

ARTICLE

Time Away from Work Considerations for U.S. Employers Addressing COVID-19

March 2020

Background

As employers develop emergency plans to support their business and workforce in the event of a broader outbreak of COVID-19, considerations include providing pay for periods of time off associated with illness, quarantine and/or a declared public health emergency.

Employee absence from work may include these circumstances:

- The employee is quarantined due to an exposure to COVID-19.
- The employee's own illness is symptomatic for COVID-19.
- The employee needs to care for a family member as defined by FMLA who has an illness symptomatic for COVID-19.
- The employee needs to care for a minor child whose school has been closed due to identified public health action.

What Types of Leave May be Available in These Circumstances?

Regulated (Mandated) Leave

Type of Leave	Paid or Unpaid	Appropriate for	Considerations
FMLA or state equivalent	Unpaid	Illness of employee or family member; will not apply to quarantine without actual illness	Employee or family member must have a serious health condition
Statutory Short-Term Disability	Paid	Illness of employee; will not apply to quarantine without illness	Available only in CA, HI, NJ, NY, RI; typically elimination period applies
Paid Sick Leave	Paid	Illness of employee or family member; quarantine or closure of school or business in certain jurisdictions	Available in 11 states, 22 cities, 3 counties and to employees of certain federal contractors; employer has flexibility to broaden reasons for use to include quarantine or closure of business or school
Paid Family Leave/Paid Family & Medical Leave	Paid	Illness of employee or family member; quarantine or closure of school or business in certain jurisdictions	Employee or family must have a serious health condition; available for illness of family member in CA, NJ, NY, RI; elimination period applies
Workers' Compensation*	Paid	Actual illness of employee; will not apply to quarantine. Time may be covered in the event of illness	Must have been exposed at work or work-related travel

Employer-Sponsored (i.e., Not Mandatory) Leave

Type of Leave	Paid or Unpaid	Appropriate for	Considerations
Sick Leave	Paid	Illness of employee	Employer has flexibility to broaden reasons for use to include illness of family member or quarantine or closure of business or school
Short-Term Disability	Paid	Illness of employee; could cover period of quarantine depending upon definition of disability	Elimination period typically applies; sponsors of self-insured STD plans have the flexibility to broaden the definition of disability to include quarantine
Family Leave	Typically Paid	Illness of family member	Typically requires serious health condition
Paid Time Off	Paid	Illness of employee or family member; quarantine; closure of school or business	Can be by policy or discretionary

How are Regulators Responding?

Cities and states that mandate paid sick leave, paid disability, paid family and medical leave are slowly clarifying how these laws apply to an employee who is quarantined and/or ill or a family member is quarantined or ill associated with the Coronavirus, as an example:

- California confirmed the availability of the state regulated disability and paid family leave benefits availability for quarantine and identified that the elimination period would be waived for a confirmed illness (applicable to SDI and VDI plans).
- Colorado has defined an emergency employer paid sick leave plan specific to leisure and hospitality, food service, community living facilities, childcare, and home health.
- New York state has passed and the Governor has signed an Emergency COVID-19 paid sick leave law.
- The House and Senate have both passed a bill which includes paid sick leave provisions. President Trump is expected to sign the bill.

Clarification of existing laws and implementation of new laws are under consideration in several states and in Washington. Continuing to monitor the changing paid sick leave, paid family and disability landscape is necessary to ensure employers align their plans and practices with these regulations.

How Are Employers Responding?

Employers are evaluating their current paid leave policies and determining if they should add an emergency paid leave with the goal of encouraging sick employees to stay home and providing financial security during uncertain times. Employers are also expanding their work from home policies ensuring their clients continue to have access to products and services.

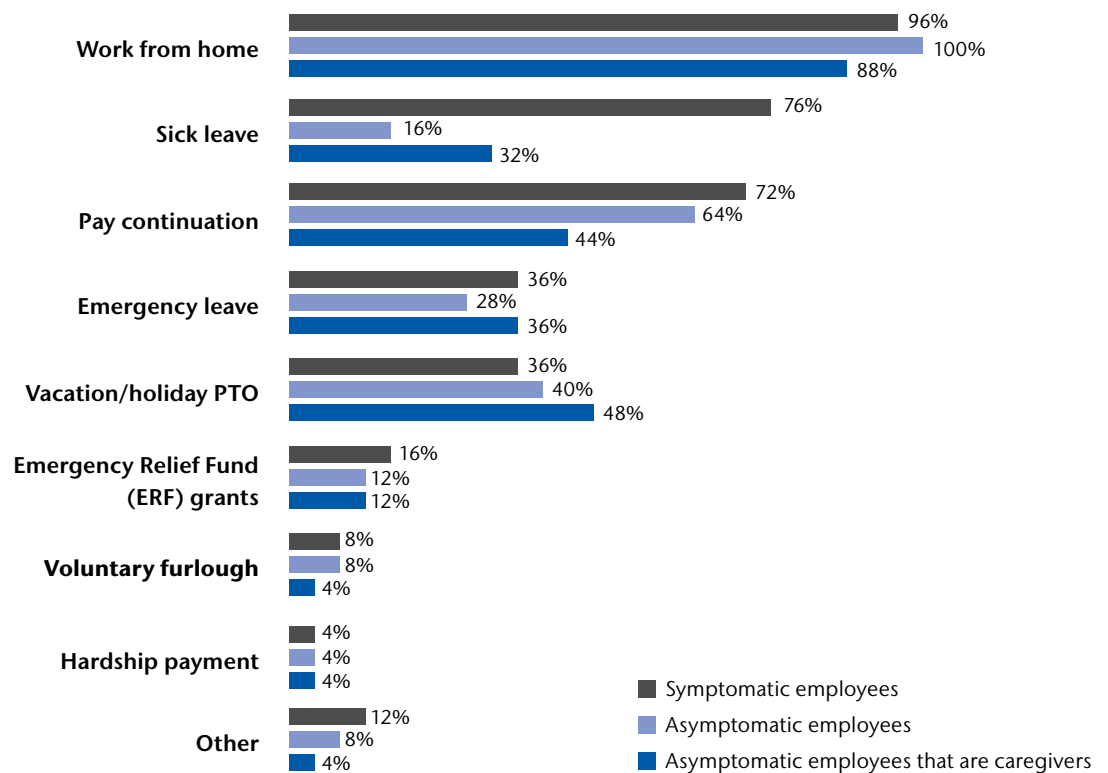
More than 90% of employers in China that closed facilities due to the COVID-19 continued pay and benefits during the closure.¹ A range of 64% to 72% of US employers surveyed are planning to provide pay in the event of a quarantine, and 68% plan to offer pay for the full duration while 12% plan to offer pay for a fixed duration.²

¹ *Harvard Business Review*

² *Business Group on Health*

Large Employers' Offerings to Employees Impacted by Quarantines

From the Business Group on Health. Large employers have made many options available to employees impacted by quarantine requirements. (N=25)



What Employers Should Do Now

Discuss the availability of STD benefits for periods of business or public health quarantine due to employee exposure with your short-term disability carrier or third-party administrator.

- Define the level of medical documentation required to support claims, including the option to confirm the event by phone.

Consider PTO/vacation donation programs for colleagues facing medical emergencies. See IRS Rev. Rul. 90-29 for the tax rules applicable to such programs.

Review your current policy regarding requirements to provide a return-to-work certification from the employee's provider. Update your policies and procedures defining when a medical certification or doctor's note is required to return to work.

Review paid sick leave policy and confirm that it covers periods of business or public health quarantine and care of sick family members. If your policy does not, consider broadening it to include these public health events.

- Consider extending paid sick leave to ineligible employees. This encourages employees not to come to work when sick.
- Encourage employees to use paid sick leave and avoid coming to work when they are sick.
- Consider offering an emergency paid leave of at least 14 days to cover the standard period of quarantine.

Consider telecommuting for those who are asymptomatic and are able to work from home:

- Create a clear policy as to goals and expectations for employees who are allowed and able to telework.
- Understand telecommuting's implications for any business continuity planning.

Employers should first consider their employees access to programs and how they can assist them with engaging the benefits associated with Time Away. In addition, employers should have a line of sight on the financial impact that could arise from a business continuity standpoint when it's not just remote work but truly a production loss. This will lead to escalated Short Term Disability and Paid Time Off costs which may include Replacement Workers in more production or manufacturing environments.

Note: In this rapidly changing environment, employers should continue to check with state and federal agencies for updates.

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