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Families First Coronavirus Response Act



Unemployment



HR Concerns

Families First Coronavirus Response Act

COVID-19 SCENARIO

	PAID SICK LEAVE (Under the Emergency Paid Sick Leave Act)	EXPANDED FAMILY AND MEDICAL LEAVE (Under the Emergency Family and Medical Leave Act)	UNEMPLOYMENT
My employer is open for business, but I am an employee that has COVID-19, or symptoms of COVID-19 and have been ordered to isolate or quarantine.	✓	✗	✗
I have been <u>laid off</u> and either I have COVID-19 or I need to care for a family member who has it.	✗	✗	✓
I am a gig worker, freelancer or independent contractor and do not have work due to COVID-19 reasons.	✗	✗	✓
I am full-time or part-time worker who lost my job because of a COVID-19 reason.	✗	✗	✓
My employer's business remains open, but I am unable to work or telework because of school or daycare closed for public health reasons.	✓	✓	✗
I <u>quit</u> my job because of fear that continuing to work would put me at risk of contracting COVID-19.	✗	✗	✗
I am immune-compromised and have been advised by my healthcare provider to self-quarantine.	✓	✗	✓
I am a non-exempt employee and my hours have been reduced due to my employer not having enough work for me from loss of business due to COVID-19.	✗	✗	✓
My employer closed their worksite for lack of business or because it was required to close pursuant to a Federal, State or Local <u>directive</u> . (i.e. Stay at Home Order)	✗	✗	✓
If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?	✗	✗	✓

Workers who are able to work from home, those receiving paid sick leave, or paid family medical leave are not covered for unemployment benefits.

You cannot receive both paid sick leave and unemployment concurrently.

Employee must be employed for 30 days to be eligible for Expanded Family Medical Leave.

Questions and Answers

PAID SICK LEAVE & THE EXPANDED FAMILY MEDICAL LEAVE (Under the Emergency Paid Sick Leave Act)

1. Which employers are covered?

Public employers, and private employers with fewer than 500 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

2. Which employees are eligible?

Paid Sick Leave: All employees (full or part-time) of covered employers are eligible for up to two weeks of paid sick time for specified reasons related to COVID-19 regardless of how long they have been employed.

Expanded Family and Medical Leave: Up to an additional 10 weeks (12 weeks total with the Paid Sick Leave) of at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

3. Which employees may be exempt?

Health care providers and **emergency responders** may be excluded by their employer from being able to take expanded family and medical leave under the Act.

4. What are qualifying reasons for leave?

An employee qualifies for **Paid Sick Leave** if the employee is **unable to work (or unable to telework)** due to a need for leave because the **employee:**

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19- *(This does not apply if an employer closes a worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive);*
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

An eligible employee qualifies for **Expanded Family and Medical Leave** if the employee is **unable to work (or unable to telework)** due to a need for leave because the **employee** is caring for a child whose school or place of care is closed or childcare provider is unavailable due to COVID-19.

5. How much will an employer pay an employee under the Paid Sick Leave and Expanded Family and Medical Leave?

Paid Sick Leave:

*Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay or the applicable minimum wage, up to a maximum of \$511 per day and \$5,110 in the aggregate over a two-week period, where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*

*Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay or the applicable minimum wage, up to a maximum of \$200 per day and \$2,000 in the aggregate over a two-week period, because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.*

A part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

Expanded Family and Medical Leave:

An eligible employee may qualify for up to 12 weeks of expanded leave (the first two weeks of expanded family leave are unpaid, unless the employee is eligible for and elects to use emergency paid sick leave or any other paid leave provided by their employer) at 40 hours per week for full-time employees. A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Employees taking leave are 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 \$10,000 in the aggregate.

FFCRA (cont.)

Questions and Answers

6. Who are designated “health care providers” that may be excluded from their employer’s paid sick leave and/or expanded family and medical leave?

For the purposes of employees who may be exempted from paid sick leave, a health care provider is 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.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

7. Who are designated “emergency responders” that may be excluded from their employer’s paid sick leave and/or expanded family medical leave?

For the purposes of employees who may be excluded from paid sick leave by their employer under the FFCRA, an emergency responder is an employee who is 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. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

8. What records need to be kept when an employee takes paid sick leave?

Employers are responsible for obtaining and maintaining certain records when an employee takes paid sick leave or expanded FMLA. Employers must require employees to provide them with appropriate documentation in support of the reason for the leave, including: the employee’s name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested.

Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the healthcare provider who has advised the worker to self-quarantine. For example, this documentation may include a copy of the federal, state or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a healthcare provider advising the employee to self-quarantine due to concerns related to COVID-19.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare provider.

If the employer intends to claim a tax credit under the FFCRA for payment of the sick leave wages, this documentation should be retained in its records.

FFCRA (cont.)

Questions and Answers

9. What does it mean to be unable to work, including telework, for COVID-19 related reasons?

An employee is unable to work if an employer **has work** for the employee and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents them from being able to perform that work, either under normal circumstances at the worksite or by means of telework.

10. May an employee take paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if the employer allows it and if the employee is unable to telework their normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.

In that situation, the employee and employer may agree that the employee may take paid sick leave intermittently while teleworking. Similarly, if an employee is prevented from teleworking their normal schedule of hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employer and employee may agree that the employee can take expanded family medical leave intermittently while teleworking.

Employees may take intermittent leave in any increment, provided that the employee and employer agree. For example, if an employee agrees on a 90-minute increment, the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

11. If an employee is laid off or furloughed, can they receive Paid Sick Leave?

No. If an employer lays off or furloughs an employee because it does not have enough work or business, employees are not entitled to paid sick leave or expanded family and medical leave.

12. Who are designated as a “son or daughter”?

Under the FFCRA, a “son or daughter” is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.

In light of Congressional direction to interpret definitions consistently, WHD clarifies that under the FFCRA a “son or daughter” is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

13. Do employees have a right to return to work if they are taking paid sick leave or expanded family and medical leave under the Emergency Paid Sick Leave or the Emergency Family and Medical Leave Expansion Acts?

Generally, yes. In light of Congressional direction to interpret requirements among the Acts consistently, WHD clarifies that the Acts require employers to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, employees are entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, the employer is prohibited from firing, disciplining, or otherwise discriminating against an employee because they took paid sick leave or expanded family and medical leave. Nor can an employer fire, discipline, or otherwise discriminate against an employee because they filed any type of complaint or proceeding relating to these Acts, or have or intend to testify in any such proceeding.

However, employees are not protected from employment actions, such as layoffs, that would have affected them regardless of whether they took leave. This means an employer can lay off employees for legitimate business reasons, such as the closure of a worksite. The employer must be able to demonstrate that an employee would have been laid off even if they had not taken leave.

An employer may also refuse to return an employee to work in their same position if the employee is a highly compensated “key” employee as defined under the FMLA, or if the employer has fewer than 25 employees, and the employee took leave to care for their own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, and all four of the following hardship conditions exist:

1. employee's position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of employee's leave;
2. the employer made reasonable efforts to restore the employee to the same or an equivalent position;
3. the employer makes reasonable efforts to contact the employee if an equivalent position becomes available; and
4. the employer continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

FFCRA (cont.)

Questions and Answers

14. Do employees qualify for leave for a COVID-19 related reason even if they have already used some or all of their leave under the Family and Medical Leave Act (FMLA)?

An eligible employee is entitled to paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA (Family Medical Leave Act).

However, if an employer is covered under FMLA and an eligible employee has already taken 12 weeks of leave under the FMLA within the past 12-month period, then an employee would not be eligible to take an additional 12 weeks of leave under the expanded family and medical leave act. Alternately, if an employee did not use all 12 weeks within the 12-month period, an employee may use any remaining leave for a qualifying reason under the expanded family medical leave act.

15. Does the Emergency Paid Sick Leave Act and Expanded Family and Medical Leave run concurrently?

An employee is entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave was taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap.

However, employers should note that if an employee takes paid sick leave "concurrently" with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

16. I am a small business owner with less than 50 employees. How do I receive an exemption from this Act?

A small business may be exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the following three conditions is satisfied:

The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;

The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or

There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

It is important to note, that employers with less than 50 employees would not be exempt from for reasons below;

- is subject to a state, local or federal quarantine;
- has been advised by a health care provider to self-quarantine;
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis,
- is providing care for an individual subject to a federal, state or local quarantine or isolation; or
- is dealing with a "substantially similar condition."

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

Additional Questions?

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA (cont.)

Questions and Answers

17. How do employers receive credit for paid leave pursuant to the Act?

The Families First Coronavirus Act provides a series of refundable tax credits for employers who are required to provide the Paid Sick Leave and Emergency Paid Family and Medical Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

Under guidance from the IRS, eligible employers who pay qualifying sick or expanded family and medical leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and expanded family and medical leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and expanded family and medical leave paid, employers will be able to file a request for an accelerated payment from the IRS. For more information visit:

https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable_qualified_health_plan_expenses

Additional Questions?

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Unemployment Related to COVID-19

Questions and Answers

1. If an employer temporarily ceases operations due to COVID-19, preventing an employee from going to work, are employees eligible for benefits?

If an employee is laid off temporarily due to a business shutdown as a result of COVID-19, the Division of Unemployment Insurance recommends that you file a claim for unemployment insurance. After you file a claim for unemployment insurance benefits, the Division of Unemployment Insurance will determine whether you qualify to receive unemployment insurance benefits.

5. If an employer lays off employees due to the loss of production caused by COVID-19, will the employees be eligible for unemployment insurance benefits?

Unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer lays off employees due to a loss of production as a direct result of COVID-19, individuals may be eligible for unemployment benefits if they meet certain criteria.

2. If an employee is quarantined due to COVID-19 with the expectation of returning to work after the quarantine is over, are they eligible for benefits?

The first and best option for employees who need to miss work due to illness is to use their employer-paid time off and the emergency paid time off under FFCRA.

Unemployment" includes a reduction of both work hours and earnings. An individual receiving paid sick leave or paid family leave is still receiving pay and would generally not be considered "unemployed" for purposes of collecting unemployment insurance benefits.

6. If an employer reduces employee hours as a result of COVID-19, will they be eligible for unemployment insurance benefits?

If an employer has reduced employees normal work hours as a result of COVID-19, they may be eligible for partial benefits.

3. If an employee decides to resign due to a reasonable risk of exposure to COVID-19, is infected, or must care for a family member infected with COVID-19, are they eligible for benefits?

If an employee is not exhibiting any symptoms of coronavirus, COVID-19, and they decide to leave employment, the Division of Unemployment Insurance recommends that they file a claim for unemployment insurance. An employee may be determined to be eligible for benefits if the circumstances of their job separation are allowable under certain provisions for good cause and/or just circumstances for voluntarily leaving work.

7. Are employees required to search for work during this state of emergency?

Claimants are not required to search for work if an employer has temporarily laid off the claimant and has provided a return to work date that is less than 10 weeks in the future.

4. If an employee takes time off because they are sick, but have not been directed to quarantine by a medical professional or the government, would they be eligible for unemployment insurance benefits?

If an employee is not eligible for paid time off or paid time off has been exhausted, the Division of Unemployment Insurance recommends that employees file a claim for unemployment insurance. An employee may be determined to be eligible for benefits if they have taken time off of work and expect to return work with the same employer in the future.

8. Are unemployment benefits available for freelancers, contractors, or part-time workers?

The Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act includes a new type of unemployment insurance for contractors, freelancers, self-employed workers and other people who typically do not qualify for standard unemployment coverage.

Pandemic Unemployment Assistance (PUA) provides emergency support for workers who are left out of their state's standard unemployment coverage, workers who have already exhausted those benefits or workers who are unable to work due to certain circumstances caused by the coronavirus pandemic.

1. CAN EMPLOYEES REMAIN ON OUR GROUP HEALTH PLAN IF THEY ARE FURLOUGHED AND WHAT ARE THE IMPLICATIONS?

The answer will depend mostly on the terms of the plan document and how eligibility is defined. Eligibility under a group health plan may depend on the number of weekly or monthly hours worked by an employee. A furlough can cause an employee to become ineligible for benefits, if the employee fails to work the required number of hours.

An employer may want to work with their plan provider to amend the terms of their group health insurance plan to permit coverage during a furlough. If an accommodation cannot be made, employers should avoid allowing employees to remain on the group plan after losing eligibility. If an insurer were to audit claims made by an ineligible employee, the claims could be denied, the policy revoked and/or other the insurer could pursue fraud claims.

Questions and Answers

2. What are the employee's contributions during a furlough period?

An employer may require that employees pay premiums post tax during the furlough period. Employers should provide employees with a written notice of the payment method, due date and consequences for non-payment. Although not recommended, the employer could permit the employee to pay upon return.

3. Is COBRA a qualifying event during a furlough or layoff?

You should consult your plan document as to what triggers a qualifying event for Cobra coverage. If your employees are required to work a minimum number of hours in order to stay benefits-eligible, and they will not meet those requirements during the furlough, then they will presumptively lose coverage. If you are able to modify your plan document to not treat the furlough as a Cobra qualifying event, then you may keep employees on the plan as if they were active employees.

If a plan change is not foreseeable, you can treat the furlough as qualifying event (loss to due reduction in hours) and offer Cobra coverage to the employee.

4. Can an employer pay an employee's COBRA coverage (in whole or in part)?

Employers who decide to pay the Cobra premiums for their employees should proceed with caution as it could be considered discriminatory under the Internal Revenue Code if the health plan is self-insured and the subsidy is not broadly offered. If an employer agrees to pay for all or part of the cost of COBRA coverage, the employer should be clear in the separation agreement that the obligation to pay is subject to the employee's timely election of, and eligibility for, COBRA coverage. The agreement should also indicate which plans will be subsidized and the amount that will be subsidized.

Note that if an employer terminates its plan completely, then there is no COBRA obligation

5. What is the difference between a furlough and layoff?

FURLOUGH: A furlough is typically meant to be temporary arrangement for an unpaid leave of absence or a period of reduced scheduled hours. The idea is that it is a temporary arrangement, and workers will one day be able to return to their jobs or normal schedule. You will still need to provide notices to the employee about the change in the relationship, and they would still be eligible for unemployment for that difference in pay. If the entire company isn't going to be furloughed, but only certain employees, it's very important to be able to show that the staff selection is not being done for a discriminatory reason

LAYOFF: A layoff is typically used when an employer lets go of employees because they can no longer afford to pay them, their business is down, or other economic reasons—not necessarily because employees weren't good at their jobs. If a person who is laid off were to return to their original job, they would have to be rehired. A layoff is generally considered permanent if there are no plans to rehire the employee or employees because the slowdown or closure is expected to be lengthy or permanent.

6. IF AN EXEMPT EMPLOYEE IS FURLOUGHED AND NOT WORKING AT ALL, DOES AN EMPLOYER STILL NEED TO PAY THEM? IS IT PERMITTED FOR THEM TO CHECK EMAILS OR PARTICIPATE IN CONFERENCE CALLS DURING A FURLOUGH?

An exempt employee must be fully compensated for any work week in which the employee performs any work, regardless of the amount of time worked during that work week. Exempt employees do not need to be paid for any workweek in which they perform no work. Employers receive the FLSA exemption because the employer agreed to pay them by the workweek.

It is important to note that exempt employees may not perform any work, including checking emails or participating in conference calls, during the furlough period. Otherwise, the exempt employee would need to be compensated for a full work week for any amount of work performed during each week work was performed during the furlough period. Employers should make it clear to exempt furloughed employees they should do absolutely no work during any week you're shutdown.

Questions and Answers

7. What is the employer's obligation to pay non-exempt (those who get overtime) employees whose hours have been reduced?

Federal and state minimum wage and overtime requirements are related to hours worked, so employees who are classified non-exempt and are working a reduced hour schedule would be entitled to wages for hours worked only. Therefore, employers are permitted to reduce the number of hours a non-exempt employee works to accommodate a reduction in business need and pay them accordingly. Any changes in work schedules without advanced notice may trigger state and local scheduling laws. Employers will want to document schedule changes and be sure to include it in the employee's personnel file.

8. Can an employer reduce an exempt employees' salary if hours have been reduced?

Exempt employees paid on a salary basis must be paid their entire salary if they perform any work during a seven-day workweek. Given the circumstances revolving around COVID-19, employers may need to create ways to keep employees on payroll, meet business needs and still reduce costs. An employer may consider reducing an exempt employee's salary in proportion to a reduced work schedule, as long as the salary does not go below the Fair Labor Standard Act (FLSA) threshold for exempt employees. An employer would want to determine the reduced rate of pay that would be paid on a salaried basis, discuss it with the employee and ensure that it is documented as a salary change in the employee's file. In the event an exempt employee's salary would fall below the FLSA threshold, consider re-classifying the employee to non-exempt status in the interim.

It is important for employers to consider whether cutting pay and/or reducing hours may trigger federal or state WARN provisions, depending on the number of hours reduced. Employers must also monitor whether the reduction hours would trigger an impact on an employee's eligibility for benefits under a health care plan.

Keep in mind that reducing hours or pay must be implemented in a non-discriminatory manner.

9. We are reducing hours for certain employees who don't have enough work caused by COVID-19. Is the company permitted to require them to use PTO during this time to make them "whole"?

Yes, since PTO is an employer provided policy, you are permitted to require employees to take any unused PTO time. It is important for employers to consider whether cutting pay and/or reducing hours may trigger federal or state WARN provisions, depending on the number of hours reduced. Employers must also monitor whether the reduction hours would trigger an impact on an employee's eligibility for benefits under a health care plan.

Keep in mind that reducing hours or pay must be implemented in a non-discriminatory manner.