

COVID-19 Preparation, Strategy, and Considerations

In dealing with the quickly changing coronavirus and its expected widespread impact, businesses must prepare and develop a plan and strategy to ensure business continuity. Following are initial matters a business should immediately consider and address:

1. Update contact information for all employees

Information should include the employee's address, phone number(s), email address, home address, and emergency contact information

2. Determine roles that are essential for business operations

This may include management, accounting, human resources, IT, and other operational roles that are necessary to keep the business going

3. Review roster of current employees

Determine employees who are essential and non-essential to business operations

4. Determine duties or tasks that can be completed remotely

If a quarantine or lockdown is put in place and employees are unable to physically come to the workplace, determine any work that can or must be completed remotely

5. Work with your IT department/service provider

Ensure appropriate technology is in place to allow employees to work remotely and communicate

6. Establish virtual office environment

Establish virtual office environments for remote working by essential and/or non-essential employees (depending on the business). In addition to technology, communication services, and software, make sure all necessary hardware (computers, printers, phones, etc.) is in place or can be quickly mobilized. After all is in place, test the system to make sure all technology structures work as intended to support continued business operations.

7. Ensure you have a disaster / pandemic and remote working plan

Ensure the business has a disaster / pandemic and remote working plan (including details of implementation) ready and in place so it can be activated if and when needed

8. Ensure you have a communications plan in place

Ensure the business can clearly communicate with employees, including expectations of how and when to contact the company or the employee's supervisor, as well as clients, as needed

9. Stay informed

Stay informed of the facts and recommended practices of Centers for Disease Control and Prevention (CDC); proclamations by federal, state, and local governments regarding matters applicable to your business; and similar news

10. Determine short-term plan for the business and its employees

Depending on the environment and reduction or shutdown of operations, plus the company's forecasts of available work, ability to work remotely, ability to reopen, and similar matters, determine what labor resources will be needed and actions to be taken by the company. This may involve shift changes or reductions, staggered shifts, furloughs, reductions in force (RIFs), and/or permanent office closures.

11. Understand potential legal issues

Be aware of legal issues that may arise related to the company's operations and employees, such as national origin and age discrimination prohibited by Title VII of the Civil Rights Act of 1964 (Title VII); disability discrimination prohibited by the Americans with Disabilities Act (ADA); Family and Medical Leave Act (FMLA) issues; Fair Labor Standards Act (FLSA) issues; and the employer's duty to provide a safe and healthy work environment under the Occupational Safety and Health Act (OSHA), as well as other federal and state laws and local ordinances governing your business. Seek legal guidance as needed.

Louisiana Unemployment Benefits

As of March 16, 2020

Information For Employees

The Louisiana Workforce Commission (LWC) released its newest policies related to the coronavirus outbreak and unemployment. Employees may be eligible for unemployment insurance if their employment was impacted for reasons related to COVID-19 (Coronavirus Disease), including:

1. If the employee's work hours were reduced because of lack of work due to Coronavirus.
2. If the employee's workplace closes temporarily and he/she is not being compensated.
3. If the employee has been instructed not to go to work, and he/she is not being paid while at home.

The employee can file a claim at www.louisianaworks.net/hire or by calling LWC's Claim Center at 866-783-5567. To assist LWC in processing the claim, the employee should answer "yes" to the question, "Are you filing for Unemployment Insurance benefits for reasons related to COVID-19 (Coronavirus)?" A number of factors determine eligibility for benefits, and the LWC reviews each case separately.

If the employee's work hours were reduced, partial benefits of up to \$247 per week could be available. The maximum number of weeks that unemployment benefits can be paid per claim is 26 weeks in a 12-month period. Per the Governor's proclamation, one week of waiting is waived for those individuals whose employment was impacted due to COVID-19. Freelancers, independent contractors, and other self-employed people do not qualify for unemployment benefits.

Information For The Employer

On March 13, 2020, the Governor of Louisiana proclaimed a state of emergency from that date until April 9, 2020, unless terminated sooner. Per the Governor's proclamation, certain statutes related to unemployment insurance were suspended. During the effective period of the Order for emergency-related claims, claimants' benefits are not charged against base period employers for purposes of the employers' tax experience rating or against certain employers.

If a business is temporarily closing or reducing its hours of operations due to COVID-19, it may contact LWC to discuss assistance LWC may provide, questions about unemployment insurance, and other programs and resources available. The employer may call LWC's Employer Call Center at 225-326-6999 or email it at EmployerServices@lwc.la.gov. The employer should be sure to provide the company name, a point of contact, telephone number, and email address, as well as specifics on the assistance or information requested.

COVID-19 FAQs

Employers have many questions about COVID-19 with regard to their employees and operations. While sometimes there is a clear-cut answer, more often the response is situation dependent as the employer's actions may be affected by other federal employment laws. Following are some answers to common questions, as well as implications of other laws.

Do employees have the right to work from home?

Employers generally do not have an obligation to allow telecommuting or working remotely.

An exception is an employee with an underlying condition or disability who may be at high risk for complications if contracting the virus, who may qualify under the American with Disabilities Act (ADA). Allowing such an employee to work from home may be considered a reasonable accommodation under the ADA.

Can an employee refuse to come to work?

Unless employees can prove they are in imminent danger, they cannot refuse to come to work.

Note that an employee diagnosed with COVID-19 would be allowed to take protected leave under the Family & Medical Leave Act (FMLA) if the employee otherwise meets FMLA requirements (COVID-19 would qualify as having a serious health condition under FMLA).

Do employers have the right to insist employees work from home?

Yes, employers are within their rights to ask employees to work remotely so long as they are not applying a policy in a way that could be deemed discriminatory. For example, it is not okay to insist that workers over the age of 60 work from home because age is a protected class under federal law (even if the employer was well intentioned). However, it is permissible to ask workers who have recently traveled to China, Italy, or another country especially hard hit by the outbreak, or who went on a cruise, to work from home for a specified period of time.

Is an employer required to pay employees who work from home?

Yes. The Fair Labor Standards Act (FLSA) requires that nonexempt employees be paid the federal minimum wage for all hours worked—whether at the employer’s business location or at a remote location—plus overtime pay. Exempt employees must be paid their full salaries for any week in which they perform work (but they are not required to be paid for any workweek in which they perform no work).

As such, an employer is not obligated to pay employees in weeks in which the office or facility is closed unless the employee continues to work remotely during this period (assuming this has been approved by the employer). If employees are not authorized to work remotely during this period, the employer must explicitly instruct them not to work and monitor to make sure work is not being performed. If the employer allows work to be performed, the employee must be paid.

Is an employer required to pay employees who are at home and not working?

No. The FLSA requires employers to pay nonexempt, hourly employees only for hours actually worked. Nonexempt employees are generally not required to be paid for such absences (unless there is a collective bargaining agreement in place that requires it).

An exempt employee must be paid for partial-day absences, but the employer may reduce his/her salary for full-day absences due to sickness if the employer offers a paid sick leave benefit and the employee has exhausted that leave or is not yet eligible for the leave.

Families First Coronavirus Response Act (FFCRA)

As of March 18, 2020

The Senate has approved the Families First Coronavirus Response Act (FFCRA), and it is awaiting signature by the President. The FFCRA bolsters food aid for needy, families, and seniors; injects funds into state unemployment coffers; and guarantees free testing for people suspected of being infected. It also requires employers with less than 500 employees to provide two weeks of paid, virus-related sick leave (no matter how long the employee has been employed), as well as family leave to those who worked at the company for at least a month.

Sick Leave

Employers with less than 500 employees will be required to provide two weeks of paid sick leave for an employee subject to a federal, state, or local quarantine or isolation order; advised by a health care provider to self-quarantine; experiencing symptoms of COVID-19 and seeking medical diagnosis; caring for an individual who been quarantined or advised to self-quarantine; caring for a child whose school or place of care has been closed or the child care provider is unavailable; or experiencing any other substantially similar conditions to COVID-19.

Full-time employees will be eligible to receive 100% of their normal salary for 80 hours. Part-time employees will be eligible to receive 100% of their average wages based on a two-week period.

To cover the sick leave, businesses will receive a payroll tax credit, with any excess amount paid to be refunded. So employers will initially pay for the sick leave, but they are reimbursed costs of providing mandated paid sick leave within three months through refundable tax credits.

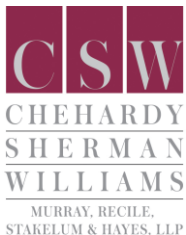
Health providers and emergency responders are exempt, and companies with fewer than 50 employees can be exempted if paying these benefits would jeopardize business viability. It is unlawful for the employer to discharge, discipline, or discriminate against an employee who takes sick leave. The employer must post a notice about the available sick leave with all other mandated employment-related posters, which the Secretary of Labor will provide a model of within seven days after this law goes into effect.

Family and Medical Leave

The bill also allows employees to claim paid leave related to the coronavirus public-health emergency if they need to care for a minor child because their school or day care is closed or their childcare provider is unavailable. It allows the employee to take up to 10 weeks of paid family leave. The first 10 days of leave is unpaid (accrued vacation leave, personal leave, or medical or sick leave may be used), and employees will then be paid 67% of their normal pay, up to \$200/day, \$10,000 in the aggregate.

Health care providers and emergency responders are exempt, and companies with fewer than 50 employees can be exempted if paying these benefits would jeopardize business viability.

These provisions go into effect within 15 days after President Trump's signature of the bill and remain in effect through December 31, 2020.



Chehardy, Sherman, Williams, Murray, Recile, Stakelum & Hayes, L.L.P. works with business clients to address the employment, disaster, insurance, and other business issues faced by companies. For further legal and business consultation regarding COVID-19 and related matters, please contact Jennifer Lee by email at jal@chehardy.com or telephone at 985.269.7220.