

FRANCZEK

300 S. Wacker Drive
Suite 3400
Chicago, IL 60606

P: 312-986-0300
800-273-6368
F: 312-986-9192
E: info@franczek.com

COVID-19 FAQs for Employers

March 12, 2020

CONTRACT

Teamwork and cooperation between all the members of company provides in business. Constant feedback and interaction of business people is the power method in getting the leading positions in market.

The examples can be found in any kind of business. Further to this evidence UK stock market is weak form efficient, other studies of capital markets have pointed toward them being semi strong-form efficient. Studies have compared the share existing after a takeover announcement with the bid offer. Firth found that the share prices were fully and instantaneously adjusted to their correct levels, thus concluding that stock market was semi strong-form efficient. The market's ability to efficiently respond to a short term and widely publicized event such as a takeover announcement cannot necessarily be taken as indicative of a market efficient at pricing.

Another observed discrepancy between the theory and real markets is that market extremes what fundamentalists might consider irrational behavior is the late stages of a bull market, the market is driven by buyers who take little notice of underlying value. Towards the end of a crash, markets go into free fall as participants extricate themselves from positions regardless of the unusually good value that positions represent. This is indicated by the large differences in the valuation of companies compared to fundamentals (such as forward price to earnings ratios) in bull markets compared to bear markets. A theorist might say that rational (and hence, presumably powerful) participants should always immediately take advantage of the overvaluation.

COVID-19 FAQs for Employers

Since the first reported case of coronavirus disease 2019 (COVID-19) in Wuhan, China, on December 31, 2019, Illinois employers have been preparing for a potential outbreak within the state. This preparation has inevitably raised difficult legal questions. Below, we provide answers to some of those frequently asked questions. This document will be updated as new information becomes available.

Although we address a myriad of legal concerns, employers' primary concern during this outbreak, newly christened as a pandemic, should be the health of its employees. If ever there was a time when legal risks were outweighed by non-legal ones, it is now. However, we hope that these answers to pressing legal questions will help ease your mind as you make these difficult decisions.

Note that although these FAQs will address scenarios applicable to most employers, public employers and other highly regulated industries may have additional considerations to consider in addition to the answers to these FAQs.

As always, this legal information is not the same as legal advice, which is essential when applying the law to specific circumstances. The information in this guide is not a substitute for and does not replace the advice or representation of a licensed attorney. For more information on these or any other questions, contact your [Franczek attorney](#).

Contents

Can we ask employees about recent or upcoming travel plans?.....	3
Can we require employees who have recently traveled to areas considered at risk from COVID-19 to remain home from work for a period of time after their return?	3
Can we ask employees if they have symptoms of COVID-19?	3
Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 or the flu? ...	3
Can we take employees' temperatures to identify those who may have fevers?	4
Can we require an employee to be tested for COVID-19 before returning to work?	4
What should we do if we believe an employee may have been exposed to the COVID-19?	4
Are employers required to provide time off for employees who become ill with or who may have been exposed to COVID-19? Must this time be paid?.....	5
Are absences related to the COVID-19 outbreak covered by the Family and Medical Leave Act?.....	5
In the event of a closure, do we have to pay exempt employees?	6
Can we <i>require</i> employees to use accrued sick / vacation / personal / PTO time in the event of a closure?	6
Should employers permit, or require, employees to work from home?	7
If an employee has been exposed, what information can we share with other employees?	7

For bargaining unit employees, are we required to notify or negotiate our response to the COVID-19 situation with the union?	8
If an employee unemployed or unable to work due to COVID-19, is he or she entitled to unemployment benefits?	8

Can we ask employees about recent or upcoming travel plans?

Yes, employers may ask employees about recent or upcoming travel plans in order to identify employees who may be at risk of exposure. Such inquiries are not intrinsically restricted “disability-related” inquiries under the Americans with Disabilities Act (“ADA”). The Equal Employment Opportunity Commission (“EEOC”) [recently reminded employers](#) that it published [guidance](#) in 2009 to assist employers with pandemic preparedness. As part of that guidance, the EEOC advised that “[i]f the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic . . . symptoms, an employer may ask whether employees are returning from these locations.”

Employers should observe certain precautions, however. First, employers should base any inquiries on current advice from public health officials. Second, employers should have a plan for what to do with this information. Third, such inquiries should be based upon travel—not an individual’s ethnicity, national origin, or citizenship.

Can we require employees who have recently traveled to areas considered at risk from COVID-19 to remain home from work for a period of time after their return?

Yes. Employers should follow current [CDC](#) and local health department guidelines.

Can we ask employees if they have symptoms of COVID-19?

Yes, employers can generally ask employees if they are experiencing symptoms of COVID-19, which according to the CDC include fever, cough, and shortness of breath.

Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 or the flu?

Yes, employers can and should direct employees who exhibit cold or flu-like symptoms to leave work and to remain at home until they have recovered and for any period following recovery recommended by public health officials.

Can we take employees' temperatures to identify those who may have fevers?

According to the EEOC's guidance, employers should follow the recommendations of public health officials. Currently, we are not aware of any guidance suggesting that employers monitor employee body temperatures. Such medical monitoring may raise concerns under the ADA.

Can we require an employee to be tested for COVID-19 before returning to work?

Whether or not an employee should be tested for the virus that causes COVID-19 is a question for public health officials and ultimately an employee's own physician. Employers should not attempt to dictate which tests an employee receives. However, if an employee is away from work due to illness or is believed to be at risk of exposure to the virus—as defined by current guidance from public health officials—employers are typically within their right to require an employee to provide a physician's certification before returning to work. However, employers should be mindful of restrictions regarding such certifications under the Family and Medical Leave Act ("FMLA") and state and local sick leave regulations.

What should we do if we believe an employee may have been exposed to the COVID-19?

[OSHA](#) advises the following in cases of suspected employee exposure to the virus:

- Employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately.
- Take steps to limit the spread of the potentially infectious individual's respiratory secretions, including by providing a facemask.
- In healthcare and other situations where non-employees may be suspected of having the COVID-19, isolate those individuals from those with confirmed cases of the virus to prevent further transmission.
- Restrict the number of personnel entering isolation areas, including the room of a patient with suspected/confirmed COVID-19.
- Protect employees who must work in close contact with an actual or suspected infected person by using additional engineering and administrative controls, safe work practices and PPE.

Additional [guidance](#) is available from the Chicago Department of Public Health.

Are employers required to provide time off for employees who become ill with or who may have been exposed to COVID-19? Must this time be paid?

Most employers in the U.S. are not required to provide paid sick time to their employees. Some jurisdictions – for example, Chicago and Cook County, Illinois – have paid sick leave ordinances that require covered employers to provide limited paid sick leave. (Note that many Cook County municipalities have opted out of coverage under the county ordinance.)

At a minimum, employers should follow their existing paid sick leave policies and any applicable leave laws.

Employers that do not presently provide paid sick leave should consider whether to revise their policies in light of CDC guidance, which strongly encourages employers to allow sick employees to stay home. Employers may find that providing some amount of paid sick leave, while not inexpensive, is less costly and disruptive than exposing the entire workforce (not to mention customers, patients, students, etc.) to illness.

Are absences related to the COVID-19 outbreak covered by the Family and Medical Leave Act?

Although the FMLA typically does not cover minor illnesses such as colds, the FMLA might apply if an employee or employee's family member is incapacitated by illness (that is, unable to work or go about their regular activities) for more than three calendar days and receiving ongoing treatment from a healthcare provider. This period of incapacity may include time after an employee is feeling better but is nevertheless recommended to stay home to avoid spreading the illness.

The regulations do not expressly address what happens when an employee or employee's family member is not actually sick but is nevertheless advised by healthcare professionals or public health officials to stay home from work or school due to suspected exposure to the virus. In these cases, the FMLA may not apply. However, specific details may matter, so employers are advised to consult with their employment counsel to determine an appropriate course of action.

In the event of a closure, do we have to pay exempt employees?

Under the Fair Labor Standards Act (“FLSA”), employees who are considered exempt under one or more of the “white collar” exemptions for executive, administrative, and professional employees must generally (with some exceptions) be paid on a “salary basis,” which means that they must receive their same fixed salary for any workweek in which they perform any work whatsoever. An exempt executive, administrative, or professional employee who performs no work at all for an entire workweek need not be paid for that workweek.

Note that the salary basis requirement does *not* apply to exempt teachers employed as such in an educational institution, to licensed physicians engaged in the practice of medicine, or to licensed lawyers engaged in the practice of law. Therefore, paying those professionals for partial weeks does not run afoul of the FLSA. For more information, see our recent [Wage & Hours Insights](#) blog post, [Coronavirus: How to Properly Pay Employees in the Event of a Pandemic](#).

Can we require employees to use accrued sick / vacation / personal / PTO time in the event of a closure?

It depends. Most private sector employers are not obligated to provide paid sick leave, vacation, personal time, or PTO and have some freedom to craft and interpret their policies. Absent some other legal or contractual restriction, employers are generally free to require employees to use accrued paid leave in lieu of unpaid time off. This is generally true even for exempt employees, who can be required to draw down their paid leave bank even in circumstances in which an employer would be prohibited from taking a deduction from their salary. However, once paid leave is exhausted, an employer may still be obligated to pay an exempt employee’s full salary for a workweek in which the employee performs work.

Where the right to paid leave derives from a collective bargaining agreement, the answer to the question may depend on the specific language of the agreement, and the issue may be subject to bargaining with the union.

Where paid sick leave is provided as a requirement of state or local law, employers should be cautious about requiring employees to use such leave in circumstances not covered by the law. Certain laws, such as the Chicago and Cook County paid sick leave ordinances, specifically provide that leave *may* be used in the event that the employee’s place of work or child’s school is closed by order of a public official due to a “public health emergency.” However, neither ordinance appears to allow an employer to *force* an employee to use paid sick leave in case of a voluntary closure or partial shut-down.

Should employers permit, or require, employees to work from home?

Certain employers have begun encouraging or directing large portions of their workforces to work from home. For certain businesses, telecommuting may be a useful strategy for limiting the spread of illness through contact at work. Even if an employer does not require employees to work from home, employers should plan for an increase in inquiries about telecommuting from employees who prefer not to report for work. If an employee asks to work from home because of a medical condition that places them at higher risk for infection, an employer may be obligated to consider this request as a reasonable accommodation under the ADA or state law. Even where there is no legal obligation to provide accommodations, employers may find that allowing an employee to work from home is preferable to not having the employee work at all.

In designing telecommuting policies and procedures, employers should first identify which jobs can be successfully performed outside of the office. Many jobs simply cannot be performed from home, and not all employers have the technology infrastructure or organization necessary to make working from home a productive option.

Where working from home is allowed, employers should establish expectations for employees' work and communications while they are away from the office. These may include specified working hours, expectations for responding to calls and email, and productivity goals. Employers should also ensure that employees have a way to accurately track their work hours. Employers should be mindful that employees may be entitled to reimbursement for expenses incurred due to a mandatory work-from-home policy.

If an employee has been exposed, what information can we share with other employees?

If an employee is confirmed to have a COVID-19 infection, the CDC recommends that employers inform fellow employees of their possible exposure to the virus. In this circumstance, it is critical that the employer maintain confidentiality as required by the ADA, and the identity of the specific individual who has been diagnosed generally may not be shared. Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC [guidance](#) for how to conduct a risk assessment of their potential exposure.

For bargaining unit employees, are we required to notify or negotiate our response to the COVID-19 situation with the union?

It depends on the terms of any collective bargaining agreement. There may be an obligation to negotiate with a union regarding the quarantine policies because they affect the terms and conditions of employment, which include wages and hours at work. Depending on the provisions in the labor agreement, an employer may be able to send the employee home but may still have to pay the employee – provisions guaranteeing minimum hours and scheduling should be reviewed carefully.

If an employee unemployed or unable to work due to COVID-19, is he or she entitled to unemployment benefits?

Most likely yes. For Illinois employees, Governor Pritzker announced that emergency rules related to unemployment will be issued, clarifying that individuals who are unemployed or unable to work due to COVID-19 will generally qualify for unemployment benefits.

About Franczek P.C.

In the 26 years since the firm was formed, we have grown into one of the premier labor, employment, and education practices in the country. Our clients include Fortune 100 companies and some of the largest public-sector entities in the United States as well as scores of small, medium, and large businesses and educational institutions. We counsel, advise, and represent employers across the United States. We capably staff the largest and most complex cases for clients of all sizes while offering responsive day-to-day consultation on more routine matters.

As a mid-size law firm, Franczek provides a personal approach and exceptional value by focusing on select areas of law and doing them exceedingly well. Our personable, talented, and highly skilled attorneys and our depth of experience in our core practice areas means we can provide you an unparalleled quality of service.

Our practice is focused and clearly defined. We do not aspire to expand our practice beyond those areas, because we strongly believe that maintaining our focus is the best way to continue to deliver our unique blend of extraordinary client service and value – for clients like you.

Find out more [here](#).