

# NAVIGATING NEW LEAVE REQUIREMENTS AS A RESULT OF COVID-19



An employee contacts Human Resources and advises that they will not be able to come to work because of Coronavirus. How should the HR department respond? What questions should be asked and to whom should the claim for benefits be reported?

First, is the claim work related? Has there been an exposure at work which precludes the employee from coming into the workspace? Is the employee exposed and experiencing symptoms, or is the inability to work due to exposure of another employee, and the employee is asymptomatic? Is the employer's facility closed due to Coronavirus? If so, is the closure voluntary or has a governmental authority specifically closed that worksite due to Coronavirus exposure? Has the employer given the employee an option to work from home?

The insurance industry and the state regulators continue to discuss these issues, but if there is no actual or potentially active exposure, which is true of many work loss situations today, the leave likely would fall under various programs, including: ERISA short-term disability contracts, state-based family leave laws, employer salary continuation policies or statutory short-term disability plans (which are required in New York, California, New Jersey, Rhode Island, Hawaii and Puerto Rico). And if there is no work loss because the employee can work from home, it's unlikely that there's a collectible Workers Compensation claim.

So where does the HR department turn, and to whom is the claim reported if there are lost wages?

1. If the claim can be construed to be work related, report the claim to the Workers' Compensation vendor. Not reporting may impact the ability to recover benefits under the contract, including work loss, death claims or permanent partial disability settlements.
2. Report the claim to the statutory disability insurance policy administrator. Generally, statutory benefits are more liberal than ERISA plans and, as described below, most of these plans have expanded benefits and more liberal determinations.
3. Report the claim to the ERISA short-term disability benefit plan. Many carriers have liberalized claim eligibility guidelines, so it has become more likely that a carrier will cover the claim.
4. Several states have liberalized State Paid Family Leave eligibility interpretations, so more claims might be paid under state PFL.
5. The most liberal benefit is salary continuation. Generally, all benefits described above would be offset by available salary continuation benefits.

The employee will be entitled to the richest benefit available under all of these programs. By reporting a potential claim, the employer can preserve its right to collect or offset claim payments. Conversely, an employer will forfeit its rights if it fails to report or submit a claim.

## Summary of Updated or Expanded State and Local Paid Leaves Due to COVID-19 – as of March 30, 2020

Many state and local governments have issued or updated paid leave requirements to help reduce the financial impact to employees unable to work due to contracting the virus, being quarantined or taking care of family members who are either sick or cannot go to school or get normal child care.

The grids below summarize updated or new leave laws and practices. We include links to the source site and/or document so you can easily search for updates. We will update these charts when state and local governments issue protective guidance as the virus spreads and they identify new hot spots. Employers should monitor their state and local authorities to help coordinate federal paid leave rights, state and local mandates and their own company guidelines.

Leave/Accommodation	Status/Change/Date	Summary of Changes
Emergency Expanded FMLA	Updated April 1, 2020	FFCRA benefits apply to leaves taken on or after April 1, 2020. Benefits are not retroactive.
ADA	No changes	Employers may test employees' temperatures because the CDC and state/local authorities have acknowledged community spread of COVID-19.
Short-Term Disability	No changes	STD carriers are treating COVID-19 as any other disabling condition – each claim is reviewed on a case-by-case basis under the terms of the policy/contract.  For ASO/Self-funded plans, carriers are willing to work with clients to expand STD to cover quarantines, with specific guidance from the plan sponsor.
Statutory Disability & Paid Family Leave	Updates	The following states have updated/expanded benefits to apply to COVID-19:  California, New Jersey, New York, Oregon, Rhode Island, Washington, Washington, D.C.  Please see the table below for specifics on each state's expanded benefits
Paid Sick Leave (including State or Local)	Updates and New Laws	FFCRA benefits apply to leaves taken on or after April 1, 2020. Benefits are not retroactive.  Expanded and new laws generally entitle employees to paid sick leave for their own health condition, family member health condition, as well as missing work due to caring for a child at home due to closure of school or childcare facility  Note: FFCRA leaves are limited to COVID-19.  See the table below for specifics on each state's expanded benefits
Employer PTO Plans	Client-by-client updates	Employers are approaching use or addition of PTO in different ways:  No changes to current policies  Providing sick time to employees that normally do not have access to sick time and/or expanding sick days to fill elimination period before STD eligibility  Providing "catastrophic" or "pandemic" pay to employees that are quarantined or must stay at home to care for children due to school or child care closures

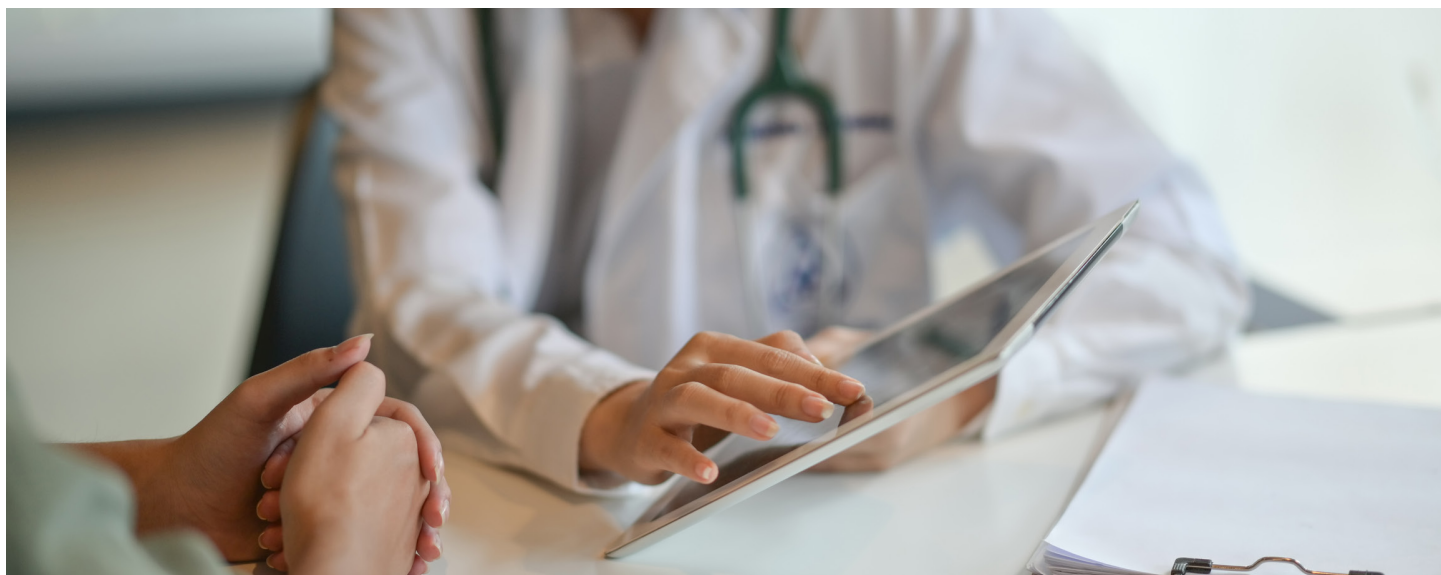
State/Local	Link For More Information	Plan	Summary of Changes
California	<a href="#">California Disability and PFL - Coronavirus FAQ</a>	SDI	The EDD will waive the seven-day waiting period for disabilities related to COVID-19. Employees unable to work because of exposure to – or diagnosis of – COVID-19 can file a claim for disability benefits (medical professional certification required)
California	<a href="#">California Disability and PFL - Coronavirus FAQ</a>	PFL	EDD confirmed that PFL benefits are available to eligible employees if they have to care for an ill or quarantined family member due to COVID-19 (medical professional certification required)
San Francisco	<a href="#">San Francisco - PSL &amp; COVID-10</a>	Paid Sick Leave Ordinance	New guidance requires covered employers to allow employees to use accrued sick time if public health officials or healthcare providers require or recommend the employee isolate or quarantine to prevent the spread of disease. Employees considered to be in the “vulnerable population” under the March 6 guidelines are also eligible to use their accrued sick time. The Mayor of SF announced a Workers and Family First program offering incentives for businesses to provide an additional 5 days’ sick time. See link for more details.
Colorado	<a href="#">Colorado Emergency Leave With Pay</a>	Emergency Sick	Emergency rule went into effect on March 11, 2020 requiring employers in select industries to provide up to four paid sick leave days when an employee presents with flu-like symptoms and is being tested for COVID-19. The days are considered calendar days and must be for consecutive days that the employee is scheduled to work. For example, an employee first ill on Thursday and is scheduled to work on Thursday and Friday but not Saturday and Sunday would be paid for two days. Impacted industries include – Leisure and Hospitality, Food Services, Child Care, Education and Home Health, Nursing Home/Rehabilitation, Community Living facilities.
New Jersey	<a href="#">New Jersey Department of Labor, Benefits and the Coronavirus</a>	TDI	TDI may be available for employees at greater risk for contracting COVID-19 or have contracted the virus and are unable to return to work and have exhausted accrued paid leave.
New Jersey	<a href="#">New Jersey Department of Labor, Benefits and the Coronavirus</a>	FLI	Family leave insurance may be available for employees who have exhausted paid leave and need to care for a family member that has shown symptoms or has been diagnosed with COVID-19.
New Jersey	<a href="#">New Jersey - Job Protection COVID-19</a>	Job Protection	Emergency legislation prohibits an employer from terminating or refusing to reinstate an employee who requested time off work based on a licensed medical professional’s recommendation that the employee has or is likely to have an infectious disease. Formal medical certification is required.

New York	<a href="#">New York DBL</a>	DBL	<p>Temporary waiver of the seven-day waiting period for DBL claims related to COVID-19</p> <ul style="list-style-type: none"> <li>» Employees may receive DBL and PFL benefits if they are unable to work because of a mandatory or precautionary order of quarantine or isolation</li> <li>» DBL benefits available to work on an on-going basis beyond the exhaustion of sick time provided under the Quarantine Leave (it appears this would apply only to employers with less than 100 employees)</li> <li>» Employees may be eligible to receive DBL and PFL benefits concurrently</li> <li>» Increased DBL benefit to match full wages up to \$2,043.92/week</li> </ul>
New York	<a href="#">New York PFL</a>	PFL	<p>Temporary expansion of PFL benefits if an employee is unable to work due to caring for a child who is subject to mandatory or precautionary quarantine/isolation due to COVID-19</p> <ul style="list-style-type: none"> <li>» Employees may be eligible to receive PFL and DBL benefits concurrently</li> </ul>



New York	<a href="#">New York Sick Quarantine Leave FAQ</a>	Sick/ Quarantine	<p>Effective March 18, 2020, NY's DBL and PFL provisions were expanded include new Quarantine Leave law.</p> <ul style="list-style-type: none"> <li>» All employers are subject to new law, including public employers</li> <li>» Rights under the law are triggered by an employee being unable to work as a result of "mandatory or precautionary order of quarantine or isolation due to COVID-19." The order must be issued by the State of NY or government entity sanctioned to issue such an order.</li> <li>» Amount of sick time available under the Quarantine Leave is based on employer size and is in addition to any other PTO provided by the employer</li> <li>» &gt; 100 employees and all public employers – 14 paid sick days during quarantine leave period</li> <li>» Between 11 and 99 employees or any employer with 2019 net income &gt; \$1M – 5 paid sick days and then unpaid until end of quarantine</li> <li>» 10 or less employees and net income &lt; \$1M – Unpaid sick time until quarantine is terminated</li> <li>» Benefits are offset by paid leave benefits mandated under the FFCRA – employers with 100 – 499 employees are eligible for 80 hours of Emergency Sick Leave, so would be eligible for additional 4 days under NY's Quarantine Law and employers with 500 or more will have full access to NY Quarantine Leave and expanded DBL/PFL since FFCRA does not apply to them</li> <li>» It is unclear if employers with less than 100 employees will have a similar coordination of 5 days NY Quarantine Leave and FFCRA Emergency Paid Sick Leave</li> </ul> <p>Employees returning to work after COVID-19 related leaves must be restored to the same position held before the leave with the same pay and terms and conditions of employment. Discrimination against employees who take leave due to COVID-19 is prohibited.</p>
Oregon	<a href="#">Oregon OFLA</a>	OFLA	OFLA expanded "sick child leave" to include leave to care for a child as the result of school closures. This expansion will apply through September 13 <sup>th</sup> , 2020.
Rhode Island	<a href="#">Rhode Island TDI and TCI</a>	TDI	The state is waiving the seven-day minimum claim period for COVID-19 related claims and the need for a medical certification if a worker is under quarantine.
Rhode Island	<a href="#">Rhode Island TDI and TCI</a>	TCI	The state is waiving the seven-day minimum claim period for COVID-19 related claims and the need for a medical certification if a worker is under quarantine.

Seattle	<a href="#">Seattle Paid Sick and Safe Time</a>	Paid Sick & Safe Time (PSST)	Pre-COVID-19 employers were required to provide PSST to employees that included business closure for any health-related reason, an employee's need to care for a child whose school or place of care has been closed by a public official or for certain domestic violence reasons. Effective March 18 <sup>th</sup> , PSST was expanded to allow sick time to be used when a family member's school or place of case has been closed, and for employers with more than 250 employees, PSST may be used if the business closes for any health-related reason.
Vermont	<a href="#">Vermont Sick Time</a>	Paid Sick Time	Employees can use their accrued sick time when a family member's school or business is closed for public health or safety reasons.
Washington	<a href="#">Washington PMFL</a>	PFML	Washington has posted FAQs regarding how COVID-19 is covered under the new Paid Family and Medical Leave program.
Washington	<a href="#">Washington State Sick Leave</a>	Paid Sick Leave	Employees can use paid sick leave if their place of business, their child's school or place of care are closed by a public official due to COVID-19. Employees can also use PTO if sick time is part of the PTO program. Employers cannot require that employees use their sick time to cover virus-related absences.
Washington, D.C.	<a href="#">Washington DC - DOE Leave</a>	DCFMLA	In response to COVID-19, DCFMLA has expanded to provide "declaration of emergency" (DOE) leave to employees who are unable to work as a result of the Mayor declaring a public health emergency. The DOE need may be for the employee's self-quarantine or isolation at the recommendation of the Mayor, Department of Health, medical professional or other agency of authority. DOE is available if the employee is quarantined or isolated by government mandate. DOE leave waives the typical eligibility requirements and continues until the declared emergency ends. Both DCFMLA and DOE leaves are unpaid.



**PLEASE NOTE THAT WE ARE UNABLE TO PROVIDE LEGAL ADVICE. PLEASE CONSULT WITH YOUR LEGAL COUNSEL CONCERNING ANY EMPLOYMENT ISSUES.**