

COVID-19 WORKER INFO

*UW-Madison School for Workers is working to analyze and summarize legal developments during the COVID-19 crises. We anticipate that regulations may further define these rights and acknowledge that details continue to change quickly.

Legal Rights for Workers During COVID-19*



School for Workers
UNIVERSITY OF WISCONSIN-MADISON

STAY CONNECTED, CONTACT US!

ph: 608-262-2112

e-mail:
schoolforworkers@dcs.wisc.edu

website:
schoolforworkers.wisc.edu

Legal Rights for Workers During COVID-19*

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ABOUT US

School for Workers advances the empowerment of working people, labor organizations, and community partners through teaching, research, and service.



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More information on FFCRA can be found at The Department of Labor website:

<https://www.dol.gov/agencies/whd/pandemic/ffcrs-employee-paid-leave>

Paid Leave | Families First Coronavirus Response Act (FFCRA)

Effective 4/1/20 – 12/31/20

Employees of employers with less than 500 employees who cannot work because of the virus are entitled to:

- Up to two weeks (80) hours of paid sick leave at their regular rate of pay if quarantined, seeking medical diagnosis or experiencing symptoms of COVID-19.
- Up to 2/3 of their regular rate of pay if subject to quarantine or to care for a minor child whose school or childcare provider is closed or unavailable.
- Up to an additional 10 weeks of paid expanded family and medical leave at 2/3 regular rate of pay if employee had worked for employer for at least 30 days and needs to care for a child whose school or child-care facility is closed or unavailable.
- Employers with less than 50 employees may be exempt; details to come.
- Regular rate of pay is the average over the previous six months or for each week the employee has worked for employer, including overtime pay.
- Leave is available if telecommuting.
- Leave may be taken intermittently.
- Leave is available to employees whose employers are operating and have work for employees to perform. Paid leave is not available to laid off or furloughed workers.

Please note: while some small employers may be exempt, these benefits are provided by the new FFCRA, and differ from FMLA benefits, which continue to be available and unpaid.

Wisconsin Unemployment Benefits

The CARES Act provides federal funds for increased unemployment insurance benefits up to an additional \$600 per week for up to an additional four months of benefits (over and above what state law provides). The Act provides funds for unemployment benefits for workers not traditionally eligible for benefits such as self-employed workers or independent contractors. This law provides extended benefits through December 31, 2020.



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More information on
unemployment insurance benefits
can be found at the Wisconsin
Department of Workforce
Development website:
<https://dwd.wisconsin.gov/ui>

The Wisconsin Department of Workforce Development, Unemployment Division administers Wisconsin Unemployment Insurance Benefits. Details of revised unemployment benefits are still being drafted, but it appears that:

- Benefits will be available to employees laid off because of COVID-19.
- Benefits will be available to employees whose workplace is closed due to COVID-19, even if not told they are “laid off.”
- Benefits will be available to employees with reduced hours.
- Benefits are not available to workers unable to work because they are ill with COVID-19.
- An additional 26 weeks of extended benefits may be available if Wisconsin qualifies for additional funding for unemployment benefits.
- As of March 30, 2020, there is still a one-week waiting period before employees begin to receive benefits.
- Unemployment benefits are based upon wages earned in the first four of the last five quarters of work completed prior to filing claim.

Financial Relief | The CARES Act

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) is intended to provide economic relief to workers and businesses and includes some changes to tax policy. Important highlights for workers:

Direct payment to individuals

Considered a tax rebate, workers who earn under \$75,000 will receive a direct payment of \$1200 that will not be considered taxable income. The cap for heads of households is \$112,500, and for joint taxpayers \$150,000.

The amount received will decrease by \$50 per \$1000 earned over the above amounts up to \$99,000 for single taxpayers, and \$198,000 for joint taxpayers. Tax returns for 2018 and 2019 will be used to determine whether workers are above these income levels, but workers will receive a tax credit if their income falls below these thresholds.

The direct payments are considered a tax credit against your 2020 taxes. This means that when doing taxes in 2021, the payment is



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More information regarding the Federal FMLA can be found at <https://www.dol.gov/agencies/whd/fmla> and Wisconsin FMLA at <https://dwd.wisconsin.gov/er/civilrights/fmla>

More information regarding federal discrimination laws at <https://www.eeoc.gov> and Wisconsin state discrimination laws at <https://dwd.wisconsin.gov/er>

considered an advance refund towards your 2020 taxes and may decrease the amount of refund you receive in 2021. It is not clear but does not appear that it will impact taxes owed for 2020 for employees who owe additional tax.

Paycheck Protection Program

Small businesses of up to 500 employees may apply for loans (through or guaranteed by the Small Business Administration) to continue providing employee compensation for employees earning up to \$100,000. These loans may be forgiven if employees are kept on the payroll and the monies used for compensation.

Extended Unemployment Benefits

As discussed above, the federal government is providing increased funding to states for unemployment benefits. As of March 30, 2020, changes to the Wisconsin Unemployment Insurance program are not yet available.

Continued Employment Protections

Family Medical Leave Act | FMLA

If an employer has 50+ employees, and the individual employee has worked 1,250 hours in the last 12 months or 1,000 hours in the last 12 months (WI FMLA), an employee is entitled to:

- **Federal:** 12 weeks unpaid leave because of own or family member's serious health condition, or for birth or adoption of a child.
- **Wisconsin:** Two weeks of unpaid time for employee's own serious health condition, two weeks for a family member's health conditions, and six weeks of unpaid leave for birth or adoption of a child.

Non-Discrimination

Employers are prohibited from discrimination against employees because of their race, color, religion, sex, ethnicity, genetic information, age or disability (in Wisconsin, employers are also prohibited from discriminating based on arrest/conviction records and sexual orientation). This means that employers cannot treat employees differently for purposes of layoffs, hours, etc., during COVID-19 for these prohibited reasons.



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More information regarding federal discrimination laws at <https://www.eeoc.gov> and Wisconsin state discrimination laws at <https://dwd.wisconsin.gov/er>

More information about the ADA can be found at <https://www.eeoc.gov> and Wisconsin disability discrimination at <https://dwd.wisconsin.gov/er/civilrights/discrimination/default.htm>

More information is available at <https://www.osha.gov/SLTC/covid-19/>.

WARN Act

The WARN Act requires employers of more than 50 employees to provide at least 60 days' notice of a plant (or any site of employment) closing or layoff affecting 50 or more employees. Employers must give 60 days' notice for "mass layoffs," defined as more than 500 employees, or between 50-499 employees if 33 % or more of the employees are to be laid off. The WARN Act continues to apply during COVID-19. Some employers may issue WARN Act notices to protect themselves but continue to work to avoid layoffs and closures.

Americans with Disabilities Act | ADA

Employers are prohibited from discrimination against employees who have a disability or a perceived disability. Employers must make a reasonable accommodation for employees who are disabled but can perform the essential functions of their job with the accommodation. Employees with disabilities may be entitled to an accommodation during COVID-19. Remember that individuals with certain conditions, like diabetes or heart conditions, may be more susceptible to COVID-19. This means that employees with chronic conditions may need a different reasonable accommodation during COVID-19.

Occupational Safety & Health Administration OSHA

The U.S. DOL Occupational Safety and Health Administration continues to have specific regulations by industry and guidance for workers during COVID-19.

Workers who contract COVID-19 at work should report it to their employer, as this is a recordable workplace illness under OSHA standards. Workers could also be eligible for state workers' compensation benefits.

Employers may not terminate employees who have a reasonable belief of imminent danger of death or serious physical harm. This should include presence of COVID-19 in the workplace.



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National Labor Relations Act | NLRA

Employees have the right to engage in concerted activities to improve their working conditions. This means that employers cannot discipline employees or take other adverse action against employees, such as discharge, constructive discharge, suspend, layoff, fail to recall from layoff or demote employees because of their protected concerted activities. This may include concerted activities intended to ensure safe working conditions during COVID-19. Concerted activities are actions taken by two or more employees, in this case to ensure safe working conditions.



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