



COVID-19 Layoff and Termination FAQs

1. What should I do if an employee has COVID-19?

A: You should send home the employee and all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the infected employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws. You may also want to consider asking a cleaning company to undertake a deep cleaning of your affected workspaces. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

2. Can I require my employees to stay home if they are sick with COVID-19?

A: Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19, and under most circumstances you can ask them to leave work.

3. Can an employee refuse to come to work because of fear of infection?

A: Maybe. Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” OSHA discusses imminent danger as where there is “threat of death or serious physical harm,” or “a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.”

The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. This guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

4. If an employee elects not to report for work because they are afraid of being exposed to COVID-19, must I pay them?

A: For non-exempt employee, an employer is not required to pay a nonexempt employee for the time in which he or she performs no work. For the exempt employee, the employer may make a deduction in pay in full-day increments pursuant to Conn. State Agencies Regs. § 31-60-14(b)(1)(B) because the employee is asking for the day off for personal reasons or for sick leave pursuant to a benefit plan.

5. What is the impact of the Families First Coronavirus Response Act?

A: On March 19, 2020, the President signed into law H.R. 6201, the Families First Coronavirus

Response Act, which consists of two main components the provision of additional paid sick leave pursuant to the Emergency Paid Sick Leave Act, and the provision of an extended period of leave for a public health emergency (i.e. COVID-19) pursuant to the Emergency Family and Medical Leave Expansion Act (“E-FMLA”). These requirements will take effect not later than 15 days after the date of the enactment and as of now, are effective through December 31, 2020.

Emergency Paid Sick Leave Act - requires private employers employing less than 500 employees and government employers to provide 2 weeks of paid sick time to employees who are unable to work because the employee:

1. is subject to a federal, state, or local quarantine or isolation order related to coronavirus;
2. was advised by a health care professional to quarantine or self-isolate due to coronavirus-related concerns;
3. is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
4. is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a health care professional to quarantine;
5. is caring for a son or daughter because the child’s school or place of care has been closed or his or her childcare is unavailable due to precautions related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health in consultation with the Secretary of the Treasury and the Secretary of Labor.

A full-time employee is entitled to 80 hours of paid sick time (prorated for part-time employees) and is immediately eligible for leave, regardless of how long such employee has been on payroll.

Note that employers of health care providers and/or emergency responders are not required to provide emergency paid sick leave to such employees.

E-FMLA - expands the protections of the FMLA to include public health emergency leave. Businesses with less than 500 employees must allow employees to take modified paid leave for up to 12 weeks if there is a “qualifying need related to a public health emergency.” Such “qualifying need” is limited to only circumstances where an employee is unable to work (or telework) due to a need to care for a son or daughter under 18 if the child’s school or place of care has been closed, or if the child’s childcare provider is unavailable, because of a public health emergency (e.g. COVID-19).

6. If I must layoff an employee and I don’t know when or whether I will be bringing them back, is this still considered a termination?

A: Yes, This situation would be considered a permanent layoff or a termination.

Wages: Pursuant to Conn. Gen. Stat. § 31-71c(b), you must pay the employee’s wages in full no later than the next business day succeeding the date of the discharge. Pursuant to § 31-76(k), if you have a policy or collective bargaining agreement providing for the payment of accrued fringe benefits upon termination, including but not limited to paid vacations, holidays, sick days and earned leave, an employee must be compensated for those accrued fringe benefits upon termination.

Healthcare Plans: You must also provide the employee a notice of continuation of rights under COBRA, election form(s) and a certificate of credible coverage pursuant to HIPPA.

Pension, Profit-Sharing and Retirement Plans: Check the requirements of all ERISA-regulated employee welfare, pension and profit-sharing plans to see if you must give the employee a “Notice to Terminated Vested Participants” (normally this doesn’t have to be done for several months).

Unemployment Compensation: Provide all employees being laid off a Separation Packet, which includes a Separation Notice (UC-16) and instructions. This can be accessed here: <http://www.ctdol.state.ct.us/HP/UC-62TwithBabel3-2020.pdf>.

7. If I have to shut down my business because an employee is sick, or because of the economic impact of COVID-19, will I be liable for unemployment benefit charges?

A: Yes, this would be considered a layoff or a shutdown (see Q.6 above). Employees may file for unemployment benefits and a determination will be made concerning their eligibility. An employee may only collect unemployment benefits if they are “able and available to work.” Under normal circumstances, an employee must also be actively seeking employment in order to be eligible for unemployment benefits, however, Connecticut Department of Labor Commissioner Westby has suspended the actively searching requirement for workers directly impacted by the COVID-19 pandemic.

According to the DOL, if the President declares a disaster that includes Connecticut and your company, it is possible you may not be liable for unemployment benefit charges. We will provide further guidance on this issue if/when it becomes available.

8. What if I hope to bring an employee back someday, but I do not know when?

A: This is still considered a permanent layoff or a termination (see Q.6 above). You can still notify them of job openings in hopes of rehiring them in the future.

9. I am considering a temporary break in operations. Can I lay off an employee temporarily if know I will be bringing them back?

A: Yes, under existing law, employees who are laid off temporarily (six weeks or less) but expect to return to work can access unemployment benefits. Employees who are laid off temporarily do not have to demonstrate that they’re looking for work.

In Section F of UC-61 (see Q.6 above), Box I asks for “Return to Work Date (if definite).” If you insert a date that is up to six weeks from the date of the layoff, it will be considered a “temporary layoff.” In the case of a temporary layoff, unemployment benefits are paid automatically without the employee having to go through a hearing. Employers do not have to take the same steps outlined in Q.6 above, such as a final paycheck, COBRA notification, etc. because the individual is still considered an employee.

10. What if after the six weeks of temporary layoff, my business is not yet able to take my employee back?

A: You can extend your temporary layoff by notifying the Department of Labor (“DOL”) at least one week prior to the employee’s Return to Work Date. The DOL will extend the temporary layoff by a maximum of 6 additional weeks if they are notified by the employer before the employee’s final unemployment check is processed. Checks are normally processed on Tuesday, so we recommend contacting the DOL no later than the Monday before the Return to Work Date.

11. Is an employee entitled to partial unemployment if they continue to work and their pay is reduced?

A: Yes, employees can receive partial unemployment benefits if they were working “part-time.” To receive partial benefits, an employee must establish monetary eligibility and:

- They must be able to work and available for work as defined by law.
- The number of hours they are working or worked during a week must be less than the number of hours customarily considered full-time for that job and/or employer.
- The reason for working less than full-time must be lack of work or because the job is part-time by choice of the employer.

Monetary eligibility is determined by the Department of Labor.

12. What can I do to avoid laying off a group of employees?

A: The DOL Shared Work Program is a voluntary program whereby employers reduce work hours for an entire group of affected employees rather than laying off some while others continue to work full time. The program provides weekly unemployment compensation payments to the employees whose work weeks have been reduced.

Requirements:

- Shared Work participation must be in lieu of layoffs and not used for seasonal separations
- Employees' hours and wages cannot be reduced by less than 10% or more than 60%
- Employers cannot eliminate or reduce fringe benefits during the duration of the program, except that if an employee drops below 30 hours, they lose their entitlement to health insurance

How to Apply:

- Submit an application to the DOL for approval via fax or email. The application can be found online at www.SharedWorkCT.com
- Decisions are made within 30 days of the DOL receiving the application, however, the DOL hopes to expedite this process for businesses applying during the COVID-19 pandemic
- If your application is approved, the plan will begin on Sunday and expire six months later

How Weekly Shared Work Benefit is Calculated:

- Employees will receive a portion of their weekly benefit rate reduced based on the percentage reduction of their work
- For example, if an employee's hours are temporarily reduced by 50%, they will receive the partial paycheck from you (50% of their regular gross earnings) and also 50% of his or her regular weekly benefit rate
- The weekly benefit rate is calculated by the Department of Labor

13. Can I reduce my non-exempt employees' hours and wages while my Shared Work Program application is pending?

A: Yes. Applications are backdated, so reducing employees' hours and wages will not impact your business's eligibility for the Shared Work Program. Those employees may be eligible to receive partial unemployment benefits while your Shared Work Program application is pending.

14. If I am terminating an employee temporarily, would the employee be able to use accrued and unused vacation time upon termination in order to continue getting paid?

A: Yes, the employee could use their vacation time and you would submit the termination paperwork to become effective after the vacation time is exhausted. However, if you list the paid time off on the UC-61 form, the DOL will treat the separation as a permanent layoff because in order for it to be a temporary layoff there needs to be no calculation required to determine the amount of benefits.

For further information on the implications of COVID-19 on employment, or other employment related questions, please contact Christopher L. Brigham, Chair of the Employment Law Practice Group at Updike, Kelly & Spellacy, P.C. at (203) 786-8310 or cbrigham@uks.com, or Valerie M. Ferdon, Associate Attorney in the Employment Law Practice Group at (860) 548-2607 or vferdon@uks.com.

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