

Coronavirus in the Workplace - Update

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Agenda

- Current spread of Coronavirus
- Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act
- Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers
- Filing, reporting and compliance requirements delayed or waived
- Common compliance questions we are receiving from employers
- Questions

Current Spread of Coronavirus

Current Spread of Coronavirus

What is the current state of the virus?

Coronavirus: U.S. at a Glance*

Total cases: 213,144

Total deaths: 4,513

Jurisdictions reporting cases: 55 (50 states, District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands)

* Data include both confirmed and presumptive positive cases of COVID-19 reported to CDC or tested at CDC since January 21, 2020, with the exception of testing results for persons repatriated to the United States from Wuhan, China and Japan. State and local public health departments are now testing and publicly reporting their cases. In the event of a discrepancy between CDC cases and cases reported by state and local public health officials, data reported by states should be considered the most up to date.

Current Spread of Coronavirus

Where are the current hotspots for the virus?

- New York
- Chicago
- Boston
- Detroit
- New Orleans and
- Philadelphia

Current Spread of Coronavirus

Are there any estimates when this will end?

- In the past, pandemics have typically lasted between 12 and 36 months.

When could social distancing end?

- TIMELINE ONE: ONE TO TWO MONTHS
- TIMELINE TWO: THREE TO FOUR MONTHS
- TIMELINE THREE: FOUR TO 12 MONTHS

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

Effective Date for Employment Tax Credits Under the Families First Coronavirus Response Act

Notice 2020-21

- The refundable tax credits for employers apply to qualified sick leave wages and qualified family leave wages paid for the period from April 1, 2020 to December 31, 2020.
- The self-employment tax credit is determined based on days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.

<https://www.irs.gov/pub/irs-drop/n-20-21.pdf>

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?

- The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

At the time the employee takes leave, must include:

- All full-time
- part-time employees
- employees on leave
- temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll);
- and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship)

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

- To elect this small business exemption, the employer should document why its business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.
- The employer should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

What reasons will the DOL accept for not providing leave?

- A small business may claim this exemption if an authorized officer of the business has determined that:
 - The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 - The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?

- A part-time employee is entitled to leave for his or her average number of work hours in a two-week period.
- Therefore, the employer will calculate hours of leave based on the number of hours the employee is normally scheduled to work.
- If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, the employer may use a six-month average to calculate the average daily hours.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

- No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons.
- However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

- The employer will consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.
- The employer will be not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

What documents does an employee need to give his or her my employer to get paid sick leave or expanded family and medical leave?

- Provide to the employer documentation in support of his or her paid sick leave as specified in applicable IRS forms, instructions, and information including:
 - Notice of closure
 - Notice posted on a governmental, school or day care website
- The employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If an employee is or becomes unable to telework, is he or she entitled to paid sick leave or expanded family and medical leave?

- Yes if an employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then he or she is entitled to take paid sick leave.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

May an employee take paid sick leave or expanded family and medical leave intermittently while teleworking?

- Yes, if the employer allows it and if the employee is unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.
- In that situation, the employee and the employer may agree that you may take paid sick leave intermittently while teleworking.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If an employer closes its worksite on or after April 1, 2020 (the effective date of the FFCRA), but before the employee can go out on leave, can I still get paid sick leave and/or expanded family and medical leave?

No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits.

This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If an employer closes an employee's worksite while he or she is on paid sick leave or expanded family and medical leave, what happens?

- If an employer closes while an employee is on paid sick leave or expanded family and medical leave, the employer must pay for any paid sick leave or expanded family and medical leave he or she used before the employer closed.
- As of the date the employer closes your worksite, the employee is no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits,

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

- No. If an employer furloughs an employee because it does not have enough work or business for him or her, he or she is not entitled to then take paid sick leave or expanded family and medical leave.
- However, the employee may be eligible for unemployment insurance benefits.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

- No, not while the worksite is closed.
- If an employer closes your worksite, even for a short period of time, an employee are not entitled to take paid sick leave or expanded family and medical leave.
- However, you may be eligible for unemployment insurance benefits.
- **This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive.**

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

- No. If an employer provides you paid sick leave or expanded family and medical leave, an employee is not eligible for unemployment insurance.
- However, each State has its own unique set of rules; and DOL recently clarified additional flexibility to the States (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

- If your employee chooses to use existing leave you have provided, yes; otherwise, no.
- Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees' preexisting leave entitlements, including Federal employees.
- Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee's normal earnings.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

DOL Releases Families First Coronavirus Response Act: Questions and Answers

If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

- A employer may pay its employees in excess of FFCRA requirements.
- But the employer cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

Families First Coronavirus Response Act Notice – Frequently Asked Questions

- Post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises.
- Can email or direct mail this notice to employees, or posting this notice on an employee information internal or external website.
- This notice applies only to current employees.
- Notice must be posted by April 1, 2020
- Copy of the notice:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Recent guidance from the IRS and DOL on the Families First Coronavirus Response Act

FIELD ASSISTANCE BULLETIN No. 2020-1

- DOL will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act.
- For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:
 - The employer remedies any violations, including by making all affected employees whole as soon as practicable.
 - The violations of the Act were not “willful”
 - The Department receives a written commitment from the employer to comply with the Act in the future.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

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Section 2202: Retirement plan emergency withdrawals

- Plans may permit individuals financially impacted by COVID-19 to withdraw up to \$100,000 in emergency funds from their eligible retirement plans or IRAs through December 31.
- This is determined on a controlled group basis.
- An individual is considered to be financially impacted by COVID-19 if:
 - the individual is diagnosed with COVID-19;
 - their spouse, or dependent is diagnosed with COVID-19; or
 - the individual experiences adverse financial consequences as a result of being quarantined, furloughed, laid off or having work hours reduced due to COVID-19, or is unable to work due to lack of child care due to COVID-19, or a business owned or operated by the individual closes or reduces hours due to COVID-19

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 2202: 10% excess tax on certain early distributions not imposed

- 10% excise tax is imposed on certain early distributions from retirement plans made after January 1, 2020.
- Tax does not apply to COVID-19 related distribution (CRD) up to \$100,000 (determined on a controlled group basis),
- CRD's are defined as:
 - Distribution(s) made from eligible retirement plan
 - During 2020
 - To an individual
 - Diagnosed with COVID-19
 - Spouse or dependent diagnosed with COVID-19
 - Furloughed, laid off, or unable to work because of COVID-19
- Recipient can avoid any income tax by repaying amount of CRD as a rollover within three years of distribution,
- To the extent not repaid, taxable ratably over three years,

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 2202: Plan Emergency loans

- Plans may permit individuals financially impacted by COVID-19 (using the same definition as for plan emergency withdrawals) to take loans of up to \$100,000 from their retirement accounts (instead of the usual limit of \$50,000).
- Loans can be taken up to 100% of the present vested balance or benefit.
- Loan repayments, which can be spread out over five years, may be delayed up to one year.

Section 2202: Qualified Plan Amendments

- Plans may operate to permit emergency withdrawals, emergency loans and waive required minimum distributions, without a formal amendment, so long as the plan is amended by the end of the 2022 plan year

Section 2203: Required Minimum Distributions

- Required minimum distribution requirements will not apply for calendar year 2020 for certain defined contribution plans.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 2301 - Employee retention credit for employers subject to closure due to COVID-19:

- A refundable payroll tax credit is provided for 50 percent of wages paid by employers to employees during the COVID-19 crisis.
- The credit is available to employers whose:
 - operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
 - gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.
- The credit is based on qualified wages paid to the employee.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 2301- Employee retention credit for employers subject to closure due to COVID-19:

- The credit is based on qualified wages paid to the employee.
- For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described in previous slide.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
- The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.
- The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 2302. Delay of payment of employer payroll taxes

- Employers and self-employed individuals are allowed to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
- Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages.
- The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.
- The Social Security Trust Funds will be held harmless under this provision.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 3201- Coverage of diagnostic testing for COVID-19:

- Clarifies that all testing for COVID-19 is to be covered by private insurance plans without cost sharing, including those tests without an EUA by the FDA.

Section 3202- Pricing of diagnostic testing:

- For COVID-19 testing covered with no cost to patients, requires an insurer to pay either the rate specified in a contract between the provider and the insurer, or, if there is no contract, a cash price posted by the provider.

Section 3203 - Rapid coverage of preventive services and vaccines for coronavirus:

- Provides free coverage without cost-sharing of a vaccine within 15 days for COVID-19 that has in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force or a recommendation from the Advisory Committee on Immunization Practices (ACIP).

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 3601: Limitation on Paid Leave

- An employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee under this section.

Section 3602 Emergency Paid Sick Leave Limitation

- An employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee under this section.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 3605 Paid Leave for Rehired Employees

- An employee who was laid off by an employer on March 1, 2020, or later will be allowed to have access to paid family and medical leave in certain instances if they are rehired by the employer.
- Employee would have had to work for the employer at least 30 days prior to being laid off.

Section 3606: Advance Refunding of Credits

- An employer or a self-employed individual may offset on a dollar for dollar basis and on a payroll by payroll basis the amount the employer or the self-employed individual has paid to its employees for Emergency Paid Sick Leave and paid FMLA against the employer's contribution for social security.
- If the amount of benefits paid exceeds the amount of the employer's social security contribution, the IRS will establish a procedure under which the employer can apply for an expedited refund of those amounts,

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 3607: Expansion of DOL Authority to Postpone Certain Deadlines

- The Department of Labor shall have the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

Section 3608: Pension payments

- Employers maintaining single-employer pension plans can delay making minimum required contributions due this year until January 2021.
- Contributions would be due with interest, accrued at a plan's effective rate.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 3701: Health Savings Accounts for Telehealth Services

- A high-deductible health plan (HDHP) with a health savings account (HSA) will be allowed to cover telehealth services prior to a patient reaching the deductible, increasing access for patients who may have the COVID-19 virus and protecting other patients from potential exposure.

Section 3702: Over-the-Counter Medical Products without Prescription

- Patients to use funds in HSAs and Flexible Spending Accounts for the purchase of over-the-counter medical products, (including menstrual care products) are now included under the term “qualified medical expenses including those needed in quarantine and social distancing, without a prescription from a physician.

Coronavirus Aid, Relief, and Economic Security Act- the effect on employees and employers

Section 4004: Executive Compensation Limitations

- If a company accepts certain emergency direct lending relief under CARES, the company must agree to certain limitations on the compensation (including salary, bonuses, equity, and other financial benefits) paid to its officers and employees that remain in effect until one year after the loan or loan guarantee ceases.
- These limitations are as follows:
 - No officer or employee whose total compensation in 2019 exceeded \$425,000 (excluding certain collectively bargained employees)
 - May receive compensation during any 12-month period greater than the amount received in 2019 or
 - May receive severance pay or benefits upon termination which exceed two times the maximum total compensation received in 2019
- Additionally, no officer or employee whose total compensation in 2019 exceeded \$3,000,000 may receive compensation during any 12-month period greater than \$3,000,000 plus 50 percent of the amount greater than \$3,000,000 received in 2019.

Filing, reporting and
compliance requirements
delayed or waived

Filing, reporting and compliance requirements delayed or waived

- On March 24, 2020, the IRS issued Q&As on Notice 2020-18, which postponed the due date for certain federal income tax payments from April 15, 2020, until July 15, 2020, in response to the COVID-19 outbreak in the US.
- The due date for paying the 10% additional tax on amounts includible in gross income from distributions from a pension plan or IRA in 2019 is extended to July 15, 2020.
- If a pension plan participant made excess elective deferrals to the plan in 2019, those excess deferrals (and income) must be taken out of the retirement plan no later than April 15, 2020, in order to exclude the distributions from income. The April 15 deadline is not extended under Notice 2020-18.
- The deadline for making contributions to individual retirement accounts (IRAs) for 2019 is extended to July 15, 2020.
- Individuals may make contributions to health savings accounts (HSAs) or Archer medical savings accounts (Archer MSAs) for 2019 until July 15, 2020.

Filing, reporting and compliance requirements delayed or waived

- The Treasury Department and Internal Revenue Service announced that the federal income tax filing due date is automatically extended from April 15, 2020, to July 15, 2020.
- Taxpayers can also defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed.
- This deferment applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax.
- Taxpayers do not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief.
- Individual taxpayers who need additional time to file beyond the July 15 deadline, can request a filing extension by filing Form 4868 through their tax professional, tax software or using the Free File link on IRS.gov. Businesses who need additional time must file Form 7004.

Filing, reporting and compliance requirements delayed or waived

- IRS released Notice 2020-22 providing penalty relief with regard to employers' deposits of federal employment taxes—including deposits of withheld income taxes and employment taxes—that are reduced in anticipation of tax credits under legislation recently enacted to address the coronavirus (COVID-19) pandemic.
- In Notice 2020-22, IRS provides:
 - A waiver of penalties for a failure to make a deposit of taxes for employers required to pay qualified sick leave wages and qualified family leave wages as mandated by the Families First Coronavirus Response Act and qualified health plan expenses allocable to these wages.
 - A waiver of penalties for a failure to make a deposit of taxes for certain employers subject to a full or partial closure order due to COVID-19 or experiencing a statutorily specified decline in business pursuant to provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).
- The penalty relief is also available with regard to deposits of employment taxes reduced in anticipation of the credits with respect to qualified wages paid with respect to the period beginning on March 13, 2020, and ending December 31, 2020.

Filing, reporting and compliance requirements delayed or waived

- Filing dates not extended:
 - Form 1094-C & 1095 due to be filed with IRS by March 31
 - Form 5500
 - Filing with CMS for Medicare Part D
 - Mandatory Medicare Secondary Payer filing
 - Form M-1

Common compliance questions we are receiving from employers

Common compliance questions we are receiving from employers

- What is the difference between layoff and furlough?
- May employee that is laid off or furloughed be covered under my medical coverage?
- If they can be, how can the employer collect their portion of the medical premium?
- When should we offer employees COBRA?

Common compliance questions we are receiving from employers

- If an employer reduces an employee's salary, is that a qualifying event to change his or cafeteria plan election?
- If the insurer allows an employee who waived coverage to enroll in the medical coverage, is that a qualifying event to allow an employee to join the cafeteria plan?
- Are part-time employees eligible for unemployment?
- If the employer reduces an employee's hours, are they eligible for unemployment?

Common compliance questions we are receiving from employers

- Can an employer take the employee's temperature?
- What action can an employer take if an employee refuses to come to work?
- What can an employer require of an employee indicates that a family member was exposed to the Coronavirus?

Questions??????????

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