

COVID-19 Q&A



QUESTION: What is the difference between non-essential and essential businesses?

ANSWER: Attached is the DHS guidance. It includes language that points to the critical nature of both agriculture and construction equipment manufacturing and dealer operations.

- Under "Food and Agriculture": Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution.
- Under "Critical Manufacturing": Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

This document serves as formal Federal guidance, but does not have the force of law to preempt state and local police powers. According to DHS, it has been shared with all 50 governors.

<https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>

QUESTION: Can you require a negative Coronavirus test result to return to work?

ANSWER: In terms of verifying illness, testing for COVID-19 is not widely available, thus, the CDC has not made a recommendation to employers that they require verification. Health screenings are permissible under both EEOC and CDC guidance to evaluate employees for symptoms. According to the EEOC's guidance, "During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA." See CDC's Guidance for more information and the EEOC's guidance on appropriate inquiries in the case of a pandemic.

- <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

QUESTION: Are we required to close for 14 days if we have an employee test positive?

ANSWER: CDC Guidance does not require a closure. State and local laws may be different. You should verify your response and action plan with your attorney.

QUESTION: Is an employer required to report an employee who tested positive for COVID-19 to local health department officials?

ANSWER: CDC Guidance recommends employers engage in such communication but state and local laws may also apply. You should verify your response and action plan with your attorney.

QUESTION: What about employee gossip or obvious absences in small operations? How can we protect an employee's identity?

ANSWER: The ADA requires confidentiality. You cannot prevent gossip but the identity of the employee should not be disclosed or confirmed.

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QUESTION: What's the recommended length of time an employee should remain out of work if he/she tested positive for COVID-19?

ANSWER: Dealers should review available CDC Guidance and consult with their legal counsel about such a determination. Guidance is available using the link below.

- <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

QUESTION: Employee flew home Friday from Florida. He felt he had a cold upon returning home. Stayed home for 3 days this week. Never developed a fever, cough, or other symptoms of COVID-19. Feels better and thinks it was just a cold. We let him come back. Right decision?

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination

QUESTION: If we ask them to stay home, do we have to pay them?

ANSWER: If your dealership is a covered employer AND the employee meets the qualifications of either the Emergency Paid Sick Leave or the expanded FMLA leave, then yes. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: We have not made the call yet to allow employees that can work from home to work from home. We are concerned that over 60% of our workforce cannot do it. Do you still recommend sending those that can work remotely? This would mostly include our Support Staff, Sales, and CTS. Any advice on how to handle people that may be upset if they are customer facing? I am torn between leadership and the CDC recommendations.

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination.

QUESTION: If the person detects a fever, then the fever subsides, does the 14 day count restart? Testing has not be readily available in our area.

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination.

QUESTION: We are requiring employees who traveled by air in the past week, (even personal travel) they must stay home 14 days. Is that a bad idea?

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination.

QUESTION: Is the EDA recommending remote work for employees whose job duties allows for it?

ANSWER: EDA does not make such recommendations. The CDC has recommended telework when possible. Dealers should consult CDC Guidance and discuss with their legal counsel about such a determination.

QUESTION: What body temperature constitutes a fever?

ANSWER: See CDC Guidance - 100.4° F [38.0° C] or greater using an oral thermometer.

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QUESTION: Can we take the temperatures of all employees coming in to our dealership? Do we have to keep records of body temperature?

ANSWER: Yes you may take the temperatures of all employees. Any records created must be maintained in compliance with the ADA. See CDC and EEOC's Guidance for more information.

- <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

QUESTION: Please explain the difference between the 200 cap and the 511 cap?

ANSWER: There are two separate leave provisions under the Act: (1) the Emergency Paid Sick Leave Act (80 hours) and (2) the Family Medical Leave Act (12 weeks). Here are two summary articles that may be helpful in understanding this separate provisions:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feed-burner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: To clarify, is an employer obligated to pay 80 hours of sick leave or 12 weeks sick leave?

ANSWER: There are two separate leave provisions under the Act: (1) the Emergency Paid Sick Leave Act (80 hours) and (2) the Family Medical Leave Act (12 weeks). Here are two summary articles that may be helpful in understanding this separate provisions:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feed-burner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: Is sick leave directly related to covid 19 or is it for any sickness?

1. ANSWER: The employee must meet the qualifications for the Emergency Paid Sick Leave provision to apply. The Act allows an eligible employee to take paid sick leave because the employee is:

2. subject to a federal, state or local quarantine or isolation order related to COVID-19;
3. advised by a health care provider to self-quarantine due to COVID-19 concerns;
4. experiencing COVID-19 symptoms and seeking medical diagnosis;
5. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
6. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
7. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feed-burner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

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QUESTION: Is there any special FMLA paperwork now required since the Families First Coronavirus Response Act was passed or does the general FMLA paperwork suffice?

ANSWER: We expect new guidance from the Department of Labor on this issue. Until such guidance is released, continue using existing Department of Labor documentation and ensure you comply with all existing timelines for notice, review and approval. Existing DOL forms can be found using the link below:

- <https://www.dol.gov/agencies/whd/fmla/forms>

QUESTION: For FMLA leave related to childcare, does the child have to be sick for the employee to take that leave? Can it be used in the instance of schools or a daycare facility closing?

ANSWER: The child does not have to be sick for the employee to qualify for the new FMLA provisions. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: We have an employee who has a daughter who needs childcare since schools are out & she wants to take off to take care of her. Is she eligible for any paid leave other than her current PTO time?

ANSWER: Yes for covered employers as defined within the Act. This question appears to fall within the purview the new FMLA provisions. Under the new FMLA provisions, the first ten days are unpaid. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: If daycare is closed and an employee is off are they paid the lesser of 2/3 or regular pay or \$200 per day but does that start after 10 days off?

ANSWER: Under the new FMLA provisions, the first ten days are unpaid. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: What size company is required to pay 80 hours of sick time?

ANSWER: Employers with less than 500 employees. Employers with less than 50 employees may be entitled to some additional exemptions for hardship but we are awaiting details on how those exemptions would work from the Department of Labor. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

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QUESTION: Is the 80 hours sick time or the extended 12 weeks, only for those with coronavirus or caring for people with coronavirus? Is the employee required to provide proof that they have COVID-19 and not just a cold or other mild illness?

ANSWER: The qualifications for Emergency Paid Sick Time and the extended Family Medical Leave Act are different. Here are two summary articles that may be helpful in evaluating the employee's eligibility to one or more of these leave provisions:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: How do we handle employees who have a family member with a cough or cold, etc? Do they have an obligation to home? Should we require them to stay home 14 days?

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination.

In terms of verifying illness, testing for COVID-19 is not widely available, thus, the CDC has not made a recommendation to employers that they require verification. Health screenings are permissible under both EEOC and CDC guidance to evaluate employees for symptoms. According to the EEOC's guidance, "During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA." See CDC's Guidance for more information and the EEOC's guidance on appropriate inquiries in the case of a pandemic.

- <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

QUESTION: If an employee's spouse or close family member has symptoms, but tests positive for flu A, can we then let the employee come back to work if they showed no symptoms? Would they be eligible for immediate paid sick leave for time lost (3 days) since it wasn't actually COVID-19?

ANSWER: Such facts are common in the current environment and require the use of judgment. Dealers should review available CDC Guidance and consult with their legal counsel about such a determination.

QUESTION: Does the 80 hours of paid time off exceed the already existing time off the employees are eligible for? Ex: An employee had 60 hours of PTO and had used all 60. Does the employer have to provide another 80 or just 20?

ANSWER: You should consult with your legal counsel when implementing paid leave calculations to ensure compliance with the Act. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: SBA resources besides 7A loans? Disaster loans? Grants, etc.?

ANSWER: Information is still developing. EDA will continue to monitor developments and release information on resources as they become available.

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QUESTION: Will you provide a whitepaper with an interpretation of the Employer's 'pay' requirements, and if so when might we expect to see that?

ANSWER: We will be scheduling a follow up webinar in the next few weeks to give an overview the new, statutory obligations on dealers. In the interim, here are two summary articles that may be helpful:

1. <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
2. https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: For Section 5102, Paid sick time requirement. How are the standards for 1-3 and 4-6 for the \$200 or \$511 pay max monitored? Do we take the employees word for it? Is there any liability for us as a dealership if one or the other is selected?

ANSWER: You should consult with a legal professional when implementing paid leave calculations to ensure compliance with the Act. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: While this may not be applicable here, I'm hoping we'll see redtape lessened with opportunities for SBA/Disaster Relief loans for Ag businesses. We're coming off slow season, a past spring that wasn't strong in the southeast due to weather, and now this. Our year-end losses should not keep us from getting support with funding if needed. Any info on this?

ANSWER: Information is still developing. EDA will continue to monitor developments and release information on resources as they become available.

QUESTION: Are there any dealerships locking the doors to the public and working from within?

ANSWER: Many dealerships are modifying operations. We do not know whether any dealerships have closed their dealerships to the public, altogether.

QUESTION: There have been continued rumors of a potential 14 day closure or all businesses and for the public to stay home and not travel. In that case, do we let our employees use their vacation time or just not pay them? Is this different for exempt v. non-exempt?

ANSWER: This type of decision would likely be made a state and/or local level. This type of closure could easily fall within the purview of the Families First Coronavirus Response Act, meaning dealers would have to pay employees during the closure.

- Here are two summary articles that may be helpful:
- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: Any foreseen interruptions to supply chain if this goes on awhile?

ANSWER: Supply chain interruptions are a serious concern but we are working with federal, state and local entities to advocate on behalf of dealers.

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QUESTION: Can an employee decide he does not want to risk working when the dealership remains open? Can he claim the 80 hours leave or how would you handle his compensation?

ANSWER: The employee must meet the qualifications to receive the Emergency Leave. The qualifications are as follows:

1. subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. advised by a health care provider to self-quarantine due to COVID-19 concerns;
3. experiencing COVID-19 symptoms and seeking medical diagnosis;
4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Any other paid time off would be determined by the employer's own policies and procedures. Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: A follow-up question on the law just passed. I am assuming all companies with employees over 500 will have to provide the benefits that have expanded but will not be reimbursed by the government through tax credits. Am I correct in that assumption? If that is the case, then we need to fight to get the tax credits expanded to cover our costs that are above our current benefits in a future bill. We do have vacation and sick leave, but the sick is not to that level. Also, Did I hear you correctly that the FMLA act in the latest bill is required at 2/3 paid leave and for how long in addition to the 80 hours sick paid leave requirement?

ANSWER: At this time, it is unclear what measure, if any, will be implemented concerning large employers with 500 or more employees. We will likely see DOL guidance forthcoming but it does not appear on the face of the Act that the paid FMLA provisions apply to employers with more than 500 employees.

We are continuing to evaluate the funding mechanisms under the Families First Coronavirus Response Act and its potential impact on employers of all sizes. For FMLA expansion, after the 10-day period, the employer generally must pay full-time employees at two-thirds the employee's regular rate for the number of hours the employee would otherwise be normally scheduled. The new Act does limit this pay entitlement to \$200 per day and \$10,000 in the aggregate per employee.

Here are two summary articles that may be helpful:

- <https://www.fisherphillips.com/resources-alerts-congress-finalizes-covid-19-coronavirus-response-act>
- https://www.kpa.io/blog/how-the-families-first-coronavirus-response-act-impacts-employers?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+kpaonline%2FBTbf+%28KPA%29

QUESTION: Business has been unusually slow for March this year. Is there any feedback that indicates the virus is affecting sales around the country?

ANSWER: We don't have any data on this issue but EDA will certainly be monitoring the situation as it continues to evolve.