

Frequently Asked Questions on Leave, Pay, and Health Insurance for Illinois Employers and Employees

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There have been a number of changes to Illinois and Federal wage, benefit and leave laws since the beginning of the COVID-19 pandemic. This alert discusses some of the frequently asked questions (“FAQs”) that employers and employees have raised regarding these laws.

Common Employee FAQs

If my hours or pay are reduced by my employer as a result of COVID-19, can I still apply for unemployment with the Illinois Department of Employment Security (IDES)?

IDES has not released guidance specifically on the issue of reduced hours or pay as it relates to the COVID-19 pandemic. Prior to COVID-19, employees whose hours or pay were cut were entitled to file a claim for unemployment (with eligibility depending upon on the extent of the pay or hour reduction) so long as they (1) were physically and mentally available for work; (2) were actively seeking work; and (3) did not fall within a disqualifying condition, such as being terminated for misconduct. Based on these guidelines, it would appear that employees whose hours or pay have been reduced can file for unemployment benefits if they meet these requirements, with the exception that, with respect to COVID-19, so long as employees assert that they are willing and able to return to work as soon as their employers return reopen or return their hours to pre-COVID 19 levels, they do not have to demonstrate that they are actively seeking work. Additionally, for purposes of COVID-19, IDES has waived the requirement that employees must register with IDES’s employment service. Employees can file an unemployment claim with IDES online or by phone [here](#).

Due to the volume of claims being filed, employees with last names beginning with letters A-M are encouraged to file their claims online or via phone on Tuesdays or Thursdays, or online on Sundays. Those with last names N-Z are encouraged to file their claims online or via phone on Mondays or Wednesdays, or online on Fridays.

What will happen to my private health insurance benefits if my hours are reduced?

The number of hours an employee must work to qualify for health insurance benefits varies by employer and insurer. Employees should discuss their individual circumstances with their employers. If available, employees may consider talking with the employer’s insurance agent to discuss coverage options. Anecdotally, commercial insurance companies have not taken an official position on how they will treat coverage for employees who have been furloughed or whose hours have been reduced to below what would qualify them for group insurance coverage, which could then trigger the employee’s eligibility for continued health insurance coverage under COBRA and Illinois’ version of COBRA, described in the next question.

What happens to my health insurance if I am terminated from employment?

A terminated employee may continue their health insurance with the employer depending on the plan the employer offers, but the terminated employee will need to pay the premiums for continued coverage.

Regardless of the size of the employer, if the terminated employee worked for at least 3 months and the employer provided a fully insured group health plan or HMO, the employee can continue their health insurance coverage for a maximum of 12 months under Illinois' version of COBRA. If the employee qualifies under Federal COBRA laws, the employee can continue their health insurance coverage generally for a maximum of 18 months, or up to 36 months under other circumstances such as divorce or loss of a dependent child. Terminated employees should check their health insurance policy regarding their rights to continuing coverage.

As an employee, how much will I be paid while taking paid sick leave or expanded family and medical leave?

Effective April 1, 2020, under the Families First Coronavirus Response Act (FFCRA), employees who cannot work due to certain COVID-19-related situations described below, and work for an employer that has less than 500 employees will be paid at their full rate for the first 80 hours of sick leave, or the average 2-week equivalent for part-time employees (up to a certain maximum amount). In addition, employees who work for an employer that has less than 500 employees and worked for that employer for at least 30 months, can take up to an additional 10 weeks thereafter to care for children or family related to COVID-19 and receive up to 2/3 of their pay (to a certain maximum amount). If an employee takes 12-weeks leave due to childcare reasons described below, the leave does not need to be taken consecutively if the employee is able to telework intermittently.

Paid Sick Leave for a Full-Time Employee's First 80 Hours

A full-time employee who is required to be quarantined or isolated by their Federal, State, or local governments, or advised to self-quarantine by their healthcare provider, is entitled to their full rate of pay for 80 hours at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period). For part-time employees, this calculation depends on their average 2-week pay equivalent.

An employee who is caring for an individual quarantined or isolated by their Federal, State, or local governments, or an individual advised to self-quarantine by their healthcare provider, or is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19, is entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period). For part-time employees, this calculation depends on their average 2-week pay equivalent.

10 Weeks Paid Additional Leave for Employees with Childcare Issues

In addition to the above, a full-time employee who is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 is entitled to an additional 10 weeks, at 40 hours a week, of pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 10-week period). Part-time employees are eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Employers Exempted from the FFCRA

Employers who employ health care providers and first responders may elect not to provide such employees with the benefits given under the FFCRA. Moreover, employers that have fewer than 50 employees, may request to be exempted from having to provide the leave benefits to an employee who is caring for a child whose school or day care is closed for reasons related to COVID-19. To be eligible

for this exemption, the employer with fewer than 50 employees must be able to demonstrate that providing the benefits would jeopardize the viability of the small business as a going concern.

Health care providers include anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions, or anyone employed by an entity that contracts with such institutions. Health care providers also include anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

First responders are employees who are necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

What happens to my health insurance if I take leave under the FFCRA?

If the employer provides group health coverage that the employee has elected, the employee is entitled to continued group health coverage during the expanded family and medical leave on the same terms as if the employee continued to work. If the employee is enrolled in family coverage, the employer must maintain coverage during the expanded family and medical leave. The employee generally must continue to make any normal contributions to the cost of the employee's health coverage.

Common Employer FAQs

I am a physician practice. Am I required to provide paid sick and expanded medical and family leave to my employees under the Families First Coronavirus Response Act (FFCRA)?

An employer with less than 500 employees is required to comply with the FFCRA, with important exceptions. An employer with fewer than 50 employees does not have to provide (a) the two weeks paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons; or (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons if it can show that doing so would jeopardize the viability of the small business as a going concern.

Additionally, an employer does not have to provide paid sick leave or expanded family medical leave for any employee who is a "health care provider" or "first responder."

What does it mean to furlough my employees?

For private employers, Illinois does not have a formal, legal definition of "furlough." Generally, the term "furlough" is used to describe a private employer asking an employee to take a temporary leave of absence from employment in the form of voluntary time off or mandatory time off. The time off may be

in full-day or full-week increments, but the absence is generally short and the employee maintains their employment. Employers that implement temporary furloughs rather than layoffs can save on severance costs, as well as future rehiring and retraining expenses.

If employers would like to “furlough” their employees, they should consider:

- Under the Fair Labor Standards Act (FLSA), non-exempt employees only need to be paid for the hours actually worked unless their contract states otherwise.
- Furloughing otherwise exempt employees may result in a loss of their exempt status, resulting in the employer having to pay these employees for qualifying overtime. To avoid this result, reduction in work hours of exempt employees should be specific as to which days and hours should be worked, implemented prospectively, and temporary.
- A furlough amounts to a reduction in work hours, and therefore, an employee can use paid time off (PTO) or some other vacation benefit to continue to be paid during the furlough period. Alternatively, the employee can treat the furlough as a termination and file for unemployment, which would require the employee to be paid out any accrued, but unpaid, PTO. For any employers covered under the FFCRA, they cannot force their employees to use their PTO or other vacation benefit to supplement any leave benefits received under the FFCRA.
- Depending on how long the furlough lasts, the state may treat the furlough as a termination. As of today, there is no specific guidance on when this determination may occur.
- A furloughed employee may still be eligible for benefits offered by the employer (such as group health insurance). Employers should consult their insurance brokers on this issue.
- Under the Illinois WARN Act, an employer with more than 75 full-time employees must provide the state 60-days’ notice if (1) it plans to lay off 25 or more full-time employees; and (2) such employees if they constitute one-third or more of full-time employees at the site, or (1) it plans to lay off 250 or more full-time employees during any 30-day period (or, in some cases, during any 90-day period). The notice should indicate if the layoff is a direct result of the COVID-19 pandemic.
- Employees who are furloughed after April 1, 2020 due to the employer not having enough work or business for employees, regardless of whether the worksite is open or closed, are not eligible to receive paid sick leave or expanded family and medical leave under the FFCRA.

Can I keep my employees on the group health insurance plan even if I reduce their hours or furlough them?

This question depends on the employer’s specific plan. Employers should contact their insurance brokers if they want to keep furloughed or reduced-hour employees on the group insurance plan. Anecdotally, commercial insurance companies have not taken an official position on how they will treat coverage for employees who have been furloughed or whose hours have been reduced to below what would qualify them for group insurance coverage. If the group plan is fully insured, Illinois requires employers to provide 10-days’ notice to their employees of their right to continued health care coverage under the Illinois Continuation law (also known as mini-COBRA). Federal COBRA law requires employers to provide 30-days notice to their employees of their right to continued health care coverage.

Can I require my employees to continue to pay for premiums to continue their health plan benefits while furloughed?

It depends. If you are an employer covered under FFCRA (have less than 500 employees and do not fall under an exemption by employing health care providers or first responders, or having fewer than 50 employees), you are required to pay for the employees' health insurance premiums during their leave. However, the employer will be reimbursed 100% dollar-for-dollar via refundable payroll tax credits.

If you are not covered under the FFCRA (e.g. have more than 500 employees), but are covered under the Family and Medical Leave Act (FMLA) (e.g., have more than 50 employees), you can ask employees to either pay for their premiums in advance, pay as they go, or pay upon their return to work.

The law and guidance in this area continues to evolve on almost a daily basis. We will update this alert to reflect such changes. Please contact any of the listed Roetzel attorneys for further information.

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