



# Minnesota Businesses Receive Guidance On COVID-19-Related Workplace Issues

Insights

4.20.20

Amid many unanswered questions and high levels of uncertainty, the Minnesota Department of Labor published guidance clarifying certain worker protections and benefits relating to the COVID-19 pandemic. The guidance answers questions pertaining to sick leave, the Family and Medical Leave Act (FMLA), the Families First Coronavirus Response Act (FFCRA), the Minnesota Human Rights Act (MHRA), unemployment insurance benefits, possible exposure, workers' compensation, pay, and workplace safety and health. Though the guidance provides workers with answers to numerous questions, it also provides insight to employers on the Minnesota Department of Labor's stance on certain issues during the pandemic.

## Sick Leave And FMLA Leave

Though Minnesota does not require employers statewide to provide employees paid sick leave, Duluth, Minneapolis, and St. Paul have each enacted a sick and safe leave ordinance. Employers within those localities must ensure compliance with not only their internal policies, but also the local ordinance. For example, Duluth has explained that coronavirus screening, providing or receiving care because of coronavirus symptoms or infection, and testing or quarantine following close contact with a person who has been diagnosed or is symptomatic are all protected activities under the city's ordinance.

Employers that do voluntarily offer sick leave to employees should allow employees to take leave for their own illness, as well as to care for certain family members who fall ill, including a minor child, adult child, spouse, sibling, parent, mother or father-in-law, grandchild, grandparent, or stepparent.

Employers must also be cognizant of new sick leave obligations imposed the FFCRA. Effective April 1, 2020, employers with between 50 and 499 employees must provide paid sick leave to employees who are unable to work because the employee is under a quarantine or isolation order, the employee is experiencing symptoms of COVID-19, or the employee is seeking a medical diagnosis of COVID-19. Additionally, covered employers must provide paid sick leave to employees who are unable to work because they are caring for someone subject to a quarantine or isolation order, or they are caring for a child whose school or childcare provider is closed because of COVID-19.

Additionally, covered employers must be mindful of their continued obligations to offer unpaid leave

for qualifying reasons under the FMLA.

### **Discrimination Concerns**

Minnesota's Department of Labor further emphasizes that under both the MHRA and the Americans with Disabilities Act (ADA), employers cannot discriminate against employees who have disabilities and request reasonable accommodations pertaining to COVID-19. The guidance informs employees if they have a disability that affects their risk of contracting COVID-19, they have the right to request a reasonable accommodation, such as teleworking or taking leave to reduce their risk of contracting the virus.

While you may ask employees if they are experiencing flu-like symptoms, you should not ask employees who do not have known or apparent flu-like symptoms whether they have a medical condition that could make them vulnerable to influenza complications. You must also remember to keep all personal medical information, including any responses to permissible inquiries, confidential in accordance with state and federal laws.

### **Unemployment Insurance Benefits**

On March 16, 2020, Minnesota Governor Tim Waltz issued Emergency Executive Order 20-05, relaxing the state's unemployment scheme. Under the Executive Order, workers who are unemployed or have reduced hours because of the pandemic may now qualify for unemployment benefits under the relaxed standards. Additionally, the Executive Order directs that COVID-19 related unemployment claims will not be used in calculating the employer's unemployment tax rate.

### **Job Protection For Exposed Workers**

You must also remember that you cannot discharge, discipline, or penalize employees who have been exposed to COVID-19 and the Minnesota Department of Health recommends that the employee isolate or quarantine. Additionally, you cannot discharge, discipline, or penalize employees who stay home to care for a minor or qualifying adult family member who the Minnesota Department of Health recommends to isolate or quarantine. The protection lasts for 21 work days.

### **Workers' Compensation**

Employees may be entitled to receive workers' compensation benefits if they can prove that they contracted COVID-19 because of their employment. Other situations, such as complying with stay-at-home, quarantine, or isolation orders, will not qualify as compensable workers' compensation injuries.

### **Wage Considerations**

Minnesota employers must tread very carefully with regard to any changes in salaries in light of the Wage Theft Act. Generally, you may not allow employees to "volunteer" to work for free because minimum wage laws and the Fair Labor Standards Act (FLSA) continue to apply.

You must also be cognizant of laws that govern changes to the salaries of exempt employees. For example, an employer cannot deduct from a salaried employee's weekly salary if the worker misses a day because no work was available unless there was no work available for the entire week. If the

employee misses work because other reasons (subject to any leave and vacation policies), you may deduct a proportional amount.

## **Workplace Safety**

The pandemic has also led to numerous questions about employers' requirement to provide safe workplaces. You may not retaliate against any employee for reporting a safety or health concern. OSHA permits employees to refuse to work under conditions that the employee, acting in good faith, reasonably believes that present an imminent danger of death or serious physical harm.

Minnesota's Department of Labor has taken the stance that "a reasonable belief of imminent danger of death or serious physical harm includes a reasonable belief of the employee that the employee has been assigned to work in an unsafe or unhealthful manner with an infectious agent. Coronavirus is considered to be an infectious agent."

## **Conclusion**

Many questions remain unanswered in this unprecedented time, and employers should proceed carefully considering recently enacted legislation and executive orders. We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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