

Employer questions

1. Can I reopen my business? If so, are there any restrictions that apply?

You can find information about what businesses can and cannot be open and learn about the applicable industry guidance [here](#).

2. Can an employer require an employee to come to work instead of working from home?

Current executive orders require that all Minnesotans who can complete their work from home, must work from home. This is true for critical and non-critical sector employees.

3. Are employers required to pay all wages to employees who are discharged within 24 hours?

Minnesota law provides that when an employer discharges an employee, the employee can make a demand for all wages earned and those wages must be paid within 24 hours of the demand.

4. As an employer, can we require workers to work from home?

Current executive orders require that all Minnesotans who can complete their work from home, must work from home. This is true for critical and non-critical sector employees. Employers must track, record and pay for all hours of work performed by employees.

5. Can an employer change the regular work schedules of its employees?

Employers may determine work schedules, including the number of hours and the shift times, for their employees unless there are restrictions to schedule changes in an employment contract or collective bargaining agreement.

6. Are employers required to pay an employee's accrued paid time off (PTO), vacation or sick time at the time an employee is laid off or terminated?

Minnesota wage and hour laws do not directly address this question. An employer should look at the applicable leave policy, employment contracts or collective bargaining agreements to determine their obligations.

7. If I pay accrued PTO, vacation or sick time to employees at the time they are laid off, are they eligible for unemployment?

The Minnesota Department of Employment and Economic Development (DEED) recommends workers exhaust other forms of leave because those will pay more than unemployment insurance, but that is subject to availability and the desire of the individual worker. Unemployment benefits are designed to provide about 50% of the employee's regular wages, while paid leave benefits typically provide more income.

8. If an employer decides to change paid vacation, sick time, or paid time-off accruals and the terms of their use or the wage rate of an employee, what is required?

Employers are required to provide written notice to employees of any changes to the information in the employee notice required by the Minn. Stat. 181.032 prior to those changes taking effect. This requirement includes changes to rates of pay or changes to leave accruals and the terms of their use. The change can be communicated in paper or electronic form.

9. Can an employer advance an employee PTO (sick or vacation hours) and then require that employee to pay the employer back through payroll deductions if the employee quits or is terminated before the employee has “earned” those leave hours?

Before an employer can require an employee to pay them back through payroll deductions for any claimed indebtedness, the employer must first obtain a voluntary written authorization from the employee in writing. This authorization needs to be signed by the employee after the loss/indebtedness to the employer has occurred. If the employee does not agree to the written reimbursement authorization, it is possible the employer may be able to pursue a claim in court against the former employee for the amount owed.

10. Does an employer need to pay an employee accrued PTO, vacation or sick leave benefits when the employee is laid off or terminated?

Minnesota wage and hour laws do not directly address this question. An employee should look at the applicable leave policy, employment contracts or collective bargaining agreements to determine their right to be paid earned or accrued leave benefits.

11. Can an employer require an employee to use accrued PTO, vacation or sick leave?

If an employee is eligible for paid leave under the provisions of the federal Families First Coronavirus Response Act (FFCRA), an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid leave pursuant to that legislation.

The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern. Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the act.

An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the unpaid portion of the leave provided in the expanded Family Medical Leave Act (FMLA) under the FFCRA. However, this may not be necessary if the employee is eligible and chooses to utilize the paid sick leave under the FFCRA for the 10-day unpaid portion of the expanded FMLA. The U.S. Department of Labor’s Wage and Hour Division administers and enforces the FFCRA’s paid leave requirements. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave or call the Wage and Hour Division at 612-370-3341.

Whether or not an employer can require the use of personal leave benefits outside of the application of the FFCRA will depend on the applicable leave policy, employment contract or a collective bargaining agreement.

12. With students taking classes at home, are employers held to the same work-hour restrictions for students in the child labor laws?

Yes, the time of day work restrictions in the child labor laws for school days apply when normal classes are in session during the regular school year in the school district. These restrictions will apply to days identified as distance learning days. Therefore, any minor 14 or 15 years of age cannot work on school days during school hours unless they have an employment certificate issued by their school district's superintendent or designee as outlined in Minn. Stat. 181A.05.

Employee questions

13. I have an underlying health condition that puts me at higher risk, does my employer have to let me work from home?

Individuals with disabilities have the right to request "reasonable accommodations" from employers that are subject to the Americans with Disabilities Act and/or the Minnesota Human Rights Act (MHRA). If the employee has a disability that affects the employee's risk for contracting COVID-19 or being harmed if the employee does contract this virus, they should request a reasonable accommodation from the employer. A reasonable accommodation may include working from home. This process applies to critical sector workers, too.

14. If my workplace closes or I am otherwise laid off, when is an employer required to pay employees their final wages?

Minnesota law provides that when an employer discharges an employee, the employee can make a demand for all wages earned and those wages must be paid within 24 hours of the demand. If an employee is not discharged, the employee must be paid on the regular pay schedule.

If your employment ends and your former employer has not paid you your final wages, there are several steps you can take to ensure you are paid all the wages you are due. To learn what steps you can take to receive your final wages, visit www.dli.mn.gov/business/employment-practices/making-demand-final-wages.

15. I understand the federal government recently enacted a new paid sick leave law and expanded benefits under the Family Medical Leave Act related to COVID-19. How do I access those benefits?

The federal Families First Coronavirus Response Act requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The U.S. Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from April 1 through Dec. 31, 2020. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave or call the Wage and Hour Division at 612-370-3341.

16. I am not feeling well, but I'm concerned about losing income if I can't work. What can I do?

The federal Families First Coronavirus Response Act requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The U.S. Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from April 1 through Dec. 31, 2020. For more information about this

law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave or call the Wage and Hour Division at 612-370-3341.

In addition, the state's unemployment program was recently expanded to ensure those whose presence in the workplace would jeopardize the health of others will have access to unemployment income for the time they are unable to work. To get more information about Unemployment Insurance or to apply for benefits, visit www.uimn.org.

17. I do not feel like my job is a safe work environment. What can I do to remain safe, but also keep my job?

All employers must continue to follow OSHA workplace standards and should adhere to Minnesota Department of Health and Center for Disease Control recommendations for businesses. Your employer may not retaliate against you for reporting health and safety concerns at work. If you believe your employer retaliated against you, you may file a complaint with Minnesota OSHA (MNOSHA) Compliance within 30 days of the adverse employment action.

You have the right to refuse to work under conditions you, in good faith, reasonably believe present an imminent danger of death or serious physical harm to you. Serious physical harm may include a work illness that results in permanent disability, temporary total disability or medical treatment. A reasonable belief of imminent danger of death or serious physical harm includes a reasonable belief of the employee that the employee has been assigned to work in an unsafe or unhealthful manner with an infectious agent.

Your employer may not fire you or otherwise discriminate against you for your good faith refusal to perform assigned tasks if you have asked your employer to correct the hazardous conditions but they remain uncorrected. If you have refused in good faith to perform assigned tasks and your employer does not reassign you to other work, you may contact MNOSHA Compliance to request assistance. MNOSHA Compliance will contact your employer to try to resolve your concern. If MNOSHA Compliance determines you would have been placed in imminent danger of death or serious physical harm by performing the work, then you are entitled to receive pay for the work you would have performed.

Contact Minnesota OSHA Compliance at osha.compliance@state.mn.us, 651-284-5050 or 877-470-6742 with questions.

18. I live with a vulnerable family member and I am concerned I may contract COVID-19 at work and then bring it home. Can I take a leave of absence from work even though my family member is not currently sick?

Current executive orders require that all Minnesotans who can complete their work from home, must work from home. This is true for critical and non-critical sector employees.

If you are unable to work from home, it is typically up to your employer to determine whether to grant a leave of absence. Sometimes, employers have written policies or contract language outlining leave of absence terms.

19. I was exposed to someone with COVID-19 but my employer still insists that I come to work. What should I do?

If you are concerned because of exposure or because you are experiencing COVID-19 symptoms, you should seek the advice of a health care provider. You may be eligible for up to two weeks of paid sick leave under the

federal Families First Coronavirus Response Act if you are unable to work because you are quarantined at the advice of a health care provider and/or experiencing COVID-19 symptoms and seeking a medical diagnosis. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave or call the Wage and Hour Division at 612-370-3341.

20. Can my employer require me to be tested for COVID-19 or require other medical tests?

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance stating that during a pandemic, ADA-covered employers may ask 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 ADA.

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine [if employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

EEOC has also advised ADA does not interfere with the guidance outlined by the Centers for Disease Control and Prevention (CDC) that employees experiencing symptoms of COVID-19 should leave the workplace. You can view additional guidance from EEOC at www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

When an employer requires an employee or applicant to undergo a medical evaluation, including a COVID-19 test, in order to work, Minnesota law requires that the employer pay the cost of the test or medical examination.

21. Can my employer take my temperature before I am allowed to work?

EEOC has advised that, generally, measuring an employee's body temperature is a medical examination. Because CDC and state and local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware some people with COVID-19 do not have a fever. You can view additional guidance from EEOC at www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

If you believe your employer is discriminating against you on the basis of race, disability, national origin or other protected class status, contact the Minnesota Department of Human Rights at 651-539-1133, 800-657-3704 or info.mdhr@state.mn.us, or complete the form at www.mn.gov/mdhr/intake/consultationinquiryform.

22. I am able to work from home, but my employer is directing me to come to work. What should I do?

All critical sector and non-critical sector workers who are able to work from home must continue to do so under the governor's executive orders. If your employer is requiring you to return to work when you can clearly complete your work from home, then you can:

1. Inform your employer that returning to work violates the governor's executive orders and that you

will be working from home so you do not violate the executive orders.

2. Contact the Work from Home Violation Helpline at 651-539-1132, 1-833-454-0152 (toll free) or WFHviolations@state.mn.us.
3. You may be able to file your own lawsuit against your employer under the state's whistleblower law, if your employer retaliates against you for refusing to return to work or reporting the violations to any government agency or law enforcement official. Minn. Stat. § 181.932, subd. 1. You should contact a private employment law attorney to discuss your options.

23. What is the employer obligation to continue health insurance if a person is out of work due to COVID-19? Can an employer cancel insurance for one individual and not others who are seemingly similarly situated?

The answer depends on the reason for the absence from work and the pay status. If an employee is on an FMLA eligible leave, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work.

Employers are also required to maintain an employee's group health plan coverage during paid family leave and paid sick leave under the Families First Coronavirus Response Act on the same terms as if the employee had continued to work.

Under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), some employers may have an obligation to offer the option of continuing health care benefit coverage to individuals who would otherwise lose their benefits due to termination of employment, reduction in hours or certain other events.

The obligation for employers to continue health insurance coverage for individuals out of work for reasons other than those identified above will be fact-specific and often dependent on pay status, employer policies, employment agreements or an applicable collective bargaining agreement. There are prohibitions on discrimination in health insurance coverage based on health status factors or protected class status.

24. My employer notified us that one of our co-workers has tested positive for COVID-19. I believe I had contact with this co-worker. Should I self-quarantine? Should I come into work? What are my rights because it appears my employer expects me to come in?

Individuals who test positive for COVID-19 are assigned a case worker through the Minnesota Department of Health (MDH) or a local public health agency. The caseworker works with the employer and affected employee to determine if more communication is necessary based on facts and circumstances, e.g. how close the employees work together and length of contact. If you are considered to be at-risk based on the facts and circumstances, you will be contacted and informed of any action you need to take. This could include a quarantine. If additional messaging is appropriate, the caseworker works with the employer to get that message out to other employees, customers, and vendors. MDH or the local public health agency will work with the employer to ensure that proper disinfectant protocols are followed. Employers should regularly communicate best practices regarding social distancing, hand washing, and other steps to mitigate the spread of the virus.

25. What right or recourse does a worker have if an employer discloses that the worker or the worker's family member has contracted COVID-19? Are there HIPAA law protections?

The Health Insurance Portability and Accountability Act (HIPAA) imposes obligations to safeguard protected

health information only on covered entities, which are defined to include health plans, health care clearinghouses, and health care providers. An employer acting in its capacity as an employer is generally not subject to HIPAA. Other laws, such as the Americans with Disabilities Act (ADA) or state confidentiality laws, may apply. The ADA prohibits disclosure of the identity of an employee who has tested positive for, or otherwise diagnosed with COVID-19 to co-workers.

26. Does my employer have to notify me if one of my co-workers tests positive for COVID-19?

Industry guidance requires that as part of its COVID-19 Preparedness Plans, businesses must establish procedures for identifying and communicating with workers who have been in close contact with a person with COVID-19 symptoms or who has tested positive for COVID-19 while they were engaged in work.

The business must inform workers who have been in close contact with a person with COVID-19 symptoms or who has tested positive for COVID-19 of their possible exposure to COVID-19 while engaged in work for the business.

Individuals who test positive for COVID-19 are assigned a case worker through the Minnesota Department of Health or a local public health agency. The caseworker works with the employer and affected employee to determine if more communication is necessary based on facts and circumstances, e.g. how close the employees work together and length of contact. If additional messaging is appropriate, the caseworker works with the employer to message that out. MDH or the local public health agency will work with the employer to ensure that proper disinfectant protocols are followed. Employers should regularly communicate best practices regarding social distancing, hand washing, and other steps to mitigate the spread of the virus.

27. Can my employer disclose the identity of an employee who has tested positive for, or otherwise been diagnosed with, COVID-19 to co-workers who were in close contact with the infected employee during the relevant 14-day period?

The ADA prohibits disclosure of the identity of an employee who has tested positive for, or otherwise diagnosed with COVID-19 to co-workers. However, an employer can provide employees with information that would help them evaluate exposure. Employers can generally identify that an “employee has tested positive for COVID-19” or that an employee “has been exposed to COVID-19,” but the employee should not be identified.

28. Can my employer ask or require me to sign a waiver of liability that prevents me from filing a claim for workers’ compensation if I contract COVID-19?

No, agreements to waive workers’ compensation rights are prohibited by Minnesota law. Employees cannot sign away the right to file a workers’ compensation claim and an employer may not discriminate against a worker for reporting an injury. The law also prohibits employers from encouraging employees to not report an injury, asking an employee to agree to hold an employer harmless for an injury or relinquishing rights an employee may have to workers’ compensation benefits.

An employer is liable for civil damages to an employee for obstructing, discharging or threatening to discharge an employee for seeking workers’ compensation benefits. Damages can be awarded to the employee for reduced workers’ compensation benefits, costs and reasonable attorney fees caused by the employer’s violation of this law. The employer may also be liable for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled. Damages awarded cannot be offset by any workers' compensation benefits to which the employee is entitled. See Minnesota Statutes, section

176.82.

If you have any questions about these laws or if you have been asked to sign a waiver, contact the Department of Labor and Industry's Workers' Compensation Division at 800-342-5354 (press 3) or dli.workcomp@state.mn.us.

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