

Dealing with Emergency Situations in a Pandemic Under A Collective Bargaining Agreement

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Workplace Exposures



Workmen's Compensation – Rebuttable Presumption

If a health care worker, public safety worker or other essential employee contracts COVID-19 during a time period in which the individual is working on site, there is a **rebuttable presumption** that the **contraction of the disease is work-related** and fully compensable for the purposes of benefits provided under the Workmen's Compensation Law, ordinary and accidental disability retirement, and any other benefits provided by law to individuals suffering injury or illness through the course of their employment. See N.J.S.A. 34:15-31.12.

“Essential employee” includes “any other employee deemed an essential employee by the public authority declaring the state of emergency.” N.J.S.A. 34:15-31.11.

Under Executive Order No. 107, **“utility workers”** are identified as workers who provide essential operations and cannot perform their functions via telework or work-from-home arrangements. See Executive Order No. 107 ¶ 11 (2020).

Quarantine Requirements



“Close Contact” (within 6 feet for a total of 15 minutes or more over a 24-hour period) to someone who has tested positive for COVID-19 should not be permitted to enter the workplace until the expiration of the recommended 14-day period of quarantine from the point of last exposure.

The CDC has advised that **quarantine periods may be reduced:**

- After day 10 without testing
- After day 7 after receiving a negative test result (test must occur on day 5 or later)

Critical Infrastructure Workers may be permitted to return to work following a potential exposure, so long as they remain asymptomatic and additional health and safety precautions are taken at the work site.

Individuals who have **tested positive for COVID-19 within the past 3 months and recovered** do not have to quarantine or get tested following an exposure to COVID-19, as long as the individuals do not develop new symptoms.

Individuals who have been **fully vaccinated against COVID-19** do not have to quarantine if they meet the following criteria:

- Are fully vaccinated (i.e., ≥ 2 weeks following receipt of the second dose in a 2-dose series, or ≥ 2 weeks following receipt of one dose of a single-dose vaccine); and
- Are within 3 months following receipt of the last dose in the series; and
- Have remained asymptomatic since the current COVID-19 exposure.

COVID-19-Related Leave

The Families First Coronavirus Response Act (“FFCRA”) established mandatory requirements for employers to provide fully and partially paid leave to employees with a need for leave due to COVID-19.

The FFCRA established the Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Expansion Act (“EFMLEA”).

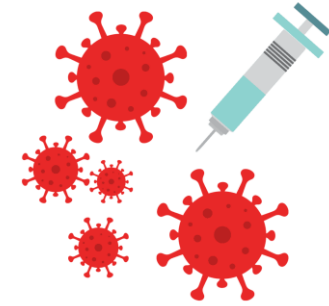
The FFCRA benefits and tax credits were available for leave taken from **April 1, 2020 to December 31, 2020**.

In December 2020, the Federal Government enacted a COVID-19 relief package that extended FFCRA tax benefits for private employers to March 31, 2021. The December 2020 COVID-19 relief package did **not** extend the mandatory requirements for employers to provide leave under the FFCRA. The American Rescue Plan may further extend the FFCRA tax benefits to certain employers.

Employers are permitted to provide FFCRA leave to employees, but employers are not required to do so after December 31, 2020.

Employees will have to utilize their own accrued sick, personal and/or vacation leave in accordance with applicable New Jersey law, Board Policy and/or the collective negotiations agreement for any authorized absence from work. Employees will be afforded their leave entitlement rights under the Family Medical Leave Act (“FMLA”) and/or the New Jersey Family Leave Act (“NJFLA”) for qualifying medical leaves of absences.

Mandatory Vaccinations and Proof of Vaccination



The U.S. EEOC has advised that an employer covered by the Americans with Disabilities Act of 1990 (the “ADA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”) **may require** employees to get a vaccine (e.g., COVID 19 vaccine) if the vaccination is job-related and consistent with business necessity.

Employers must permit exemptions and accommodations for **medical conditions** and **sincerely held religious beliefs**.

Employers may request proof of vaccination from an employee.

Employers should advise employees not to provide any medical or genetic information as part of the proof of vaccination. Employers should not inquire as to why an individual did not receive a vaccination. This will help avoid any potential issues under the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”).

Records containing an employee’s medical information, including proof of COVID-19 vaccination, should be kept confidential and stored separately from the employee’s personnel file. Pursuant to U.S. EEOC guidance, an employer may store all medical information related to COVID-19 in existing medical files.

Take-Aways and Questions

Guidance and requirements regarding COVID-19 are continuously revised and updated.

Following all available public health guidance and requirements can help limit liability.

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