

COVID-19

Quick Reference Guide

Employee Symptoms and Time Off

As of May 20, 2020

CONTAINS UPDATED INFORMATION AS OF MAY 20, 2020

Governor Whitmer is slowly lifting the stay-home-stay-safe restrictions implemented in March 2020. Employees that are part of critical infrastructure or necessary to conduct minimum basic operations have been permitted to perform in-person work. Other jobs and industries have already reopened to allow in-person work, and more industries are being added to that list as restrictions are lifted. Employers are required to implement plans and protocols that comply with various executive orders and local ordinances in order to safely continue or resume operations. [Click here for more information.](#)

Those protocols include screening questions employees must answer before each shift which are designed to identify potential risk of sickness or exposure to COVID-19. The State of Michigan and local health departments have issued required questions and required shelter-in-place waiting periods. Check county websites not listed here for more information.

Oakland County Screening Questions & Responses	Wayne County Screening Questions & Responses	Washtenaw County Screening Questions & Responses
<p>1. Do you have any of the following symptoms:</p> <ul style="list-style-type: none"> • 100.4 degrees F or higher (measured by touchless thermometer if available, but verbal confirmation of no fever sufficient if touchless thermometer is not available) • cough (excluding chronic cough due to known medical reason other than COVID-19), • shortness of breath, • at least 2 of the following symptoms: chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell and/or diarrhea (excluding when due to known medical condition, and extreme fatigue? <p>If YES, employee must isolate for 10 full days after symptoms start AND must have 3 full days of no fever (without fever reducing drugs) and improvement of other symptoms before return to work.</p>	<p>1. Do you have any symptoms of fever, cough, shortness of breath, sore throat, or diarrhea?</p> <p>If YES, employee must isolate a minimum of 7 days since symptoms first appeared AND must have 3 full days without a fever and improvement of respiratory symptoms.</p>	<p>1. Do you have symptoms of:</p> <ul style="list-style-type: none"> • 100.4 degrees F or higher (measured by touchless thermometer if available, but verbal confirmation of no fever sufficient if touchless thermometer is not available) • cough (excluding chronic cough due to known medical reason other than COVID-19), • shortness of breath, • sore throat, or • diarrhea (excluding diarrhea due to know medical reason other than COVID-19)? <p>If YES, employee must isolate for 10 full days after symptoms start AND must have 3 full days of no fever (without fever reducing drugs) and improvement of other symptoms before return to work.</p>
<p>2. Have you had any close contact in the last 14 days with someone diagnosed with COVID-19?</p> <p>If YES, employee must quarantine for 14 days after last exposure to person with COVID-19, per CDC guidance,</p>	<p>2. Have you had close contact in the last 14 days with an individual diagnosed with COVID-19?</p> <p>If YES, employee must quarantine for 14 days if employee had close contact with a person diagnosed with COVID-19.</p>	<p>2. Have you had close contact in the last 14 days with an individual diagnosed with COVID-19?</p> <p>If YES, employee must quarantine for 14 days following close contact with COVID-19 positive person, except</p>

except employees involved in mitigation of risk during pandemic (e.g. healthcare, pharmacy, public health functions).		employees involved in mitigation of risk during pandemic (e.g. healthcare, pharmacy, public health functions).
<p>3. Have you travelled internationally or outside of Michigan in the last 14 days (excluding commuting on a regular basis between a home located outside of Michigan to work)?</p> <p>If YES, employee must quarantine for 14 days following travel, with exceptions for necessary workers engaged in travel related to supply chain and critical infrastructure.</p>	<p>3. Have you travelled via airplane internationally or domestically in the last 14 days?</p> <p>If YES, employee must quarantine for 14 days after international or domestic travel.</p>	<p>3. Have you travelled internationally or outside of Michigan in the last 14 days (excluding commuting between a home located outside of Michigan to work)?</p> <p>If YES:</p> <ul style="list-style-type: none"> • Not Supply Chain or Critical Infrastructure = quarantine for 14 days following international or domestic travel. • Supply Chain or Critical Infrastructure = without symptoms, employee may work. With symptoms, employee must quarantine for at least 10 days after symptoms start AND must have 3 full days of no fever (without fever reducing drugs) and improvement of other symptoms.

Under the Families First Coronavirus Response Act (FFCRA), Governor Whitmer’s Executive Order (EO) 2020-36 and certain county health orders, employees are required or eligible 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. Depending on the employee’s reason for being unable to work, an employee may be eligible to receive pay under the FFCRA, employer PTO policies or through State unemployment compensation benefits. For information about the FFCRA and whether your company must follow the FFCRA, [click here](#). When an employee is unable to work or telework, use this quick reference guide to help determine the length of time an employee should shelter at home based on screening questions and whether the employee should be paid for that time at home.

REASON EMPLOYEE IS UNABLE TO WORK	ADVICE GIVEN TO EMPLOYEE BY MEDICAL PROFESSIONAL	ISOLATION OR QUARANTINE PERIOD (How long is employee off work)	PAID AS FOLLOWS: (FFCRA does not apply to all businesses)
Employee experiencing symptoms of COVID-19 (see above for symptoms listed on employee health screening questionnaire)	Employee does not see a doctor.	EO 2020-36: isolate until 7 days have passed since employee’s symptoms first appeared AND 3 days have passed since symptoms resolved. <i>However</i> , employers should follow local county health orders that have more restrictive isolation or quarantine periods. See below.	FFRCA does not apply, so employees are not eligible for paid leave under FFCRA. Employee should be allowed to use accrued but unused PTO and then apply for UIA benefits.
		Oakland & Washtenaw Counties: isolate for 10 full days after symptoms start AND must have 3 full days of no fever (without fever reducing drugs) and improvement of other symptoms before return to work.	

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		Wayne County: isolate a minimum of 7 days since symptoms first appeared AND must have 3 full days without a fever and improvement of respiratory symptoms.	
Employee experiencing symptoms of COVID-19 (see above for symptoms listed on employee health screening questionnaire) AND seeking a diagnosis.	Employee visits a health care professional and is waiting for COVID-19 diagnosis.	<p>EO 2020-36: isolate until 7 days have passed since employee's symptoms first appeared AND 3 days have passed since symptoms resolved. After showing symptoms, employee may return to work upon receiving a negative COVID-19 test. However, local orders do not allow employee to return simply because test result is negative. See below.</p> <p>Oakland & Washtenaw Counties: isolate for 10 full days after symptoms start AND must have 3 full days of no fever (without fever reducing drugs) and improvement of other symptoms before return to work.</p> <p>Wayne County: isolate a minimum of 7 days since symptoms first appeared AND must have 3 full days without a fever and improvement of respiratory symptoms.</p>	<ol style="list-style-type: none"> 1. 10 days paid leave under FFCRA, except pay ends if employee gets negative diagnosis; 2. use available paid time off; and then 3. apply for UIA benefits
Employee receives positive COVID-19 diagnosis	Received medical diagnosis	Same isolation or quarantine period as when an employee experiences symptoms of COVID. If employee quarantines for the required number of days and then tests negative, employee should return to work. If employee refuses, employer may not have keep employee's job open. Consult your attorney before making this decision.	<ol style="list-style-type: none"> 1. 10 days paid leave under FFCRA; 2. use available paid time off; and then 3. apply for UIA benefits
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. Employer may periodically request updated medical documentation to establish need for continued leave.	Employer should try to follow the doctor's advice for the duration of the leave by taking several factors into consideration. Once employee has exhausted FFCRA 10 days of paid time off, the employer must determine whether to allow the employee to continue	<ol style="list-style-type: none"> 1. 10 days paid leave under FFCRA; 2. use available paid time off; and then 3. apply for UIA benefits

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		the leave of absence under the FMLA, the ADA or employer's unpaid leave policies.	
Employee just not feeling well	May have received medical advice depending on circumstances	For illness unrelated to COVID-19, employee should follow employer PTO or sick policy. For negative diagnosis of COVID-19, see guidance discussed above.	FFCRA may apply to employee who is seeking Depends on employer sick leave policy
Employee caring for someone with COVID-19 (if employee develops their own symptoms or tests positive, see above for isolation period)	N/A	(1) 14 days have passed since the individual being cared for tested positive; or (2) individual being cared for receives a negative COVID-19 test. The FMLA may also apply.	1. 10 days paid leave under FFCRA at 2/3 regular rate of pay; 2. use available paid time off; and then 3. apply for UIA benefits
Employee caring for individual advised by doctor to isolate due to COVID-19 concerns when individual is high risk	N/A	Once employee has exhausted FFCRA 10 days off, any other employer time off, FMLA may provide additional protected leave depending on employee eligibility, individual's underlying health condition, and medical certification.	1. 10 days paid leave under FFCRA at 2/3 regular rate of pay; 2. use available paid time off; and then 3. apply for UIA benefits
Employee had close contact with individual who tested positive for COVID-19, outside employee's household (if employee develops their own symptoms or tests positive, see above for isolation period)	N/A	14 days have passed since the employee last had close contact with the positive individual	Use available paid time off then apply for UIA benefits
Employee had close contact with individual who displays principal COVID-19 symptoms, outside employee's household (if employee develops their own symptoms or tests positive, see above for isolation period)	N/A	(1) 14 days have passed since the employee last had close contact with the symptomatic individual; or (2) symptomatic individual receives a negative COVID-19 test	Use available paid time off then apply for UIA benefits
Employee traveled on an airplane or outside of Michigan (for purpose other than commuting to / from work or for essential work reasons)	N/A	14 days after return from travel	Use PTO then unpaid

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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.	<ol style="list-style-type: none"> 1. 10 days paid leave under FFCRA at 2/3 regular rate of pay; 2. expanded FMLA additional 10 weeks paid at 2/3 regular rate of pay, use available paid time off; and then 3. available PTO, and then 4. apply for UIA benefits

EMPLOYER FREQUENTLY ASKED QUESTIONS

1. What if employee refuses to return to work from furlough because employee 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 state unemployment benefits.
2. What if an employee accuses employer 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?	<p>A: No. 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. However, 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. Click here for more information about how to document these situations.</p> <p>You can require an employee to get tested prior to returning to work. However, there are several issues to consider with testing: Who will pay for it? Who will conduct the test? Is the test reliable? If the employee has already satisfied the waiting period, do you need a test? How long before the results are back?</p>
4. Can I force my employee to provide me with medical documentation supporting the symptoms or need for leave?	A: No. 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. However, 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. See below and click here for more information about how to document these situations.
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.
6. What if an employee continues to claim to have symptoms beyond “normal”	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

<p>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>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 must comply with EO 2020-36 which prohibits discrimination, discharge and retaliation. 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. Click here for Jaffe's Return to Work Best Practices Checklist.</p>
<p>8. Where else can I find answers to employer questions?</p>	<p>A: The Department of Labor has posted 93 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 Equal Employment Opportunity Commission has issued updates related to COVID-19 which can be found at https://www.eeoc.gov/wysk. 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>

Every employee situation should be evaluated on a case-by-case basis. Use this Reference to help evaluate each scenario, guide employee discussions, and determine possible next steps. It is not intended as a final answer to every employee situation. Contact us with any questions.

Jaffe can answer all of your employment-related COVID-19 questions. Let us help you ensure a smooth return-to-work transition with policies and protocols that comply with federal, state and local laws. Contact us to help you make sound and well-informed decisions about returning your employees to work and how to respond when an employee cannot return to work.

Call or email us to discuss your employment-related concerns: Nicole Foley at nfoley@jaffelaw.com or 248.727.1396

Patrice Arend at parend@jaffelaw.com or 248.727.1381



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