



Responding to an Employee's Positive Coronavirus Test

As the number of coronavirus disease 2019 (COVID-19) cases grows daily, employers across the country are dealing with the difficult situation of responding to an employee's positive COVID-19 test.

Employers are responsible for handling the situation swiftly to protect the health of other employees while preserving the affected employee's confidentiality. In addition to notifying the company and its customers, employers must also disinfect the office and evaluate next steps.

If you're in this situation, you may be wondering what you need to do. This article provides an overview of how you can respond to finding out an employee has COVID-19.

RESPONDING TO THE EMPLOYEE

When an employee notifies you that he or she is sick with COVID-19, you should respond calmly and empathetically. In these uncertain times, it can be easy to overreact, but you need to ensure that the infected employee is treated with compassion. Reassure the employee that their identity will remain confidential, and be sure to help them coordinate taking leave or paid time off until they've recovered.

You will also need to ask the employee some potentially difficult questions, including whom the employee has been in contact with in the last two weeks. Obtaining this information is essential so that you can directly notify customers and other employees that they may have been directly exposed to COVID-19.

NOTIFYING EMPLOYEES & CUSTOMERS

Without disclosing the identity of the infected employee, you need to notify their co-workers, customers and the rest of the company.

Directly notify any co-workers or customers whom the ill employee had been in contact with. Be sure to remain calm and let them know that someone they have been in contact with or has been in their physical work area has tested positive for COVID-19. Recommend that they should self-quarantine for the next 14 days and monitor themselves for the symptoms of COVID-19. If feasible, allow eligible employees to work from home during this time.

Be sure to notify the rest of the company by email or letter that an employee has tested positive for COVID-19. Remember to keep the employee's identity protected and be transparent about your response. The communication should include what steps your company will be taking to protect the health of other employees. If you plan on having employees work from home for the next 14 days or closing the office, this information should be disclosed in the communication.





DISINFECTING THE OFFICE

According to the Centers for Disease Control and Prevention, COVID-19 can remain on hard surfaces for up to 12 hours, creating a potential risk of transmission. Depending on the size of your organization, you may want to consider closing the office for a few days so that it can be thoroughly cleaned and disinfected. All surfaces that the infected employee may have touched should be disinfected, as well as other high-touch surfaces, which include countertops, cabinets, doorknobs, handles and chairs.

EVALUATING LEAVE POLICIES

With continued uncertainty regarding the virus' disruption to normal workplace operations, employers should continue to evaluate and review their leave policies keeping current federal relief provisions concerning leave in mind.

The most recent coronavirus relief legislation, the [American Rescue Plan Act of 2021](#) (ARPA), was signed into law by President Biden on March 11, 2021, and included an extension of paid leave tax credits for certain employers that voluntarily provide paid leave. The requirements contained within the ARPA follow an extension of credits for these employers that voluntarily provided paid leave under the Consolidated Appropriations Act of 2021 (CAA).

The CAA provided extensions of tax credits for voluntary implementation of the paid leave requirements under the Emergency Paid Sick Leave Act (EPSL) and the Emergency Family and Medical Leave Expansion Act (EFML) from the Families First Coronavirus Response Act of 2020 (FFCRA) (a summary of paid leave provisions can be found here [DOL FFCRA Provisions](#)). Under the FFCRA, certain employers were required to provide paid leave under specified circumstances.

The paid leave tax credits under the ARPA will apply only to wages paid with respect to calendar quarters beginning after March 31, 2021 and ending on September 30, 2021.



Furthermore, under the ARPA, the qualifying reasons for taking leave under the EPSL and the EFML are now the same and include two additional circumstances. Also, the ARPA includes a restart of the 80 hours of available EPFL for purposes of the tax credits.

ELIGIBLE EMPLOYERS AND AMOUNT OF CREDIT

These provisions apply to employers with fewer than 500 employees who voluntarily provide paid leave for the specified events mentioned in the ARPA. Determining employer size is based upon the requirements of the EPSL and the EFML.

Application of the tax credit is limited to qualified wages paid during the applicable leave period. It may include the cost of providing health care (generally the cost of the group health care plan coverage). The available tax credit applies to certain employment taxes and should be discussed with your company's tax advisor. The ARPA has amended the grounds under which an individual can take leave under the EPSL or the EFML, making the grounds the same under both types of leave while also expanding the grounds for eligible leave to include two additional circumstances. Additionally, the ARPA struck the EFML's 10-day elimination period, making the initial 10-day period of EFML eligible for payment.



PAID SICK LEAVE

The applicable tax credit for each calendar quarter is 100% of the qualified paid sick leave wages paid by the employer for each quarter. The qualifying circumstances under the EPSL include when an employee:

- Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19,
- Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
- Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Is caring for an individual subject to a federal, state, or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns,
- Is caring for their child, if the child's school or place of care is closed or the child's care provider is unavailable due to the public health emergency, or
- Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

In addition to the reasons for paid sick leave under Sec. 5102(a) of the EPSL, the ARPA includes two additional qualifying circumstances:

- An employee seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, and such employee has been exposed to COVID-19, or the employee's employer has requested such test or diagnosis, or
- The employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.

The tax credit is available for a new bank of 80 hours of EPSL paid sick leave for full-time employees beginning April 1, 2021. For part-time employees, the employer may use the work hours averaged over two weeks. The credit is up \$200 per day for individuals caring for an individual to quarantine or due to school closures and daycare provider closures and up to \$511 for all other reasons.

PAID FAMILY LEAVE

The applicable tax credit for each calendar quarter is 100% of the qualified paid family leave wages paid by the employer for each quarter. The qualifying circumstances under the EFML have been expanded to include the reasons provided for leave under the EPSL and in addition:

- An employee seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, and such employee has been exposed to COVID-19, or the employee's employer has requested such test or diagnosis, or
- The employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.
- The credit will not exceed \$200, and in the aggregate, with respect to all calendar quarters, combined paid family leave and paid sick leave benefits are limited to \$12,000.

NONDISCRIMINATION

No credit will be allowed to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.





SUMMARY

Employers that intend to voluntarily provide paid leave under the EPSL and the EFML and claim the tax credit under this part of the ARPA should review the prior requirements of the Emergency Paid Sick Leave Act and Emergency Paid Family Leave Act to determine whether to implement these available paid sick leaves.

However, there are still lingering questions regarding the mechanics of new voluntary paid leave under the ARPA. For example, it is not clear whether an affected employer can voluntarily elect to provide just the EPSL portion without implementing the EFML requirements. Further guidance from the Department of Labor and Treasury is expected. The Hays Companies Research and Compliance Team will continue to monitor these developments.

Employers contemplating implanting these voluntary provisions should discuss this with their employment law counsel.



Due to the rapid spread of COVID-19, employers should be prepared to respond to an employee testing positive for the disease. By being prepared, employers can swiftly respond to the employee, notify the rest of their organization and make plans for moving forward.

Hays Companies is here to help during these uncertain times. Contact us today for additional COVID-19 resources and guidance for how your company can respond to it.

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