



# COVID – 19

## Legal Webinar 3.26.20

# Webinar Agenda



- I. Welcome
- II. Overview of Minnesota Stay at Home Executive Order
- III. Overview of other Current Issues
- IV. Overview of Federal Families First Act
- V. Frequently Asked Questions - COVID-19
- VI. Questions and Answers

# Minnesota Stay at Home Order



- Goes into effect 11:59 on Friday night 3/28 (tomorrow)
- 2-week order, expires Friday, April 10 at 5:00 pm
- Allows construction workers to leave home to go to work
- Allows union offices and benefit funds to continue to operate
- Encourages work from home when possible
- When not at work, residents are asked to stay home.

# Minnesota Stay at Home Order



- ***Workers in skilled trades related to construction of all kind.***
- Workers engaged in roadway construction, maintenance and utility projects
- Workers performing public works construction including construction of critical or strategic infrastructure.
- Construction materials suppliers and workers providing services necessary to maintain construction materials sources.
- Workers supporting building code enforcement
- Workers performing any construction required in response to COVID-19, including health care facilities and essential businesses and serves
- Construction required for emergency repairs and safety
- Critical Labor Functions. Includes labor union essential functions, including health and welfare funds and monitoring safety of members.

# Minnesota Stay at Home Order



## Updated information:

- DEED NAICS codes
- School/Childcare Tier 1 and 2

## Open Questions:

- What about apprenticeship programs? Training?
- What about supply chain businesses?
- What happens after two weeks?
- What about clarifications/changes to the order?

# Updates on Other Issues



## Resolved for Now

- Unemployment Eligibility
- Guidance on Building Permits/Inspections
- DEED NAICs Codes
- MDE Guidance
- OSHA Guidance

## On-going Issues

- Unemployment Extension
- Guidance on Health Inspections
- Guidance for Suppliers
- Communications with Contractors
- Communications with Members

# THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

**\*These materials are for educational purposes only and do not constitute specific legal advice. For legal advice about a particular issue contact legal counsel.**

# Emergency Paid Leave Due to The Pandemic

- On March 18, 2020, Congress enacted the Families First Coronavirus Response Act (“FFCRA”).
- This federal law provides for two kinds of emergency paid leave because of the coronavirus pandemic:
  - (1) Emergency Paid Sick Leave
  - (2) Emergency Paid Family and Medical Leave (FMLA)

This law applies to employers with fewer than 500 employees, in other words, small to medium size businesses.

# Emergency Paid Sick Leave

- Full-time employees are entitled to 80 hours of emergency paid sick leave.
- Part-time employees are entitled to pro-rated emergency paid sick leave based on the number of hours they work on average over a 2-week period.
- For an employee's own illness or quarantine, the benefit is paid at the employee's regular rate of pay, not including fringes, and capped at \$511 per day and \$5,110 total.
- If the leave is taken for the care of others or school closures/child care, the benefit is paid at 2/3 of the regular rate, not including fringes, and capped at \$200 per day and \$2,000 aggregate.
- This leave benefit must be used prior to December 31, 2020

# Reasons to Use Emergency Paid Sick Leave

- The employee has been advised by a medical provider to self-quarantine, or has coronavirus symptoms (e.g., cough, fever, difficulty breathing) and is seeking a medical diagnosis.
- The employee is caring for someone else who has been advised to, or is required to, self-quarantine.
- The employee needs leave to care for a child due to school closure or unavailability of a child care provider.
- The employee is under a federal, state, or local quarantine or isolation order, such as Minnesota's Stay at Home Executive Order.
- Catch-all: The employee experiences "substantially similar" conditions as determined by the agencies.

# Emergency Paid Family and Medical Leave for Child Care

- Emergency FMLA can be taken only if the employee is unable to work due to a need for leave arising from the closure of a school or day care or unavailability of child care provider resulting from COVID-19.
- The first 10 days of such leave is unpaid, but an employee may choose to use vacation, sick leave, or PTO during that time period.
- The remainder of the 12-weeks of emergency FMLA leave is paid at 2/3 of the employee's regular rate of pay. An employee's payout for emergency FMLA is capped at \$200 per day or \$10,000 total per employee.
- This leave benefit must be used prior to December 31, 2020

# Eligibility for Emergency FMLA Leave

- Applies to all employers with fewer than 500 employees, even if they are not subject to the Family and Medical Leave Act, which requires a minimum of 50 employees within a 75 mile radius.
- Applies to all employees who have worked at least 30 calendar days for the employer.

# Relationship to Existing Benefits

- Emergency paid sick leave and emergency FMLA benefits are intended to be in addition to existing benefits that are required under a collective bargaining agreement.
- However, fringe benefits contributions do not need to be paid for hours of Emergency Paid Sick Leave or Emergency FMLA under the new law.

# Paying for the Benefits – Payroll Tax Credit

- Federal law provides for immediate dollar-for-dollar reimbursement for the costs of the benefits. Eligible employers who pay qualifying sick or child-care leave will be able to retain an amount of their payroll taxes equal to the amount of qualifying sick and child-care leave that they paid, rather than deposit them with the IRS.
- The payroll taxes that are available for offset include federal income tax withholdings, 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 child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.

# Paying for the Benefits

- Example: If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

# Paying for the Benefits – Multiemployer Plans

- The new law allows employers who are parties to multiemployer collective bargaining agreements – like most construction industry employers – to pay for the required leave by contributing the necessary amounts to the applicable multiemployer plan.
- The multiemployer plan, which would typically be the health and welfare fund, would then be required to pay the employee the leave benefits.
- The Fund Administrator can assist the employer in complying with its paid leave obligations.
- The Employer would be required to make additional contributions to pay for the benefits. It cannot simply demand that the Fund pay for the leave benefits.

# Effective Date

The new law takes effect “not later than 15 days after the date of enactment.” This means that employers will be required to provide emergency paid leave starting on April 1, 2020.

Because the law takes effect “not later than” April 1, 2020, employers may potentially provide the paid leave sooner and take advantage of the tax credit sooner. The law gives the Secretary of the Treasury discretion to allow for tax credits during this “15-day period beginning on the date of enactment of this Act.”

# Layoffs and Unemployment

- An employer may lay off employees for lack of work if work is not available due to the coronavirus pandemic. The FFCRA does not prohibit such layoffs.
- However, an employer should not terminate employees for asserting their rights to paid leave under the law.
- Under Governor Walz's executive order, employees who are laid off due to the coronavirus pandemic are likely to be eligible for unemployment benefits.
  - A. The one-week waiting period has been waived.
  - B. Requirements for seeking alternative employment have been relaxed for health and safety reasons.
  - C. Employees who are unable to work due to sickness, quarantine, an outbreak at work, school closure, or unavailability of child care will be eligible.

# Exemptions

- Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue.
- During the first 30 days after the effective date, the Department of Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. The Department of Labor will instead focus on compliance assistance during the 30-day period.

# FAQs



**What if one of my members has COVID-19 symptoms (cough, fever, respiratory issues) or reports to work with symptoms?**

- The employer should ask the member not to enter the jobsite or to leave the job site
- The employer should call the union to discuss potential safety measures and protection of the workforce.
- The employer should keep the information confidential to the extent possible.

**What do I do when a member tells me that they may have been exposed to COVID-19, or tests positive for COVID-19?**

- Keep their information confidential to the extent possible.
- Encourage them to seek medical assistance and call the MDH hotline.
- Recommend that the member self-quarantine for 14 days.
- Work with the member's employer to determine if anyone else was potentially exposed.

# FAQs



## Can employers perform any health checks of members during the COVID-19 Pandemic?

- Yes, Employers can do health checks reasonably related to COVID-19 exposure.
- Employers cannot ask questions about underlying health conditions or disabilities.
- Employers can take employees' temperature if:
  - Uniform (fever is defined at 100.4 degrees)
  - Non-Discriminatory
  - Confidential

## Several members have expressed that they are “high risk”—what should I do?

- Do not inquire as to underlying health conditions.
- Keep private medical information confidential.
- If the member can continue work with a reasonable accommodation, assist the member in requesting a reasonable accommodation
- Encourage the member to stay at home if there is no reasonable accommodation available.

# FAQs



**If an employee is exposed to COVID-19 in the workplace, does the employer need to report it to OSHA? Does the employer need to tell the union?**

- Generally yes.

**Can a member get workers' compensation if they contract COVID-19 from work?**

- Workers compensation would only apply if the worker can demonstrate that they contracted COVID-19 in the course and scope of their employment and if it was caused by the work.

# FAQs



**What does the employer *have to do* to change hours, shifts, other terms and conditions of employment.**

- The employer must secure the agreement of the Union before making any changes to hours, shifts, or other terms covered by the contract.
- For changes to conditions that are not covered by the contract, the employer must provide notice to the Union of the requested changes and the opportunity to bargain.

**What does an employer have to do if they need to lay off a portion of its unionized trades?**

- The employer must follow any applicable terms of the collective bargaining agreement in conducting layoffs.
- The employer cannot terminate employees in retaliation for the exercise of the new federal paid leave rights.
- If the layoff is a mass, long-term layoff, the WARN Act may apply.

# FAQs



**What if a unionized member does not want to go to work out of fear of being exposed to COVID-19?**

- They should call their union.
- They should ask their employer for a voluntary lay-off or furlough.
- They should apply for unemployment benefits.

**Does a voluntary layoff allow members to get unemployment?**

- Yes.

# FAQs



## What questions should we ask about the contractors plans for responding to COVID-19?

- What infection control protocol do you have in place?, E.g., personal protective equipment, social distancing on the job, access to sanitary handwashing, access to hand sanitizer, health surveys?
- How will they respond to employees who either have symptoms or express fears of coming to work due to COVID-19?
- What is their plan for compliance with the new federal paid leave law?

## What should we be thinking about if my union is in CBA negotiations?

- Keep it simple. Consider contract extensions or wage/benefit-only bargaining for a shorter contract period (e.g. several months or 1 year) because of (1) the uncertainty of the outlook for the economy and the industry and (2) it is more effective to bargain complex language issues in person.
- Bargain about any COVID-19 issues, like alternative scheduling or health surveys, on a temporary basis in a Memorandum of Understanding.

# FAQs



**Do my members need to get “papers” from their employer to work under the SAH Order?**

- No.

# Questions?

Please use Q & A function at the bottom of your zoom screen.



Building Trades COVID-19 Resources:  
<https://mntrades.org/covid-19-resources/>