

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*



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Legal Rights for Workers During COVID-19*

Wisconsin workers deserve to stay safe and healthy during the COVID-19 pandemic. This "Know Your Rights" guide will help ensure that workers have the information they need about health, safety, and economic policies that support their overall health and well-being. In Wisconsin we take of each other and protecting workers across our state is a crucial part of that commitment.

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School for Workers

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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>

If your employer refuses to provide paid leave under FFCRA contact:

U.S. Department of Labor, Wage and Hour Department
866-487-9243
www.dol.gov/agencies/whd

In Wisconsin, contact the local Wage and Hour Division:

Madison, Wisconsin office
608-266-3110

Milwaukee, Wisconsin office
866-487-2365

Paid Leave | Families First Coronavirus Response Act (FFCRA)

Effective 4/1/20 - 3/31/21

Employers are no longer required to provide employees paid sick leave or extended family leave pursuant to the federal Families First Coronavirus Response Act. Under the Employee Paid Sick Leave Act, however, employers can still receive reimbursements in form of tax credits for the expenses incurred by providing leave related to COVID-19 through March 31, 2021. In other words, while no longer required, employers with less than 500 employees can voluntarily provide paid leave to employees for COVID-19 and recover the costs.

Effective 4/1/20 - 12/31/20

During this time period, employers with less than 500 employees were required to provide employees who could not work because of the virus the following benefits. Through March 31, 2021, employers can voluntarily provide the benefits and receive reimbursement through tax credits.

- Up to two weeks (80) hours of paid sick leave at their regular rate of pay if quarantined, seeking a 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 the employee had worked for the 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 the 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.



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September 2020 Department of Labor Update

In September 2020, the U.S. Department of Labor provided more clarity on when paid leave was required. While only voluntary through March 31, 2021, the new rules appear to guide the leave for which employers are entitled to reimbursement for tax credits.

Employees must provide the employer (verbally or in writing): name, date(s) of leave, reason, statement that the employee is unable to work because of the reason stated. If leave is because of child care, the employee must also provide: name of child, name of the school, place of care or child care provider that has closed or become unavailable, and a statement that no other suitable person is available to care for your child.

Fewer employees are now considered "health care providers" (those exempt from FFCRA and not eligible for leave). As of September 16, 2020, health care provider employers can deny paid FFCRA leave only to those employees who:

- meet the definition of health care provider under FMLA; or
- are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care that if not provided would adversely impact patient care.

Specific employees who are not eligible for paid FFCRA leave include:

- nurses, nurse assistants, medical technicians, and others directly providing diagnostic, preventive, treatment, or other integrated services;
- employees providing such services "under the supervision, order, or direction of, or providing direct assistance to" a health care provider; and
- employees who are "otherwise integrated into and necessary to the provision of health care services," such as laboratory technicians who process test results necessary to diagnoses and treatment.

The Department of Labor takes this view because these services "are important combating the COVID-19 public health emergency and are essential to the continuity of operations and their absence would be "particularly disruptive."



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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>

Wisconsin Unemployment Benefits

The Federal Pandemic Unemployment Compensation Act provided federal funds for increased unemployment insurance benefits of \$600 in addition to regular unemployment insurance benefits through 7/25/20 and an additional \$300 from 8/1/20 - 9/5/20. The additional payments of \$300 are now available for time individuals receive regular unemployment benefits in the time period 01/02/21 - 03/13/21. Employees waiting on a decision can still receive benefits at these higher rates for these time periods upon receiving a favorable decision concerning eligibility.

Funds for 39 weeks of unemployment benefits for workers not traditionally eligible, such as self-employed workers or independent contractors, are available through the CARES Act Pandemic Unemployment Assistance. The benefits were extended through December 31, 2020, and these workers should still be able to receive benefits for this time period.

The Wisconsin Department of Workforce Development, Unemployment Division administers Wisconsin Unemployment Insurance Benefits.

As of November 10, 2020 it appears that:

- Unemployment benefits are based upon wages earned in the first four of the last five quarters of work completed prior to filing a claim.
- Wisconsin no longer requires a one-week waiting period to receive unemployment benefits.
- 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.
- Employees may receive an additional 13 weeks of benefits after receiving regular unemployment insurance benefits through December 31, 2020, pursuant of the Pandemic Emergency Unemployment Compensation. This does not apply for those receiving Pandemic Unemployment Assistance (PUA), or those who would not traditionally be eligible such as self-employed individuals or independent contracts. While this support expired 12/31/20, employees should still be able to collect on benefits due through 12/31/20.
- On August 27, 2020, the federal government passed Lost Wage Assistance to provide an unemployed individual an extra \$300 in unemployment benefits for weeks ending on August 1, 8, 15, 22, 29, and September 5, 2020. Payments for these periods can be received retroactively but only apply to individuals unemployed or partially unemployed due to disruptions caused by COVID-19.



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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>

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

In 2021, workers have begun to receive the second round of Economic Impact Payments. Workers should expect to see one-time direct payments of \$600 as long as Adjusted Gross Income (AGI) does not exceed \$75,000 for individuals, \$112,500 for heads of household, and \$150,000 if married and filing a joint tax return.

In 2020, workers who earned under \$75,000 should have received a direct payment of \$1,200 that will be considered a tax rebate and not taxable income. The cap for heads of households is \$112,500 and for joint taxpayers \$150,000.

The amount received decreased by \$50 per \$1,000 earned over the above amounts up to \$99,000 for single taxpayers, and \$198,000 for joint taxpayers. Tax returns for 2018 and 2019 were 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 2020 direct payments are considered a tax credit against your 2020 taxes. This means that when doing taxes in 2021, the payment is 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. The Small Business Administration has extended the program with a second round of loans being issued in early 2021.

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:



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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>

- **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 an 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.

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 reasonable accommodations for employees who are disabled but can perform the essential functions of their job with the accommodation. Employees with disabilities may be entitled to accommodations 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 different reasonable accommodations during COVID-19. These accommodations could include work from home, temporary transfers, use of plexiglass and barriers, or modification of work schedules.

Guidance from the Equal Employment Opportunity Commission (EEOC) has clarified that employers do not violate the ADA or other discrimination laws by asking if employees have Center for Disease Control identified symptoms, have had a COVID-19 screening test, or require a temperature screening. Additionally, employers may require employees with symptoms or positive tests to stay home to avoid spreading the virus. Antibody tests, however, may not be employer mandated. Employers do not violate the ADA by notifying local public health officials about employees who test positive for COVID-19. Similarly, the U.S. Department of Health Services has determined that disclosure of health information is permitted to address a public health emergency without violating HIPPA.



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

Wisconsin Worker's Compensation

To receive Worker's Compensation benefits for COVID-19, the Wisconsin Department of Workforce Development (DWD) takes the position that the employee must show evidence that contracting the virus “arose out of employment.”

Wisconsin law created a “rebuttable presumption” that injuries of first responders from COVID-19 from March 14 – April 15, 2020 was worked related and compensable under Wisconsin Compensation law. This means that unless proven otherwise, COVID-19 related illnesses of first responders during this time should be presumed to have been caused by work. “First responders are those employees or volunteers that provide firefighting, law enforcement, medical or other emergency services.” First responders may still file claims but no longer have a rebuttable presumption.

If an employee believes that they have contracted COVID-19 at work, they should file a claim for worker's compensation benefits with their employer or the employer's worker's compensation carrier. Employers must provide this information to employees. If the claim is denied, the employee should contact the Wisconsin Department of Workforce Development, Worker's Compensation Division, and ask them to send a “Notice of Hearing” form which opens a worker's compensation case with the DWD. The DWD Worker's Compensation Division can be reached at (608) 266-1340. You can also visit the DWD website at dwd.wisconsin.gov/wc/workers/.

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 the presence of COVID-19 in the workplace.

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, constructively discharge, suspend, layoff, fail to recall from a 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.



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