



*The Lawyers for Employers*

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### FREQUENTLY ASKED QUESTIONS ON THE CORONAVIRUS

**Q1. Are contractors entitled to receive compensation from the Districts when it is shutdown due to the COVID-19 epidemic?**

A1. Yes. On March 18, 2020, the Minnesota Department of Education updated its Frequently Asked Questions document to better reflect how schools are supposed to be managing their transportation payments. <https://education.mn.gov/MDE/dse/health/covid19/>

Question 8 provides: **8. Are school districts and charter schools expected to continue paying out bus transportation contracts? Yes**, the expectation is that school districts and charter schools maintain collaboration and contracts with bus transportation providers. These professionals are instrumental in supporting the efforts of distance learning specifically for transporting the students of our healthcare and emergency care workers and food to our students throughout the community.

**Q2. Are school bus drivers entitled to unemployment benefits when the school is closed due to the COVID-19 virus?**

A2. Drivers are eligible to apply for unemployment benefits. However, the determination of whether school bus drivers are entitled to receive unemployment benefits will be determined by the Department of Employment and Economic Development. Additionally, School Districts should be paying contractors pursuant to the terms of the transportation contract and in turn, contractors should be paying their drivers as if they were working. For additional unemployment information see <https://www.uimn.org/employers/employer-account/news-updates/covid-19.jsp>

**Q3. May an employer require an employee to use his/her vacation or Paid Time Off while on leave due to COVID-19.**

A3. Yes, but employers should review their PTO/vacation policies and apply their terms consistently among employees.

**Q4. May an employer advance paid time off or vacation time for employees who are on a leave due to the COVID-19 epidemic?**

A4. Yes. If an employee does not have paid time off or vacation time, employers may advance paid time off or vacation time for employees. Before taking such action, employers should consider whether other benefits are available from the state or federal government.

**Q5. May an employer provide additional paid leave to employees who are absent due to the COVID-19 epidemic?**

A5. Yes. Employers may offer additional paid time off or vacation time for employees. Before taking such action, employers should consider whether other benefits are available from the state or federal government.

**Q6. Are there additional benefits that may be available to employees while they are absent from work due to the COVID-19 epidemic?**

A6. On March 18, 2020, the Senate passed the Family First Coronavirus Response Act, which provides in summary:

Two weeks of paid sick leave to employees who have COVID-19 or caring for those with COVID-19. They will be paid their entire salary, up to \$511 per day (which works out to about \$130,000 per year).

Ten additional weeks of paid leave at a two-thirds rate of up to \$200 per day for those caring for children not in school.

Employers will get a tax credit in the form of the 6.2% social security tax that they pay for the sick leave that they pay out.

Large Companies over 500 employees are exempt and small companies under 50 employees may be exempt.

Additional information can be found at <https://www.prkalaw.com/labor-and-employment-law/2020/03/19/employer-obligations-under-the-families-first-coronavirus-response-act/>

**Q7. Can we take employees temperature when they report to work?**

A7. Yes. On March 17, 2020, the EEOC issued revised Guidance providing that employers may conduct temperature checks during this epidemic. Such temperature checks are for this limited circumstance. Additional information can be found at:

[www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitation\\_act\\_coronavirus.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitation_act_coronavirus.cfm)

**Q8. Can we have employees fill out a questionnaire when they report to work, asking the following questions:**

- a. In the last 14 days, have you traveled to or returned from a destination with a Travel Health Notice issued by the CDC at a Level 3 also known as a Warning Level for COVID-19**
- b. In the last 14 days, have you been in close contact with a confirmed or suspected COVID-19 case?**
- c. In the last 14 days, have you experienced a fever and cough or difficulty breathing?**

**If so, when was the last time you experienced these symptoms**

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A8. Yes. Such a questionnaire is likely permitted under the Americans with Disabilities Act, provided the questionnaire is maintained confidentially and treated as a medical record and is limited to job related purposes. Additionally, before banning an employee from working due to answers to these questions, a designated company representative should ask the employee follow-up questions in private.

**Q9. Can we send employees home from work if they exhibiting symptoms of COVID-19?**

A9. Yes. The EEOC has advised that sending home employees exhibiting symptoms is not disability-related if the symptoms are akin to influenza and is permitted under the Americans with Disabilities Act if the illness is serious enough to pose a threat to others.

**Q10. Can we send employees home from work if they have been exposed to COVID-19 by a family member or someone else?**

A10. Yes. Under the CDC guidance, employees who are asymptomatic may be excluded from the workplace, if they: (1) have close contact with, (2) sat on an aircraft within 6 feet (two airline seats) of, or (3) live in the same household as, are an intimate partner of, or are caring for at home, for a symptomatic individual with laboratory-confirmed COVID-19.

CDC defines “**symptomatic**” as subjective or measured fever, cough, or difficulty breathing. CDC defines “**close contact**” as: (a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time or (2) while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case; or (3) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on)

For more information, see <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>

**Q11. Can we identify an employee’s actual or probable COVID-19 diagnosis to employees, the District or vendors?**

A11. Without revealing the name of the employee to comply with confidentiality requirements under the Americans with Disabilities Act, employers should notify exposed employees of their potential workplace exposure. The employer may also notify non-exposed employees as well as vendors and the District that there has been a potential workplace exposure without identifying the employee. Contractors should consider working with the Department of Health or County Health Department where possible on how to communicate.

**Q12. If an employee contracts COVID-19 while working at the Company, is he/she entitled to workers' compensation benefits?**

A12. Unlikely. If an employee contracts a disease that arises out of and in the course of his/her employment, the employee may be entitled to workers' compensation benefits, including payment of wage loss and medical benefits. However, the employee will need to establish that the employee contracted the disease due to the employee's employment.

**Q13. May an employee refuse to report to work due to a generalized fear of contracting COVID-19?**

Q13. Possibly, but unlikely. The Occupational Safety and Health Act provides employees with protection against retaliation for bringing forth a good faith concern over safety and health in the workplace. Under this standard, employees may refuse to work: (1) if possible, the employee have asked the employer to eliminate the danger, and the employer failed to do so; (2) the employee refused to do so after genuinely believing that an imminent danger exists; (3) a reasonable person would agree that there is a real danger of death or serious injury; and (4) there isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection. See, <https://www.osha.gov/right-to-refuse.html>

**Q14. Are employees protected from being terminated if they have contracted COVID-19 or have been quarantined by the Department of Health?**

Q14. Under a state health law, if an employee has contracted or been exposed to COVID-19, and the Minnesota Department of Health recommends that the employee stay home, an employer cannot discharge, discipline, or penalize the employee for missing work. This protection also applies if the employee needs to care for a minor or disabled or vulnerable adult family member for whom MDH recommends isolation or quarantine. This employment protection is available for 21 workdays. Additionally, employees may also be eligible for protection under the Family and Medical Leave Act, which permits employees to take up to 12 weeks of unpaid leave for his/her serious health condition or a child's serious health condition. See also Answer to Question # 6