

Top 5 Questions from our 3/31 COVID-19 Webinar:

1 May an employer require an employee who is out sick with COVID-19 to provide a doctor's note, submit to a medical exam, or remain symptom free for a specified amount of time before returning to work?

Yes. However, employers should consider that during a pandemic, healthcare resources may be overwhelmed, and it may be difficult for employees to get appointments with doctors or other health care providers to verify they are well or no longer contagious. During a pandemic health crisis, under the Americans with Disabilities Act (ADA), an employer would be allowed to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free, before it allows the employee to return to work. Specifically, an employer may require the above actions of an employee where it has a reasonable belief – based on objective evidence – that the employee's present medical condition would:

- impair his ability to perform essential job functions (i.e., fundamental job duties) with or without reasonable accommodation, or,
- pose a direct threat (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

In situations in which an employee's leave is covered by the FMLA, the employer may have a uniformly-applied policy or practice that requires all similarly-situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work. Employers are required to notify employees in advance if the employer will require a fitness-for-duty certification to return to work. If state or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.

2 May I use paid sick leave and expanded FMLA leave together for any COVID-19 related reasons?

No. The emergency FMLA applies only when you are on leave to care for your child whose school or place of care is closed, or whose childcare provider is unavailable, due to COVID-19 related reasons. However, you can take paid sick leave under the emergency paid sick leave act for numerous other reasons.

3 For the Social Security Tax Credits, will the PNI Tax Department reach out to us to determine if we are eligible?

We are not proactively reaching to clients currently regarding tax credits. This is in part because each client may have different situations. We encourage all our clients to connect with their legal counsel first to discuss what tax credits would apply to your company. Payroll Network will certainly be partnering with our clients as needed to help provide any of the data that resides in iSolved to assist you. We also expect more details to continue to be released to help companies navigate the various acts that have been passed in the last couple of weeks.

4 Are the paid sick leave and expanded family medical leave requirements retroactive?

No.

5 If providing childcare-related paid sick leave and expanded FMLA at my business with fewer than 50 employees would jeopardize the viability of my business, how do I take advantage of the small business exemption?

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 of Labor, which will be addressed in more detail in forthcoming regulations.

Here is some additional detail from the DOL to help guide you:

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

A great source for FAQs and answers: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

REMINDER – we at Payroll Network are not legal attorneys, and the information provided here is not legal advice. Please consult with your legal counsel for specific questions and guidance.