergency (aka: childcare)



Tax credits for Paid Leave, for non-public entities only

# Information

- This is all specific to Coronavirus (COVID 19) April 1 and ends December 31, 2020
- Employers with under 500 employees must comply or attempt to comply April 17.
- Expands FMLA for up to 12 weeks for all employers with up to 500 employees, and to cover new hires (30 calendar days), just for COVID 19 (6 reasons)
- Paid sick leave is capped at 80 hours (in full day increments) per employees over a two-week period, except for the child leave reason...
  - Childcare leave has a higher cap and can be intermittent (with employers' permission) over 12 weeks
- Working remotely is work, not leave.

# Exceptions

- Employers under 25 employees do not have to hold job open for someone who is on the extended childcare FMLA due to COVID
- There are some exceptions for employers under 50 employees only for the childcare portion, the exemption is about financials not headcount per say.
- *To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department. More detailed info here, #58 and 59*
- Health Care Providers are exempt (if desired)

<https://www.dol.gov/agencies/whd/pandemic> (Facts Sheets, Posters, Q&A)

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (88 Q&A)

# Exceptions

## **Exception for Health Care Providers and Emergency Responders.**

- Employers who are health care providers or emergency responders may elect to exclude their employees from the public health emergency leave provisions of the bill.
- The provider or responder can be excluded for FMLA expansion (protection and pay) as an eligible employee whose job is protected if they do not come to work due to one of the 6 COVID reasons.
- Also they can be exempt from the Paid Sick Leave requirement(s).
- Definition of health care provider and emergency responders can be located on the Department of Labor website

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

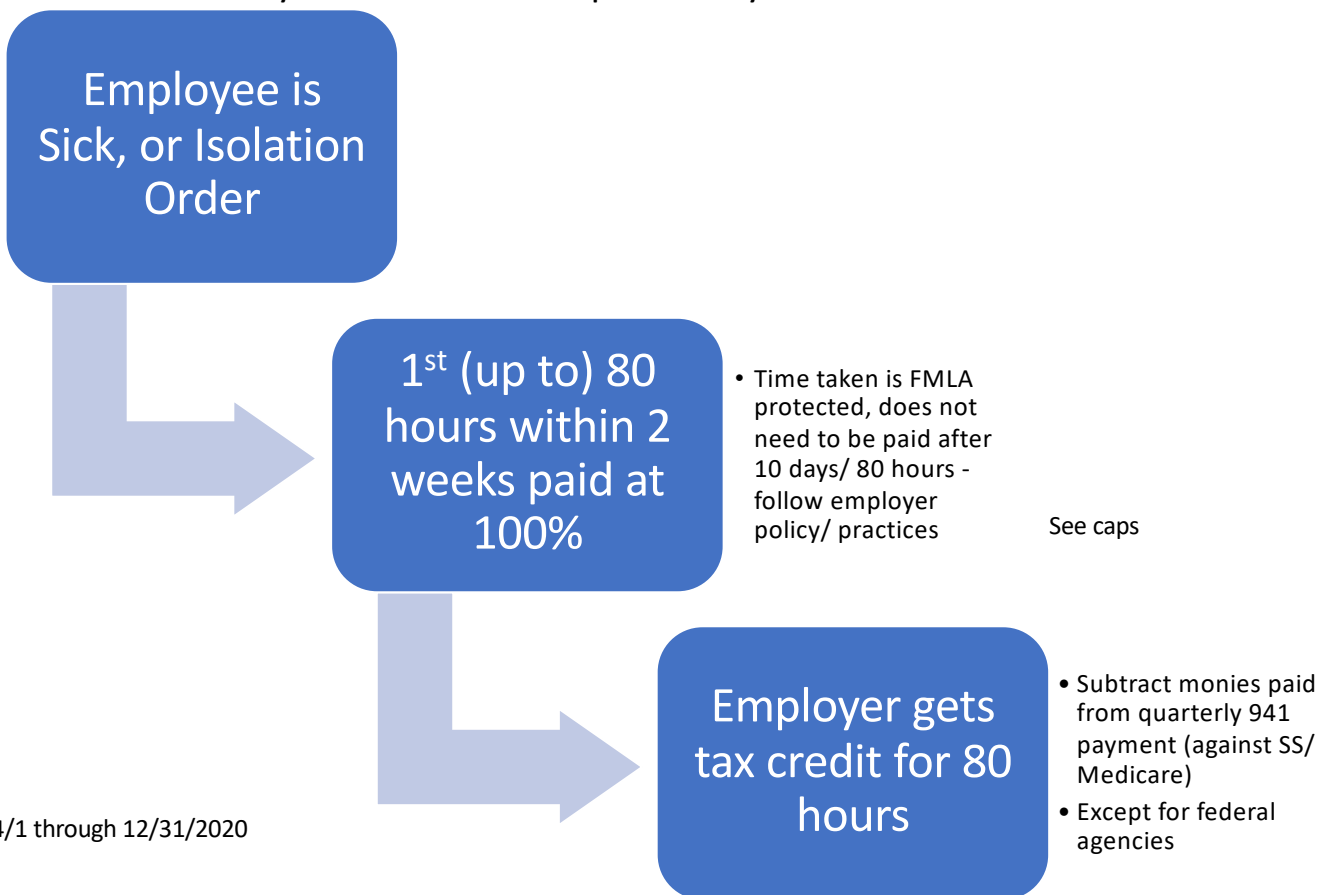
# FFCRA -Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

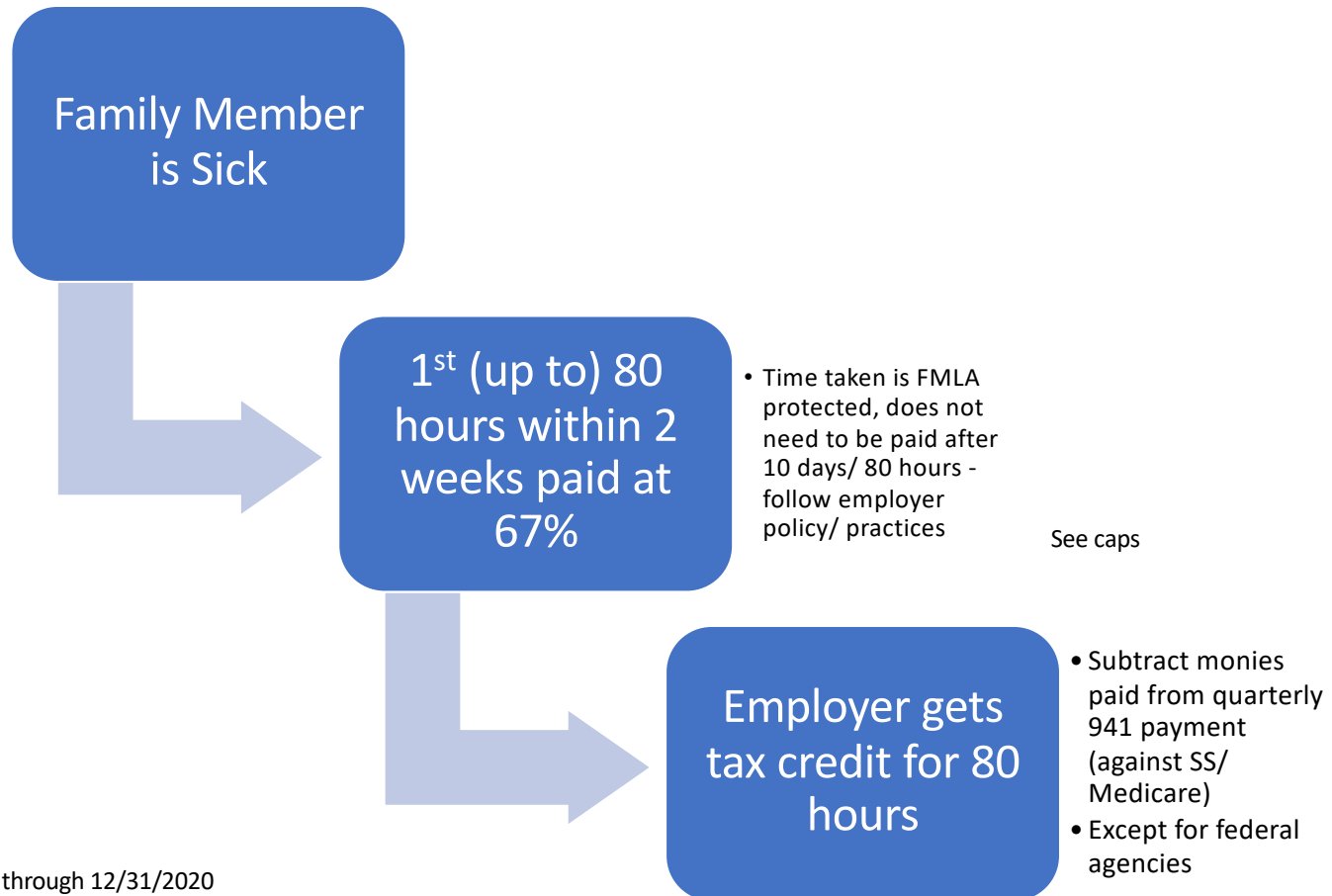
NOTE: Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

#1 employee (self) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; and/or  
#2 employee (self) has been advised by a health care provider to self-quarantine related to COVID-19; and/or  
#3 employee (self) is experiencing COVID-19 symptoms and is seeking a medical diagnosis; and/or  
#6 is experiencing any other substantially-similar condition specified by SHHS



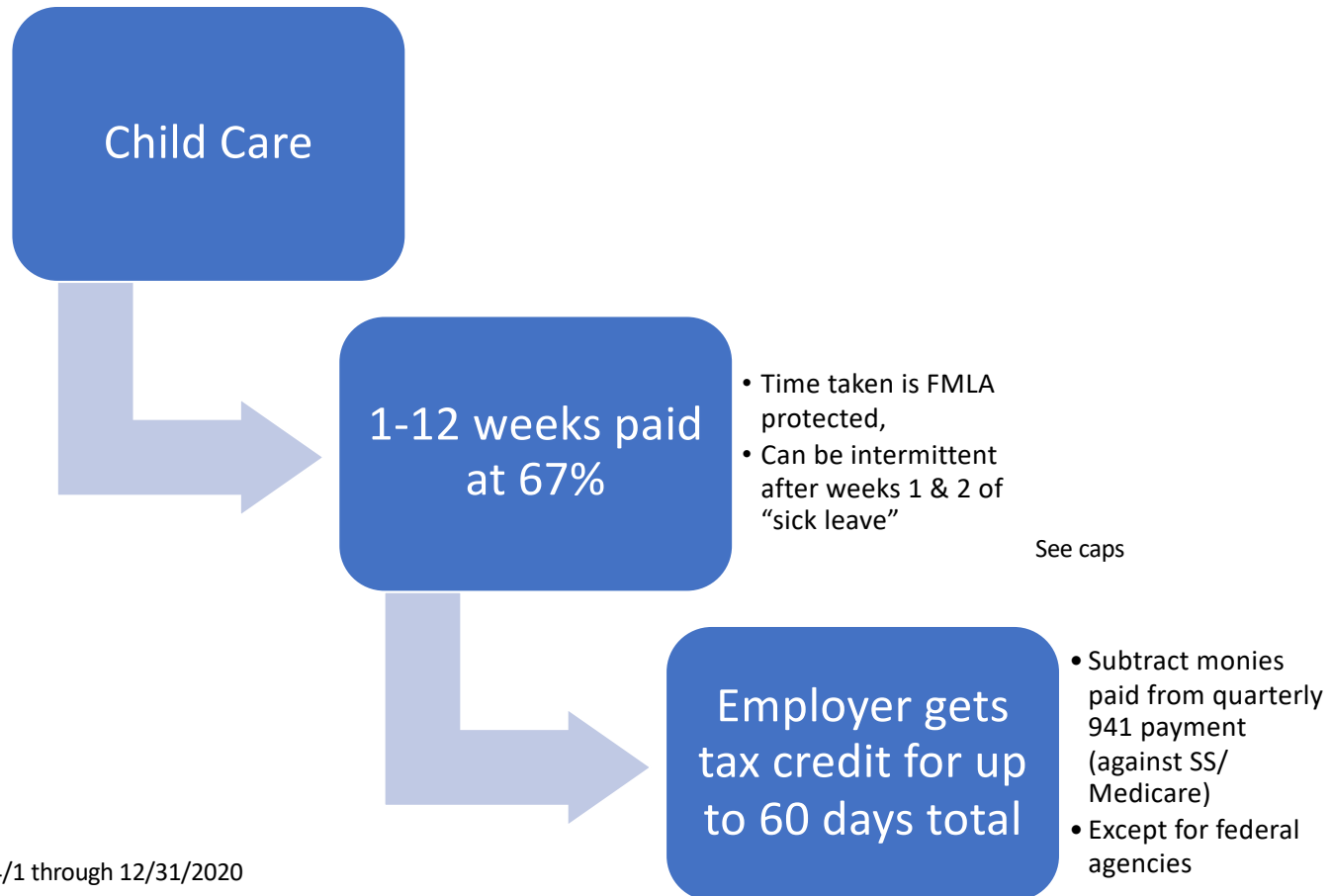
Effective for hours taken after 4/1 through 12/31/2020

#4 the employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); the individual must be a qualified family member (son, daughter, spouse, parent, parent in loco)



Effective for hours taken after 4/1 through 12/31/2020

#5 is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or



Effective for hours taken after 4/1 through 12/31/2020



# Caps for Tax Credit (Paid Leave)

## Self/ Employee (Reasons 1, 2, 3 and 6)

Sick Leave Act: \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section

## Family Care (Reason 4 - not Child Care)

Sick Leave Act: \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

## Child Care (Reason 5)

- \$200 per day and \$12,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a). (per Paid Sick Leave section of the law). \$2000 is sick leave act, \$10,000 is FMLA expansion act for childcare
- A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period
- 12 weeks can be intermittent for COVID childcare. First (up to) 80 hours (10 days) back to back over 2 weeks
- Then remaining 10 weeks totals 50 days between April 1 and December 31, 2020
- Total of 60 days
- This last reason, childcare, is the one that small businesses under 50 employees *might* be able to be excluded from

Pay	Credit Cap	*
\$12/ hour		
\$96/ day	\$200 or \$511 per day cap	
\$480/ week		
\$960/ two weeks (80 hours)	\$2,000 or \$5,110 total cap	\$12,000 cap for 12 weeks child-care reason

## Caps Examples

# Posters Required

- The FFCRA DOL required posters are ready (there are 2 versions, federal/ non-federal) as well as Q&A.
- Put up with your other posters, on your intranet & email to remote workers.
- Find posters, fact sheets and Q&A here
- <https://www.dol.gov/agencies/whd/pandemic>



## Review of FFCRA Q&A – Definitions



- **“Paid sick leave”** – means paid leave under the Emergency Paid Sick Leave Act.
- **“Expanded family and medical leave”** – means paid leave under the Emergency Family and Medical Leave Expansion Act.
  - Child Care Reason 5 only
  - Unless already qualify for FMLA
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

# Review of FFCRA Q&A – Top Questions

- **Question 6: When calculating pay due to employees, must overtime hours be included?**
- Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.
- However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period.
- If the employee's schedule varies from week to week, please see the answer to [Question 5](#), because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.
- Please note that pay does not need to include a premium for overtime hours.

# Review of FFCRA Q&A – Top Questions

- **Question 8: What is my regular rate of pay for purposes of the FFCRA?**
- For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your regular rate over a period of up to six months prior to the date on which you take leave.
- If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.
- If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.
- You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

# Review of FFCRA Q&A – Top Questions

- **Question 16: What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**
- When requesting paid sick leave or expanded family and medical leave, you must provide your employer either orally or in writing the following information:
  - Your name;
  - The date(s) for which you request leave;
  - The reason for leave; and
  - A statement that you are unable to work because of the above reason
  - If you request leave because you are subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally provide the name of the government entity that issued the order.
  - If you request leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should additionally provide the name of the health care provider who gave advice.

# Review of FFCRA Q&A – Top Questions

- **Question 16: What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**
- If you request leave to care for your child whose school or place of care is closed, or child care provider is unavailable, you must also provide:
  - The name of your child;
  - The name of the school, place of care, or child care provider that has closed or become unavailable; and
  - A statement that no other suitable person is available to care for your child.
- In addition to the above information, you must also provide to your employer written documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.



# Review of FFCRA Q&A – Top Questions

- **Question 16: What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA.

For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to provide medical certifications under the FMLA if required by your employer.

# Review of FFCRA Q&A – Top Questions

- **Question 18: What does it mean to be unable to work, including telework for COVID-19 related reasons?**
- You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.
- If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

## Review of FFCRA Q&A – Top Questions

- **Question 19: If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?**
- If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.
- Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave.
- Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

# Review of FFCRA Q&A – Top Questions

- **Question 40: Who is a son or daughter?**
- Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.
- WHD clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.
- FMLA fact sheets
- <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28B.pdf>
- <https://www.dol.gov/agencies/whd/fact-sheets/28k-fmla-adult-children>

## Review of FFCRA Q&A – Top Questions

- **Question 61: When am I eligible for paid sick leave to self-quarantine?**
- You are eligible for paid sick leave if a health care provider directs or advises you to stay home or otherwise quarantine yourself because the health care provider believes that you may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining yourself based upon that advice prevents you from working (or teleworking).

See next question

## Review of FFCRA Q&A – Top Questions

- **Question 62: I am an employee. I become ill with COVID-19 symptoms, decide to quarantine myself for two weeks, and then return to work. I do not seek a medical diagnosis or the advice of a health care provider. Can I get paid for those two weeks under the FFCRA?**
- Generally no.
- If you become ill with COVID-19 symptoms, you may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises you to self-quarantine.
- If you test positive for the virus associated with COVID-19 or are advised by a health care provider to self-quarantine, you may continue to take paid sick leave.
- You may not take paid sick leave under the FFCRA if you unilaterally decide to self-quarantine for an illness without medical advice, even if you have COVID-19 symptoms.
- Note that you may not take paid sick leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your employer's expectations and your condition, however, you may be able to telework during your period of quarantine.

## Review of FFCRA Q&A – Top Questions

- **Question 73: When am I eligible for paid sick leave based on a “substantially similar condition” specified by the U.S. Department of Health and Human Services?**
- The U.S. Department of Health and Human Services (HHS) has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

## Review of FFCRA Q&A – Top Questions

- **Question 86: Under what circumstances may an employer require an employee to use his or her existing leave under a company policy and when does the choice belong to the employee under the Department’s regulations, specifically [29 CFR 826.23\(c\)](#), [826.24\(d\)](#), [826.60\(b\)](#) and [826.160\(c\)](#)?**
- Paid sick leave under the Emergency Paid Sick Leave Act is in addition to any form of paid or unpaid leave provided by an employer, law, or an applicable collective bargaining agreement.
- An employer may not require employer-provided paid leave to run concurrently with—that is, cover the same hours as—paid sick leave under the Emergency Paid Sick Leave Act. (See also [Question 32](#).)



# More information

- Essential workers are defined by Homeland Security and should have a letter to carry (every state differs)  
<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>
- Your local/ state orders may have additional information on “essential workers” above and beyond this definition
- CDC recommendations (not mandates)  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
  - Check temperature with non-contact thermometer
  - Wear cloth face coverings
  - Document (Self Certify)

# Layoffs & Unemployment

- Write letter or email documenting reduced hours, temporary shutdown or closure due to COVID related economic conditions as well as “call back” when/ if it happens
- Provide employee with state unemployment agency information such as a PDF, letter with a link to apply
- If someone quits and files for unemployment, make sure you complete the form that the Unemployment Agency sent to you and provide any documentation you have that they quit (ie: when an employee quits, email their personal email that you accept their resignation as of X date and the reason they quit).
- Why? Quitting due to “COVID concern” is allowed for unemployment on some states. Otherwise it is not and they cannot collect (or will have to pay it back)



Q&A

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