

Coronavirus & Employee Benefits: Unemployment vs. the New Emergency Paid Sick Leave or Paid FMLA

While the country navigates the coronavirus pandemic, employees should be aware of the benefits that are available to them if it causes them to be unable to work. Wisconsin law provides for unemployment compensation where a worker is unemployed. New federal laws mandate that employers provide some paid or partially paid sick days and family/medical leave for employees unable to work. Benefit availability depends on whether the employer remains in operation (or whether work remains available for the employee) or whether there is a shutdown or mass layoff.

- If the **employer temporarily or permanently ceases operations** (or parts of operations) for a coronavirus related reason, the employee is eligible for ***unemployment under Wisconsin*** law if his or her job was affected.
- If the **employer sends the employee home from work to self-quarantine due to its policy** (but not by health professionals), the employee has been laid off and should apply for ***Wisconsin unemployment benefits***. An employee who seeks medical care as a result of this layoff or due to symptoms may, however, become eligible for federal emergency paid sick leave benefits.
- If the employee is required to **self-quarantine at the advice of a medical professional or the health department** due to his/her own exposure or symptoms or positive test and his or her employer remains open and operating, the employee may be eligible for ***emergency paid sick days*** and ***emergency paid family and medical leave***, and Wisconsin unemployment benefits may also be available in the event these paid sick days and paid leave is exhausted.
- If the **employee is unable to work his/ her job because he/she is required to care for a family member** who is quarantined by medical professionals or to care for a family member who has symptoms of, is quarantining because of, or is seeking care for coronavirus, the employee may be eligible for ***emergency paid sick days***.
- If the employee **is unable to work his/her job because he/she must care for his/her child** whose school or daycare has been closed due to the coronavirus, he/she is eligible for ***emergency paid sick days*** and ***emergency paid family and medical leave***.
- If the **employee is unable to work because he or she is ill from the coronavirus and under the care of a physician**, he/she is eligible for the ***emergency paid sick days*** and ***unpaid federal FMLA***, and may be available for ***A&S benefits*** under his/her health plan.

Background

1. Can my employer make me answer health-related questions?

Right now, the coronavirus poses serious health risks in the workplace. Employers may require employees to answer non-discriminatory questions designed to screen employees for coronavirus-related symptoms or exposures.

2. Coronavirus-related layoffs and shutdowns: Wisconsin Unemployment Benefits.

If the employer's operations shut down or the employee is laid off because the employer is not continuing in business (or is laid off for another reason), the employee should apply for **Wisconsin Unemployment Compensation Benefits**. On March 18, 2020, Governor Evers issued an emergency order waiving the weekly work search requirements for unemployment benefit recipients during the public health emergency.

Employees who are off work because of symptoms of the COVID-19 virus or who have been quarantined and will return to work after the quarantine or would otherwise be available for work but for the symptoms or quarantine are considered available for suitable work during the emergency and entitled to Unemployment Compensation benefits. The state Legislature, however, has not yet waived the one-week waiting period for unemployment benefits.

Employees who temporarily lose employment because of the virus should file for benefits immediately through DWD's website at <https://dwd.wisconsin.gov/uiben/>. More information regarding benefit eligibility for employees out of work due to COVID-19 can be found here: <https://dwd.wisconsin.gov/covid19/public/ui.htm>

3. What if I have symptoms of coronavirus or if a doctor or the health department quarantines me because of symptoms or exposure to coronavirus?

On March 18, 2020, the Families First Coronavirus Response Act was signed into law providing for emergency paid sick leave and expanding FMLA protections to certain employees affected by COVID-19. Benefits under the act are available if the employer is continuing to operate and the employee is not working for reasons specified below, and if the employee has worked for the employer for at least 30 days immediately before taking the leave. The Act provides the following benefits:

- Two weeks (or 10 work days) of **emergency paid sick leave** for employees of employers with 500 employees or fewer.
 - Sick leave is paid by the employer at full wage replacement for personal care if one is ill with coronavirus, to quarantine, or to seek a diagnosis or preventive care for coronavirus.

- Leave is paid at 2/3 wage replacement to care for a family member for the same purposes as above, or to care for a child whose school has closed or whose child care provider is unavailable due to coronavirus.
- Part time workers are entitled to paid sick leave for the amount of hours that they typically work over a 2 week period
- 12 weeks of job-protected **emergency paid family and medical leave** for employees of employers with 500 employees or fewer and government employers, who have been on the employer's payroll for at least 30 days before utilizing the benefit, paid at 2/3 wage replacement, to:
 - Care for a child whose school or place of care has been closed, or whose childcare provider is unavailable, due to coronavirus.
 - The first two weeks (or 10 work days) are unpaid to avoid duplication with emergency paid sick leave provided above.
- These provisions go into effect on April 2, 2020, and expire on Dec. 31, 2020.
- An employee receiving paid sick time or paid FMLA benefits from his or her employer is likely *not* eligible for Wisconsin unemployment because he/she has received income (the federally mandated paid time off benefit) from his/her employer.

4. Are Accident & Sickness benefits available under the WI Laborers Health Fund?

The WI Laborers Health Plan provides a weekly A&S benefit to eligible employees who become disabled and unable to work due to an injury or sickness that is not work related and not covered by workers' compensation laws, provided the employee is under the care of a physician for the disabling condition.

This means that unless an eligible employee provides written documentation to the Plan that he or she has been diagnosed with the Coronavirus, A&S Benefits stemming from the inability to work because of the virus will not be payable. The Plan will not pay an A&S Benefit to an employee who is absent from work solely because he/she:

- is subject to self-isolation or government-imposed quarantine requirements or guidelines,
- is caring for a covered family member subject to the quarantine requirements or guidelines, whether the family member is ill or not,
- suspects that he or she is ill and is seeking a diagnosis,
- is assisting a covered family member in obtaining treatment or diagnosis for coronavirus;
- is caring for his or her child/children who do not have other care due to coronavirus-related school or daycare center closures; **or**
- **is laid-off by the employer due to lack of work or because a project is shut-down because of Coronavirus concerns.**

Note: Loss of Time Benefits begin on the eighth day of disability due to sickness but if the sickness extends past the seventh day, then benefits will be paid retroactively to the first day.