We appreciate the time you spent with us for the HR segment in the Bringing PA Back webinar series. We compiled the questions that we were unable to address in our time slot and have included our answers here for you. Thank you for participating and we look forward to serving you again soon.

Worksite Cleaning / Workplace Preparation

How many times per day should we clean common or high-touch surfaces?

Neither the [CDC guidance](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfecting.html) nor PA Dept. of Health specify a particular number of times per day to clean surfaces other than to say “frequently”. This is a decision you’ll make based on the activity in your particular location.

Do you foresee staff indicating that cleaning is "not their job" with regards to the rotating of staff to wipe down common areas?

This is a tough conversation to have with an employee and one we hope in which you will not have to engage. No one’s job duties are etched in stone and there are times where we’ll all have to work together for the greater good and most employees have an understanding of what that means. In the absence of a collective bargaining agreement to the contrary, an employer can require an employee to perform appropriate out-of-typical-scope work-related duties.

What if a member of an organization’s leadership/ownership team refuses to take temperature, wear a mask, clean, and/or provide cleaning supplies?

According to an April 15, 2020 press release by Governor Wolf: Failure to comply with requirements linked below will result in enforcement action that could include citations, fines, or license suspensions. Compliance with the order began to be enforced Sunday, April 19 at 8:00 PM.


However, due to interactions with potential underlying medical conditions related to wearing masks, we recommend that employers seek legal counsel prior to taking any formal actions. Rooted in requirements of the ADA, it is probable that an employer should initiate an interactive accommodation process to ensure compliance. For instance, if an employee is dealing with an underlying respiratory condition exacerbated by wearing a face mask, would it be reasonable to require use of a face shield instead?

Are there required signs that need to be posted when operations resume?

Beyond the recommended signage highlighted during the webinar to include respiratory etiquette, hand washing reminders, actions employers are taking to keep employees/customers safe, there are two newly required postings. The Families First Coronavirus Response Act (FFCRA) requires the following posting—


The following FAQ document provides additional guidance—

[https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions](https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions)

The PA Dept. of Health has issued the following sign as well:

Cubicles

There has not been specific guidance regarding the height of cubicle walls. What we have seen is guidance from the PA Dept. of Health that states:

Q. Does someone working in a personal office need a mask at all times?

A. Employees isolated in their personal office space, when unshared with any other colleagues, do not need to wear a mask. However, when the employee leaves their individual office or has invited a colleague into their office, they must wear a mask. Additionally, one cannot wear a mask while eating or drinking. At those times, social distancing techniques should be applied.

Since a cubicle environment is essentially a shared office, then we return to the shared office guidance given by the PA Dept. of Health as shown above.

We have seen guidance that suggests a need for face covering is reduced when an individual is maintaining strict 6’ or greater social distancing measures at ALL times. While differing recommendations are being circulated, we recognize the most conservative approach would be to wear face masks in situations where an individual could come into contact with others, even while working hard to maintain appropriate social-distance.

Taking Temperatures / Screening

Must we take everyone’s temperature or can we limit to only those that we know have been sick?

The EEOC’s guidance tells us that it is permissible to take the temperature of employees entering into our physical workplace. However, employers must ensure that the temperature checks are designed to reduce the threat that an employee with COVID-19 poses to the workplace. These checks must be uniform and reliable and administered in a non-discriminatory manner.

Can we have a clipboard for employees to record their temps on left by our time clock or would that be a HIPPA violation? Should we have a manager be in charge or recording all temps instead or even assign an employee a number instead of listing their names?

To have the results of testing in an area where others can see it violates the confidentiality provisions of the Americans with Disabilities Act (ADA). It is a prudent measure to designate a member of management to take the temperatures or to whom employees report their own self-taken temperatures to help avoid any unauthorized disclosure. Any sort of posting of temperatures is fraught with potential compliance issues and is not recommended.

Is the Chamber recommending collection of temperatures in order to see if there are trends?

While the Chamber does not have a particular recommendation in this area, an employer may choose to track this information in order to ascertain whether or not they can see a trend. If this is information you plan to track, you should consider de-identifying the information in order to lessen the likelihood of improper disclosure. Information that identifies the individual must be kept confidential and all records must not be included with other personnel records.

If an employee is sent home because they refuse to answer questions or have their temperature taken, is that paid or unpaid leave? Does the employees need to take PTO at that time?

This is a matter of individual policy for employers. You may want to consider using your current dress code as the model for this situation. For instance, do you provide paid leave for an employee to go home and change if their attire violates your dress code? If not, then apply that same principle here. To allow for paid leave to go home may send a message other than the one you’re intending.
What if an employee has a respiratory issue and the mask exacerbates symptoms. Can they opt out of the mask or does the employer have to provide some other type of PPE?

If you have an employee with a condition that prevents them wearing a mask, then you should treat this situation as you would any other request for reasonable accommodation by engaging in the interactive process to seek a satisfactory solution.

With PA opening up some families are hosting graduation gatherings. If my employees attends one of these gatherings what guidelines should we use about them coming to work after attending one of these gatherings?

The EEOC has made it very clear that employers are not permitted to single out a particular group to which different rules will apply. Treat these individuals as you would all other employees.

What if an employee says their temperature reading is not correct because they were exerting themselves prior, the temperature outside is affecting it, etc.?

If you or your employee believe the temperature reading to be inaccurate due to outside forces and you don’t want to send the employee home right away, you can have the employee sit quietly in a climate-controlled area (away from others) and retake their temperature after a period of time, such as 15 minutes. If the employee’s temperature persists in being at or above the safety indicator for COVID-19, the employee should be sent home.

NY is requiring that employees be screened every day before going to work - a questionnaire is allowed. Does PA require this as well, and also, are we required to do the same with all visitors to the office (including customers)?

Our understanding is that temperature screenings are upon discovery that the business has been exposed to a person who is a probable or confirmed case of COVID19: [https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf](https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf)

Customers are not required to be screened, according to the FAQ document inserted below. While the current environment is fluid, Page 8 notes that non-employees are not subject to temperature checks and Page 9 provides additional guidance regarding the use of questionnaires.

Do we have an obligation to inform anyone else if they were in contact with an employee who tested positive for COVID, other than employees of the organization?

In relevant guidance, [CDC](https://www.cdc.gov) and [DOH](https://www.governor.pa.gov) only mention the need for employees to be notified.

In the salon environment, is it going to be required for you to take the guest’s temperature before they enter business in PA?

We have not seen such a requirement published to date, only that salons must operate by appointment and not accept walk-in clients for whom pre-scheduled appointments do not exist. Pertinent information is contained in Section 1.F. of the following order, contained on Page 4:

Employee has a fever. We send them home. They drag their feet to seek medical treatment and/or testing. How many days would be considered “reasonable” before we feel they are milking the opportunity to be at home? How many days should we allow for seeking treatment before we inquire on status?

At the time you sent the employee home, make your expectations clear that you are directing them to seek medical advice and you expect them to contact you within 24 hours to advise the status of that contact and any direction that they’ve been given by their medical provider. If you do not hear from them, turn to your Job Abandonment policy for guidance. Be sure to exercise discretion understanding that if an employee becomes suddenly ill, he or she may not be able to respond to your request immediately.

**Time Off**

**At what point does a sickness not qualify to stay home? Seasonal allergies?**

Let your current policies guide you when dealing with a sickness that does not appear to be COVID-19 in nature. If someone with allergies would not have had cause to stay home under your previous policy, then apply your previous policy.

**If a staff member is planning a larger family vacation in August to a beach destination, does the 14-day self-quarantine apply?**

It is our understanding that action here will depend upon the recommendations of the CDC, state, or local public health officials at the time of the vacation. Relevant guidance is provided in Section B.8 of the linked publication: [https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act](https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act)

**How many symptoms should someone have before deciding to stay home?**

The answer to this question is specific to the individual, their health status, and their particular situation. We would recommend that an individual seek out the CDC’s self-checker to help answer the question of next steps due to the individual’s symptoms. You can find the self-checker here: [https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html)

**FFCRA – Paid Sick Leave and Expanded FMLA**

**If someone has tested positive for COVID - but still does not feel ready to return to work after 14 days - used all of their FFCRA - should they now use their own PTO or go unpaid?**

Once your employee has exhausted their FFCRA mandated sick leave, it is a matter of the employer’s policy whether any remaining time is unpaid or if the employee must use PTO. There are two regulations for you to keep in mind when determining whether to honor the request to stay home: ADA and FMLA. If the employee is sufficiently ill that a reasonable accommodation may be appropriate, employers should engage in the interactive process. If your workplace is required to comply with FMLA, you may need to make arrangements for use of that leave time (which is not required to be paid for this instance). It’s really going to depend on the individual’s circumstances and health status.
How do you get documentation regarding childcare provider?

For guidance regarding substantiation of leave, we turn to the IRS. The IRS has a Q&A section regarding these topics. Here’s what they have to say:

**44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee’s inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

**45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?**

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth in FAQ 44 (“What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?”), the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 (“Determining the Amount of Allocable Qualified Health Plan Expenses”) for methods to compute this allocation.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer’s entitlement to the credit claimed on Form 941).

You can read more here:

Does emergency paid sick leave apply if we only have self-contracted workers?

The US Dept. of Labor issued guidelines clarifying how to determine who counts as an employee for this purpose. Here’s what they have to say:

“Section 826.40(a) also addresses how to determine who counts as an employee for this purpose, including discussing categories of workers who do (and do not) count toward the 500-employee threshold. In making this determination, the employer should include full-time and part-time employees, employees on leave, temporary employees who are jointly employed by the employer and another employer, and day laborers supplied by a temporary placement agency. Independent contractors that provide services for an employer do not count towards the 500-employee threshold. Nor do employees who have been laid off or furloughed and have not subsequently been reemployed. Furthermore, employees must be employed within the United States. For example, if an employer employs 1,000 employees in North America, but only 250 are employed in a U.S. State, the District of Columbia, or a territory or possession of the United States, that employer will be considered to have 250 employees and is thus subject to the FFCRA.”

You can find the full Federal Register posting here: https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07237.pdf

How many times can FFCRA be triggered between now and December? If someone takes it in the summer and then school is delayed, can they use it again and get 20 weeks off?

The expanded FMLA adds a qualifying reason, but uses the same parameters as “original” FMLA in terms of frequency and weeks. FMLA entitlement is limited to 12 weeks within a 12 month period. A second event would not qualify an individual for a protected leave if the employee has already used their full 12 week allotment.

It [FFCRA Paid Sick Leave] says up to 80 hours...but we MUST include their "normal" hours...so if an employee was hired for 45 hours and worked an average of 42 hours for the past 6 months, I have to pay 42 hours for the expanded FMLA and not 40, right?

The Act provides only up to 80 hours. In the case of employees who typically work more than 40 hours per week, we can look at the Dept. of Labor’s Q&A:

When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

You can find the full Q&A here: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

For the Expanded FMLA policy as it relates to being unable to find child care....what if the parent simply doesn't feel safe placing their child in childcare because "little Suzie's mom always drops her off even when she's sick"

The Act provides leave for individuals caring for a child for whom the child care provider is unavailable. Therefore, an employee whose provider is available, would not be covered under the Act. The employee will be required to provide a substantiation statement regarding the child care situation. In a situation where an employer doubts the authenticity of the employee’s statement, employers should seek out advice from their legal counsel.
**Miscellaneous**

When restaurants reopen in the green 50% phase will patrons need to wear a mask when they are entering and while they are in the establishment until they are eating or drinking?

Pursuant to the linked guidance, all businesses and employees in the restaurant and retail food service industry authorized to conduct in person activities must do the following:

> Require all customers to wear masks while entering, exiting, or otherwise traveling throughout the restaurant or retail food service business. Face coverings may be removed while seated.


Are employers allowed to keep laid off employees on their group benefits without offering them COBRA? Will it violate Section 125?

Because answers to this question could depend upon internal employment policies, specific insurance carrier policy language, and other case-specific information we recommend that employers seek counsel from their employee benefits advisor. Generally speaking, flexibility here depends upon continuation of coverage provisions included within your written policies. Additionally, many insurance carriers relaxed eligibility requirements allowing greater flexibility to retain active coverage in response to the pandemic.

---

1 Please reference the related question: “What if an employee has a respiratory issue and the mask exacerbates symptoms. Can they opt out of the mask or does the employer have to provide some other type of PPE?”