

National Network for Youth Inc. / COVID-19 Pro Bono (USA)

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**Baker
McKenzie.**

Legal Protections for Employees During COVID-19

Like most people, you probably have questions about your right to work, paid sick leave, medical leave, unemployment insurance, workers' compensation, or disability benefits during the COVID-19 pandemic. Below you will find some legal information about your rights during the COVID-19 pandemic.

Can I be fired for not coming into work because I'm scared of getting COVID-19?

Likely yes, but there are some exceptions.

Your employer can discipline you (this can mean many different things but it includes being able to fire you) if you violate the attendance policy and do not report to work. However, there are some exceptions:

You can refuse to come to work if you believe you are in "**imminent danger**". It means that you must reasonably believe that you are about to suffer a serious physical harm or even die, right now or in the near future. Generally, you can refuse to come to work if:

- there is more than a general fear of contracting COVID-19 at work;
- you have a specific fear based on facts that you can explain; and
- your employer cannot address your specific fears in a manner designed to ensure a safe work environment.

For example, if you work with someone that was diagnosed with COVID-19 and your employer refuses to have the workplace cleaned, then you could refuse to come to work. You also could refuse to come to work if you are asked to work next to someone who actually has COVID-19.



Who should I call about this?

You should contact the Occupational Safety and Health Administration (OSHA) if you think your employer is asking you to work in an unsafe environment and you want to stay home.

Website: https://www.osha.gov/workers/file_complaint.html

Telephone: 1-800-321-6742

You have the right to join other employees and participate in "protected concerted activity for mutual aid or protection." This means that you can let your employer know that working conditions are unsafe on behalf of your co-workers. Your employer cannot discipline you for bringing these concerns to their attention.



Who should I call about this?

For more information on what you can do to let your employer know about unsafe work conditions, you should visit the National Labor Relations Board's (NLRB) website. You also can call the NLRB helpline to ask questions about your employer's unsafe work conditions.

Website: <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/concerted-activity>

Telephone: 1-844-762-6572

If you have a medical condition (for example, asthma) that makes you more likely to become very sick if you get COVID-19, then you can ask your employer to provide you with a "reasonable accommodation" under the Americans with Disabilities Act. For example, a reasonable accommodation may be that your employer allows you to work from home, or allows you to work in a separate space from your co-workers.



Who should I call about this?

If your employer denies your request for an accommodation, you should ask them for the reason why. You can challenge your employer's decision by going up the chain of command, filing a complaint with your union (if you have one), or filing a complaint with the Equal Employment Opportunity Commission (EEOC). Information on how to file a claim or discuss your situation with the EEOC is included below.

Website: <https://www.eeoc.gov/employees/howtofile.cfm>

Telephone: 1-800-669-4000

If I get COVID-19, can I take time off work? What if I have to care for a family member?

Likely yes. See below for information on two benefits that may apply to you:

The Family & Medical Leave Act (FMLA) may cover you if you work for a company with 50 or more employees, a public agency, a public or private elementary or a secondary school. To be covered, you must have worked for your employer for at least one year, worked over 1,250 hours during the past year (this equals about 24 hours per week on average over the course of a year), and your employer must have at least 50 employees within 75 miles.

- If you are covered, you are entitled to take up to 12 weeks of unpaid leave within a 12-month period if you or an immediate family member requires care for a serious health condition like COVID-19. Your spouse, children and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The term child does not include a child over the age of 18 unless they are "incapable of self-care" because of mental or physical disability.
- FMLA also allows you to continue to receive health insurance benefits and requires your employer to offer you the same (or similar) position when you return from leave.



What steps do I need to take to request FMLA leave?

You should let your employer know as soon as possible in any way possible that you want to take leave. You also should provide your employer with enough information for them to know that your leave will be covered by FMLA. Your employer may ask you to provide proof of the medical condition from a health care provider (e.g., a medical certificate). If asked, you are required to provide the proof within 15 days of the request. A health care provider can be a doctor, dentist, nurse practitioner, psychologist, physician's assistant or anyone else who is allowed to practice medicine in your state.



Who should I call about this?

If your employer does not allow you to take FMLA leave, you should ask them why your request was denied. You should then reach out to the Wage and Hour Division of the Department of Labor (WHD) because they are responsible for enforcing FMLA. Information on how to reach out to WHD is included below.

Website: www.dol.gov/agencies/whd

Telephone: 1-866-487-9243

The Families First Coronavirus Response Act (FFCRA) may cover you if you work for an employer with less than 500 employees.

If you are...	Amount of Time Off	Pay Calculation
Subject to a quarantine or isolation order related to COVID-19 from a public official, like the governor of your state, your county, your mayor, etc.	A full-time employee can take 80 hours of leave, and a part-time employee can take the number of hours of leave that the employee works on average over a two-week period	You have the right to receive either your regular pay or minimum wage, whichever is higher, with a maximum of \$511 per day and \$5,110 over a two-week period
Advised by a health care provider to self-quarantine due to COVID-19	A full-time employee can take 80 hours of leave, and a part-time employee can take the number of hours of leave that the employee works on average over a two-week period	You have the right to receive either your regular pay or minimum wage, whichever is higher, with a maximum of \$511 per day and \$5,110 over a two-week period
Experiencing COVID-19 symptoms and are seeking a medical diagnosis	A full-time employee can take 80 hours of leave, and a part-time employee can take the number of hours of leave that the employee works on average over a two-week period	You have the right to receive either your regular pay or minimum wage, whichever is higher, with a maximum of \$511 per day and \$5,110 over a two-week period
Taking care of someone subject to a quarantine or isolation order related to COVID-19, or someone advised by a health care provider to self-quarantine due to COVID-19	A full-time employee can take 80 hours of leave, and a part-time employee can take the number of hours of leave that the employee works on average over a two-week period	You have the right to receive 2/3 of your regular pay or 2/3 minimum wage, whichever is higher, with a maximum of \$200 per day and \$2,000 over a two-week period
Taking care of a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19	A full-time employee can take a maximum of 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee can take leave for the number of hours that the employee is normally scheduled to work over that period	You have the right to receive 2/3 of your regular pay or 2/3 minimum wage, whichever is higher, with a maximum of \$200 per day and \$12,000 over a 12-week period
Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services	A full-time employee can take a maximum of 80 hours of leave, and a part-time employee can take the number of hours of leave that the employee works on average over a two-week period	You have the right to receive 2/3 of your regular pay or 2/3 minimum wage, whichever is higher, with a maximum of \$200 per day and \$2,000 over a two-week period



What steps do I need to take to request leave under the FFCRA?

You should provide your employer with a written request for emergency sick leave that includes all of the following information:

- Your name
- The date(s) you are requesting leave
- A statement of the COVID-19 related reason you are requesting leave and support for such reason
- A statement that you are unable to work (even from home) for this reason
- IF APPLICABLE:
 - The name of the government entity (for example, your governor or mayor) ordering quarantine or isolation.
 - The name of the health care provider recommending self-quarantine. A health care provider can be a doctor, dentist, nurse practitioner, psychologist, physician's assistant or anyone else who is allowed to practice medicine in your state.
 - The name of the person you are taking care of and their relationship to you. This includes an immediate family member or someone who regularly lives in your home. You may also take paid sick leave to take care if someone if your relationship creates an expectation that you would care for the person in a quarantine or self-quarantine situation, and that individual depends on you for care during the quarantine or self-quarantine.
 - The name and age of the children you take care of, the name of the school that has closed or the place of care that is unavailable. The statement should mention that no other person is providing care for the child during the time you are on leave. A child is someone under the age of 18 who is 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) or an adult child (over the age of 18) who cannot care for themselves due to a mental or physical disability.



Who should I call about this?

If your employer does not allow you to take leave under the FFCRA you should ask them why your request was denied. You should then reach out to the Wage and Hour Division of the Department of Labor (WHD) because they are responsible for enforcing FMLA. Information on how to reach out to WHD is included below.

Website: www.dol.gov/agencies/whd

Telephone: 1-866-487-9243

Certain states (such as California, Michigan, New Jersey and New York) and cities (such as Chicago and San Diego), require employers to provide additional paid or unpaid leave in the event of your own illness or in the event of emergency school closures. Paid sick leave and "kin care" laws also may require your employer to provide time off to parents dealing with school closures. If you work in those places, your employer cannot fire you because you need to stay home and take care of a child or a sick family member. Your employer may even have to pay you for some or all of that time. The FFCRA also requires employers to grant two weeks of paid child care leave if you have to take care of a child due to the closing of your child care provider or child's school.

What happens if my employer temporarily shuts down?

Your pay will depend on whether you are an hourly or salaried employee.

If your employer temporarily shuts down and you are an **hourly employee**, then your employer is only required to pay you for the time you actually worked (including from home if your employer approved it). If you are a **salaried employee**, then your employer is required by law to pay you the full week if you performed any work during that week. If you work for a large employer, and your employer is planning a large layoff or a shutdown, your employer must usually give you 60 or 90 days' notice (although there may be some exceptions to this requirement due to COVID-19).



Who should I call about this?

If your employer is refusing to pay you, you should reach out to the Wage and Hour Division of the Department of Labor (WHD) because they are responsible for enforcing this law. Information on how to reach out to WHD is included below.

Website: www.dol.gov/agencies/whd

Telephone: 1-866-487-9243

What kind of help can I get if I lose my job or if my hours are reduced because of COVID-19?

You may have the right to get paid sick leave, state or private disability insurance, paid family leave, unemployment insurance, state work sharing, or, in limited circumstances, workers' compensation benefits. The federal government created an interactive Benefits Finder here: <https://www.benefits.gov/benefit-finder>. You answer a series of questions and it lets you know what benefits you may receive.

You also can learn more about available unemployment benefits in your area through the Unemployment Benefits Finder (<https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx>). Even if you do not qualify for state unemployment benefits, you may still receive benefits through the CARES Act.

Will I receive a \$1,200 COVID-19 Economic Impact Payment?

You are eligible for a COVID-19 economic impact payment if:

- you have a social security number;
- filed taxes in 2018 or 2019, or don't earn enough to file but receive social security payments;
- earned less than \$99,000 for single adults, \$136,500 for heads of household and \$198,000 for married filers; and
- are not claimed as someone else as a dependent (you should check with your parents or other caretakers who provide you financial support whether they have claimed you as a dependent).

The U.S. Internal Revenue Service (IRS) will determine the amount of your payment based on the "adjusted gross income" listed on your most recent tax return (either 2018 or 2019). On a Form 1040EZ, your adjusted gross income is listed on Line 4, on a Form 1040A it is listed on Line 21 and on a Form 1040 is listed on Line 37. The maximum payment is \$1,200 for single filers with adjusted gross income below \$75,000 or single parents (heads of household) with adjusted gross income below \$112,500. Married couples who file jointly and have adjusted gross income below \$150,000 will get a total of \$2,400. In addition, you are eligible for an additional \$500 per qualifying child. A qualifying child is someone:

- related to you (by blood, marriage, or adoption),
- under the age of 17,
- whom you claim on your tax return,
- is a U.S. citizen, U.S. national or a U.S. resident alien,
- lives with you for at least half of the year, and
- cannot provide more than half of their own financial support during the year.



Who should I call about this?

For security reasons, the IRS plans to mail a letter about the economic impact payment to your last known address within 15 days after the payment is paid. The letter will provide information on how the payment was made and how to report any failure to receive the payment. Please use the website below to determine whether you need to take any action in order to receive your COVID-19 economic impact payment.

Website:

<https://www.irs.gov/newsroom/how-to-use-the-tools-on-irsgov-to-get-your-economic-impact-payment>

Do employment laws protect me if I am paid "under the table"?

Probably not. Unfortunately, most protections are only available to "official" employees. However, if you are self-employed or work as an independent contractor, you may still qualify for benefits under the federal Coronavirus, Aid, Relief and Economic Security Act (CARES Act). See below for additional information.

Are benefits available if I am self-employed, a contractor or am paid "under the table"?

Yes. Pandemic Unemployment Assistance (PUA) is available under the CARES Act. PUA provides benefits to workers who generally are not eligible for unemployment benefits under state law, such as people who are self-employed, independent contractors, have limited work history, or who have used up all regular or extended unemployment benefits. Under PUA, you may receive benefits for a maximum of 39 weeks.

You can receive benefit payments under PUA for weeks of unemployment, partial employment, or inability to work because of COVID-19 beginning January 27, 2020 and lasting likely until December 31, 2020. If you qualify, your weekly benefits under PUA equals the amount that you would receive under state law plus an additional \$600 a week under the Federal Unemployment Compensation Program (but only until July 31, 2020).

Am I eligible for PUA benefits?

You must be unemployed, partially unemployed, or unable to work for certain reasons relating to COVID-19, such as where:

- You have been diagnosed with COVID-19 or have COVID-19 symptoms and you are seeking a diagnosis;
- A health care provider advised you to self-quarantine due to COVID-19 concerns and you cannot work;
- A member of your household (generally people who live in your home that provide financial support to one another) has been diagnosed with COVID-19;
- You are caring for a family or household member diagnosed with COVID-19;
- You are the primary caregiver of a child or household member who is unable to attend school or another facility (for example, daycare) that is closed due to COVID-19 and the school or facility is necessary for you to be able to work;
- You cannot get to your job as a direct result of COVID-19;
- You were scheduled to start a new job that is now unavailable as a direct result of COVID-19;
- You became the breadwinner or major support for your household because the head of the household died from COVID-19;
- You had to quit a job as a direct result of COVID-19;
- The place where you usually work closed as a direct result of COVID-19; or
- You are an independent contractor and COVID-19 has limited your ability to work (for example, you were an Uber driver and now there is no business because no one is requesting rides).



Who should I call about this?

To apply for PUA benefits you have to go through your state's unemployment insurance office. The website below has a chart that includes the website and telephone number of each U.S. state's unemployment insurance office.

Website:

<https://www.dol.gov/coronavirus/unemployment-insurance#find-state-unemployment-insurance-contacts>

What important employment papers should I keep to receive benefits?

Make sure to keep your tax Form W-2, tax Form 1099 or paycheck stubs so that you can list all of your employer information for the last 18 months on an application. You also should keep other ID documents, like your Social Security card, driver's license or state ID, Alien Registration Information (only if you are not a United States citizen), or copies of the Standard Form 8 and Personnel Action Form 50 (only if your employer was the federal government).