

COVID-19

Quick Reference Guide

Employee Symptoms and Time Off

As of April 28, 2020

Governor Whitmer’s Stay-Home-Stay-Safe Executive Order allows critical infrastructure and certain other employees to continue working. Other orders may soon allow more employees to return to work. Employers are required to screen employees working onsite or in the field for COVID-19 related symptoms and exposure. Collectively, the Families First Coronavirus Response Act (FFCRA), Governor Whitmer’s Executive Order 2020-36 and certain local county orders require employees to shelter at home if they are: (1) displaying symptoms of COVID-19, (2) awaiting a diagnosis, (3) diagnosed with COVID-19, (4) advised by a health care provider to isolate due to COVID-19 related concerns, (5) have been in close contact with an individual displaying symptoms of COVID-19 or diagnosed with COVID-19, (6) taking care of an individual diagnosed with COVID-19 or advised to isolate due to COVID-19 concerns, or (7) taking care of a child whose school or daycare is closed due to COVID-19 reasons.

Use this quick reference guide when employees are unable to work (or telework) due to the following COVID-19 reasons:

<u>UNABLE TO WORK:</u>	<u>MEDICAL ADVICE TO EMPLOYEE:</u>	<u>SHELTER AT HOME UNTIL:</u>	<u>PAID AS FOLLOWS:</u>
Employee has a fever	Did not see doctor.	3 days after symptom free AND 7 days since symptoms first appeared	Use PTO then apply for UIA benefits
Employee has atypical cough	Did not see doctor.	3 days after symptom free AND 7 days since symptoms first appeared	Use PTO then apply for UIA benefits
Employee has atypical shortness of breath	Did not see doctor.	3 days after symptom free AND 7 days since symptoms first appeared	Use PTO then apply for UIA benefits
Employee has atypical sore throat	Did not see doctor.	3 days after symptom free AND 7 days since symptoms first appeared	Use PTO then apply for UIA benefits**
Employee has atypical diarrhea	Did not see doctor.	3 days after symptom free AND 7 days since symptoms first appeared	Use PTO then apply for UIA benefits**
Employee has a fever	Doctor advises isolation or waiting for COVID-19 diagnosis	(1) 3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result (2) While awaiting diagnosis & return next work day after negative result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits
Employee has atypical cough	Doctor advises isolation or waiting for COVID-19 diagnosis	(1) 3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result (2) While awaiting diagnosis & return next work day after negative result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits

<u>UNABLE TO WORK:</u>	<u>MEDICAL ADVICE TO EMPLOYEE:</u>	<u>SHELTER AT HOME UNTIL:</u>	<u>PAID AS FOLLOWS:</u>
Employee has atypical shortness of breath	Doctor advises isolation or waiting for COVID-19 diagnosis	(1) 3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result (2) While awaiting diagnosis & return next work day after negative result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits
Employee has atypical sore throat	Doctor advises isolation or waiting for COVID-19 diagnosis	(1) 3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result (2) While awaiting diagnosis & return next work day after negative result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits
Employee has atypical diarrhea	Doctor advises isolation or waiting for COVID-19 diagnosis	(1) 3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result (2) While awaiting diagnosis & return next work day after negative result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits
Employee receives positive COVID-19 diagnosis	Received medical diagnosis	3 days have passed since symptoms resolved AND 7 days have passed since symptoms first appeared or since swabbed for test that yielded positive result	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits doctor, date, and medical advice
Employee advised by doctor to isolate / self-quarantine due to concerns related to COVID-19 (ex: employee with asthma, diabetes, COPD, etc. at higher risk for contracting the virus)	Received medical advice	After FFCRA time off, available PTO and other employer time off, Americans with Disabilities Act (ADA) requires employers to consider whether time off is a disability accommodation. May periodically request updated medical documentation to establish need for continued leave.	(1) FFCRA* up to 10 days paid, (2) available PTO, (3) apply for UIA benefits
Employee not feeling well and/or received a diagnosis not related to COVID-19 (strep throat, influenza...)	Depends on employer sick leave policy	Depends on employer sick leave policy	Depends on employer sick leave policy
Employee is caring for an individual with COVID-19 (if employee develops symptoms or tests positive, see above)	N/A	(1) 14 days have passed since the individual being cared for last displayed symptoms; or (2) individual being cared for receives a negative COVID-19 test	(1) FFCRA* up to 10 days paid at 2/3 regular rate of pay, (2) available PTO, (3) apply for UIA benefits

<u>UNABLE TO WORK:</u>	<u>MEDICAL ADVICE TO EMPLOYEE:</u>	<u>SHELTER AT HOME UNTIL:</u>	<u>PAID AS FOLLOWS:</u>
Employee caring for individual advised by doctor to isolate due to COVID-19 concerns (if employee develops symptoms or tests positive, see above)	N/A	After FFCRA time off, available PTO and other employer time off, FMLA may provide additional time off depending on employee eligibility, underlying health condition, and medical certification.	(1) FFCRA* up to 10 days paid at 2/3 regular rate of pay, (2) available PTO, (3) apply for UIA benefits**
Employee had close contact with individual who tested positive for COVID-19 (outside employee's household)	N/A	(1) 14 days have passed since the individual last displayed symptoms; or (2) individual receives a negative COVID-19 test	Use PTO then apply for UIA benefits
Employee had close contact with individual who displays principal COVID-19 symptoms (outside employee's household)	N/A	(1) 14 days have passed since the individual last displayed symptoms; or (2) individual receives a negative COVID-19 test	Use PTO then apply for UIA benefits**
Employee traveled on an airplane in the last 2 weeks	N/A	14 days after return from travel	Use PTO then unpaid
Employee traveled anywhere other than locally in the last 2 weeks	N/A	14 days after return from travel	Use PTO then unpaid
Employee is caring for child due to school or daycare closure from COVID-19	N/A	Up to 12 weeks if emergency sick leave and expanded FMLA leave are combined. If emergency sick leave is taken for another qualifying reason, then employee is only eligible for 10 weeks of expanded FMLA for this reason.	(1) FFCRA*** up to 10 days paid at 2/3 regular rate of pay, (2) expanded FMLA additional 10 weeks paid at 2/3 regular rate of pay, (3) available PTO, (4) apply for UIA benefits

* Obtain a doctor's note or the name of the doctor, date, and medical advice directed to individual.

** (1) Atypical sore throat and atypical diarrhea are identified in county ordinances as symptoms that necessitate an employee being sent home for 3+ days; (2) an employee caring for an individual who is advised to self-isolate due to COVID-19 related concerns is a covered event under the FFCRA; and (3) employee exposure to an individual suffering symptoms of COVID-19 constitutes a reason for an employee to shelter-at-home to avoid the risk of spreading the virus under Executive Order 2020-36. However, (1) – (3) are not listed as symptoms or reasons that would qualify an individual for unemployment benefits under Executive Order 2020-57. Despite this, it is unlikely an employee would be denied benefits since the UIA does not ask for the specific symptom that caused an employee to be unable to work.

*** Obtain a school closure notice (school email or school blog).

REMINDERS FOR A SAFE WORKFORCE

1. You must have safety protocols in place. Review CDC and OSHA guidance for best practices. The protocols must include: (a) employee screening questions; (b) social distancing; (c) hand-washing; (d) access to hand-sanitizer; (e) workstation/work area sanitizing; (f) lunchroom, use of kitchen, coffee station and other rules about gathering or use of facilities; (g) limit access to meeting rooms, conference rooms; and (h) teleconferencing and teleworking options.
2. Under Michigan Executive Order 2020-59, employers must also provide some sort of face covering masks and certain employers must: (a) bar gatherings where people cannot maintain six feet of distance; (b) limit in-person interaction with clients and patrons to the maximum extent possible; and (c) adopt protocols to limit the sharing of tools and equipment and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
3. Safety protocols should be provided to employees in writing, particularly when notifying employees that they are being returned to work from furlough or unemployment. Employers should require employees to sign a copy of the protocols acknowledging receipt and understanding of the employer’s zero tolerance for violations of its safety protocols.
4. Safety protocols should be posted where other H.R. notifications are posted and sent to all employees who remain on furlough.

FREQUENTLY ASKED QUESTIONS

1. What if an employee refuses to return to work from furlough because he or she is “afraid”?	A: Employees who refuse to return to work from furlough solely because they are “afraid” can be deemed a voluntary quit. They are not entitled to the protections of Executive Order 2020-36. They would not be entitled to unemployment benefits. Employers will need to decide whether the loss of that employee may negatively impact loan forgiveness if the employer received a Payroll Protection Plan (PPP) loan.
2. What if an employee accuses me of not providing a safe work environment?	A: Carefully consider what the employee is claiming. Before disciplining or deeming that employee a voluntary quit for refusing to work under these circumstances, consider the claims of unsafe work environment. Make sure to have safety protocols in line with CDC and OSHA guidance to overcome these types of claims. Make sure to communicate with the employee that you have safety protocols in place to overcome a claim of OSHA retaliation.
3. Can I force an employee to see a doctor or get tested if the employee claims to have symptoms of COVID?	A: No. You can encourage an employee to see a doctor or get tested to prevent the spread of COVID-19, but you cannot force them to do either one.
4. Can I force my employee to provide me with medical documentation supporting the symptoms or need for leave?	A: Under the FFCRA, employers are entitled to medical documentation to support the need for leave. Furthermore, the DOL has listed specific documents the employer should obtain and retain in order to substantiate any future tax credits. <u>However</u> , Governor Whitmer’s Executive Order 2020-36 prohibits an employer from discharging, disciplining or retaliating against an employee for failing to comply with a requirement to provide documentation of symptoms or close contact with someone displaying symptoms.
5. What should I do if my employee does not provide medical documentation?	A: If the employee is unable to provide documentation, ask the employee for the name of the health care provider, date of visit and medical advice. If the employee did not see a doctor, ask the employee for his or her symptoms, date symptoms began, date of exposure to individual displaying symptoms, relationship with individual, date of positive test, etc. in order to establish reason for leave, chronology and/or exposure dates. Document as much information as you can, including the dates you asked for documentation and the employee’s reason for being unable to comply.

<p>6. What if an employee continues to claim to have symptoms beyond “normal” recovery times? For example, my employee tells me he still has a cough four weeks after he first reported symptoms but he has not seen a doctor.</p>	<p>A: The recent legislation (allowing employers to get medical documentation) and the Governor’s orders (prohibiting action against employees for not providing documentation) have put employers in a difficult position. Clever employees can continue to claim that they are displaying symptoms without employers being able to verify the truth of those statements. If employees fail to provide medical documentation and/or fail to provide the employer with relevant medical facts (doctor name, date of treatment, advice, etc.), employers can deny employees pay under the FFCRA. However, employers <u>cannot</u> refuse to allow employees time off work or discipline employees for taking the time off. Document the employee’s refusal or failure to provide medical documentation. Try to work with employees to make it easier for them to provide documentation.</p> <p>Employers can also follow up with employees when the “recovery” times identified in county ordinances and executive orders have lapsed without hearing from the employee. If your employee has not contacted you after 14 days, reach out, inquire as to their status, give them time to respond, and document their response before taking any actions against them.</p>
<p>7. How can I convince my employees to return to work?</p>	<p>A: Prior to returning your employees to work, make sure you have strong communication explaining the return to work date and the consequences for failing to return to work (voluntary quit and loss of unemployment benefits). Make sure you also have your social distancing, safety, and sanitizing protocols in place before returning your employees to work. Provide a copy of the protocols, and require employees to acknowledge receipt and review. Make clear that you have a zero tolerance policy for failure to follow the protocols.</p>
<p>8. Who do I call for help?</p>	<p>A: Contact Nikki Foley at nfoley@jaffelaw.com or Patrice Arend at parend@jaffelaw.com. Nikki Foley and Patrice Arend can answer your employment-related COVID-19 questions.</p>
<p>9. Can Jaffe help me draft return to work and safety protocol documents for my workplace?</p>	<p>A: Of course. Nikki Foley and Patrice Arend can draft letters related to critical infrastructure workforce, designating employees as critical infrastructure workers, removal from unemployment and resumption of payroll, and return to work. They can also draft screening questionnaires and protocols related to CDC and OSHA compliance, social distancing, safety, sanitizing, and use of personal protection equipment.</p>
<p>10. Where else can I find answers to employer questions?</p>	<p>A: The Department of Labor has posted 88 FAQs related to the FFCRA, paid time off, furloughs and return to work issues. You can access the DOL site here: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions. The State of Michigan also has a robust FAQ page which can be found here: https://www.michigan.gov/coronavirus/.</p> <p>Jaffe has also provided detailed information about the FFCRA, DOL regulations, leaves of absence, unemployment compensation benefits, Executive Orders, WARN Act, and other factors to consider here.</p>



The foregoing is only a general summary and is being provided with the understanding that Jaffe Raitt Heuer & Weiss, P.C. is not rendering legal, tax or other professional advice, positions or opinions on specific facts or matters and, therefore, assumes no liability whatsoever in connection with its use.