



WORLDLY INSIGHT + LOCAL KNOW-HOW

# HANDLING EMPLOYEE HEALTH, SAFETY AND QUARANTINE DURING COVID-19

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# Managing Employees and Safety During COVID-19

- Employee compliance with safety standards
- Responding to actual or potential exposure in the workplace
- Confidentiality of employee information
- Employee leave issues
- Vaccinations

# Employee Compliance with Safety Standards

## Compliance with Safety Guidelines

- Be prepared to manage employees around safety requirements
- Just like any other rule or policy, employees can be required to comply, and face discipline if they do not comply.
- Should be enforced consistently.
- You can require that employees comply with Governor's orders off site as well – e.g. follow travel requirements, wear a mask, etc.

## Handling Safety Complaints

**Under OSHA, an employee is entitled to refuse to work if they believe they are in “imminent danger.”**

**OSHA defines “imminent danger”** to include “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.”

Whether or not certain conditions pose an “imminent danger” would depend upon the facts.

# Handling Safety Complaints

Section 7 of the National Labor Relations Act (NLRA) also protects employees (in union and non-union workplaces) to engage in “protected concerted activity for mutual aid or protection.”

The NLRB has upheld an employee’s right to participate “in a concerted refusal to work in unsafe conditions.”

## Handling Safety Complaints

- OSHA also has an anti-retaliation provision – meaning that employees who make complaints about safety in good faith may not be retaliated against.
- Following Vermont and CDC guidelines will protect against “imminent danger.”
- If an employee expresses a concern, discuss specific concern and explore if it is something that can/should be addressed.

## Accommodating Safety Issues...

- There are circumstances where you may have to provide reasonable accommodations to employees with disabilities around safety issues.
- Examples:
  - Employee with COPD who can't wear a mask
  - Employee with a mental health issue making it difficult to be in public during pandemic
- Age is NOT a disability. Be careful about making employment decisions based on employee ages, even if you are trying to help protect employees.

# Responding to Actual or Potential Exposure in the Workplace

## Symptomatic Employee

- If an employee answers yes to any daily health survey question regarding symptoms or has a high temperature:
  - The employee should go home immediately
  - Advise employee to seek a medical diagnosis.
  - Either get a negative COVID-19 test result or stay out of work for 10 days from the last symptom (note that the employee may not be eligible for FFCRA if they do not seek a diagnosis).
  - Be careful about discussing too much medical information when communicating with an employee.

## Employee with Positive Test Result

If an employee reports that they have COVID-19:

- That employee is not permitted to report to work.
- Call the Vermont Dept. of Health to report the case and discuss exposure at the workplace.
- Identify any other employees who have been within 6 feet of the positive employee for 15 or more minutes.
  - Tell those employees that there has been a potential exposure, and that they are to go home and quarantine.
  - These employees should follow Dept. of Health advice and advice of their health care providers about testing. When they have negative tests following the incubation period, they can return to work.
- Deep clean through a professional cleaning service or following CDC guidelines, ideally waiting 24 hours.

## Employee with Positive Test Result

- Follow Dept. of Health guidance as to when the positive employee should return to work. Ideally, you want a negative test but there is some data showing that someone with COVID-19 can test positive for months, while not being contagious anymore.
  - DOH currently recommends 10 days since symptoms first appeared, and symptoms have improved (or 10 days from test for asymptomatic case).
- DOH Resources:
  - <https://www.healthvermont.gov/covid-19/your-community/businesses-employees>
  - <https://www.healthvermont.gov/sites/default/files/documents/pdf/COVID-19-What-employers-should-do-if-their-employee-tests-positive.pdf>
  - <https://www.healthvermont.gov/sites/default/files/documents/pdf/COVID-19-Guidance-Positive-Guest-Establishment.pdf>

# Confidentiality of Employee Information

## Confidentiality

- Employers are required to keep all information relating to health as a confidential medical record under the ADA. This includes:
  - Information about symptoms when an employee calls in sick
  - Temperature readings
  - Any report of symptoms through screening process or health officer
  - Quarantine recommendation or COVID-19 diagnosis

## How do you handle confidentiality if there is an exposure risk?

- Even where an employee has a COVID-19 diagnosis, or an expected diagnosis, you cannot share the identity of that person with other employees.
- You need to work with the employee to determine contact with other employees/shared spaces
- You need to send those potentially exposed employees home to quarantine. You can tell them there is a potential exposure risk, but you cannot share the identity of the individual.
- Employers can share identity with the Department of Health.

# Employee Leave Issues

## Employee Leave Issues

- Certain leave requirements in place prior to coronavirus are applicable:
  - FMLA/PFLA leave (for sick employee and employee caring for family members)
  - Leave as a reasonable accommodation (employees with disabilities)
  - Earned sick leave under Vermont law (for sick employee, family member, school/child care closure)

## Employee Leave Requests

- **Certain new leave legislation is in place:**
- Families First Coronavirus Response Act (FFCRA)
  - The law took effect on April 1, 2020 and was set to expire on December 31, 2020. In December, Congress extended it through March 2021, but only on a *voluntary* basis.
  - President Biden has indicated that he will ask Congress to immediately extend FFCRA requirements through September 2021 as part of his American Rescue Plan.

## FFCRA

- Employers with less than 500 employees (with certain exceptions) may/must:
  - Provide partially or fully paid sick leave to their employees for COVID-19 related reasons for 2 weeks (80 hours). This is referred to as “Emergency Paid Sick Leave” (EPSL).
  - Provide employees with partially paid leave to care for children (under 18 years of age) due to school or daycare closures caused by COVID-19 for as much as 10 weeks (for a total of 12 weeks if used with the 2 weeks of paid time off). This is referred to as “Emergency Family Medical Leave” (EFML).
- *Employers may recoup the amounts paid out to employees for paid leave through quarterly payroll tax credits.*
- Employees’ available banks of FFCRA time did not renew as of 1/1/21.

## Paid Sick Leave

All employers with **less than 500** employees may/must provide **80 hours of paid sick leave (at current rate of pay, subject to caps)** to employees who are unable to work (**or perform telework**) because of one of the following reasons:

1. The employee is subject to a federal, state, or local isolation or quarantine order related to COVID-19;
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms consistent with COVID-19 **and** is seeking a medical diagnosis;

## Paid Sick Leave Under FFCRA

4. The employee is caring for an individual who is subject to a federal, state, or local isolation or quarantine order;
5. The employee is caring for a child for whom the school or childcare has been closed or is unavailable due to COVID-19 precautions; or
6. The employee is experiencing a substantially similar condition specified by the Department of Health and Human Services Secretary (unclear as of yet what this means).

## Reason #1

*The employee is subject to a federal, state, or local isolation or quarantine order related to COVID-19;*

- The Governor's Executive Orders relating to out-of-state leisure travel require quarantine for 7 days, followed by a negative test OR 14 days. Work and other reasons for travel are exempted.
- If an employee travels out of state voluntarily, they must be permitted to use paid leave upon return during the required quarantine.
- Employers can:
  - Prohibit out-of-state travel
  - Deny vacation requests
  - Discipline an employee for violating a clearly written policy that prohibits travel (this should be well-documented)

## Reason #1

*The employee is subject to a federal, state, or local isolation or quarantine order related to COVID-19;*

- The Governor's Executive Order relating to multi-household gatherings does not require quarantine
- Employers can:
  - Make employees take unpaid leave for violating requirements
  - Discipline an employee for violating the requirements

# Vaccinations

## Vaccinations

- As the COVID-19 vaccine becomes more available, many employers are asking if they can require employees to be vaccinated.
- In general, employers can require vaccinations that are FDA-approved as long as:
  - They provide reasonable accommodations for employees who object to vaccinations based on religious beliefs (Title VII)
  - They provide reasonable accommodations for employees who cannot be vaccinated for medical reasons (ADA)
- It is an open question as to whether employers can require a vaccine that has received “Emergency Use Authorization” from the FDA

## Vaccinations

- While the vaccine has EUA status, many employers are strongly encouraging employees to be vaccinated, rather than requiring it.
- Employers can modify job duties based on vaccine status, particularly where employees interact with the public or clients.
- Employers should be cautious about doing so on a consistent basis, and tailoring those decisions to job duties and health/safety.



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