



COVID-19 FAQs—March 24, 2020

This information is current as of March 24, 2020. The information contained in this document is intended as general advice. The MDA recommends that you also consult with your own professional advisors about your individual situation and the applicable law.

The MDA is diligently working with the proper authorities in an effort to provide accurate and appropriate information to members. This information presented below is intended as general advice. The MDA recommends that you also consult with your own professional advisors about your individual situation and the applicable law. Sources for this information include factsheets from the Minnesota Department of Labor and Industry, the Minnesota Unemployment Insurance Program administered by the Department of Employment and Economic Development (DEED), and other sources. Information on these topics is changing rapidly, so the MDA recommends that you regularly check the MDA website and the other Minnesota government websites for updates.

Unemployment Benefits

If an employer reduces the hours of an employee as a result of COVID-19, will the employee be eligible for unemployment benefits?

To reduce costs, some employers may require workers to take time off without pay or furlough, for the intention of avoiding having to permanently layoff workers. Furloughs may be for one day or several days. For example, employers may require workers to take one day off per week, or they may lay off workers for a full week. This may occur once, or it may occur on a regular schedule.

An employee may be eligible for Unemployment Insurance benefits if they are temporarily or intermittently laid off or their hours are reduced below 32 hours per week. Employees are encouraged to apply for unemployment benefits during the first week they are laid off or their hours are reduced below 32 hours per week.

If an employer reduces their employee's hours as a result of COVID-19, will the employee be eligible for unemployment benefits?

If an employee's hours or rate of pay have been substantially reduced, they may be eligible for unemployment benefits. The Minnesota Unemployment Insurance Program encourages all workers affected by COVID-19 to apply for unemployment benefits so the Program can review their application and determine eligibility for benefits.

If an employer either permanently or temporarily lays off an employee as a result of COVID-19, will the employee be eligible for unemployment benefits?

Unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer shut down operations and no work is available, the worker may be eligible for unemployment benefits. In addition, if an employee's hours or rate of pay have been substantially reduced, or if an employee has been temporarily or intermittently laid off, an employee may be eligible

for unemployment benefits. When applying for unemployment benefits, an individual should indicate that their employment has been affected by COVID-19.

Executive Order #20-05 states that an employee who has been temporarily laid off does not actively have to seek other work as would a permanently laid off employee. Employees who have been temporarily laid off can satisfy the “actively seeking work” requirement by checking in with their employer.

Will an employee’s separation, severance, or bonus payments delay unemployment benefits?

Unemployment benefits are available to individuals who are unemployed through no fault of their own. However, separation, severance, or bonus payments delay unemployment benefits. An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment. Minn. Stat. § 268.085, subd. 3b.

If an employee is unable to work because their children are out of school or have lost childcare as a result of COVID-19, will the employee be eligible for unemployment benefits?

Unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employee’s child’s school district, daycare, or other childcare provider has notified the employee that their ordinary childcare is unavailable, and they have requested an accommodation from their employer and were denied, they may be eligible for unemployment benefits.

If an employer requires their employees to take a leave of absence due to COVID-19, will the employee be eligible for unemployment benefits?

Workers who are receiving vacation pay, sick pay, or personal time off (PTO) pay equivalent to their normal rate of pay are ineligible for unemployment benefits. If an employer required an employee to take an unpaid leave of absence, the employee may be eligible for unemployment benefits.

Do business owners qualify for unemployment benefits?

Generally, business owners who become unemployed from a business they own may only receive benefits for five weeks should they not have enough other employment history during the base period to establish a benefit account. However, Governor Tim Walz’s Executive Order #20-05 has waived enforcement of the five-week benefit limitation for business owners required under Minnesota Statute § 268.085, subd. 9.

Does an employee’s use of their vacation pay, sick pay, or personal time off pay effect their eligibility for unemployment benefits?

When an employee first applies for unemployment benefits, and every week that a request for payment is made, the applicant will be required to disclose if they have applied for or are receiving other types of income. The most common types of income that may affect unemployment benefits is paid leave. An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive vacation pay, sick pay, or personal time off pay (PTO) equivalent to their normal rate of pay.

Is there a difference between an employee being laid off and being temporarily laid off?

Layoffs occur when an employer dismisses an employee; the employer lets go of the employee because they can no longer afford to pay them, their business is down, or other economic reasons. A furlough is a temporary layoff from work. Employees who get furloughed typically get to return to their job after a furlough; the intent is to avoid having to permanently layoff workers.

Unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer shut down operations and no work is available, an employee's hours or rate of pay have been substantially reduced, or if an employee has been temporarily or intermittently laid off, an employee may be eligible for unemployment benefits. When applying for unemployment benefits, an individual should indicate that their employment has been affected by COVID-19.

Executive Order #20-05 states that an employee who has been temporarily laid off does not actively have to seek other work as would a permanently laid off employee. Employees who have been temporarily laid off can satisfy the "actively seeking work" requirement by checking in with their employer.

Shared Work Program

What is the Shared Work Program?

The Shared Work Program offers an alternative to layoffs for employers facing a temporary downturn in business. Administered by the Minnesota Unemployment Insurance Division, the program allows employers to divide available hours of work among a group of employees instead of implementing a full layoff. These employees may then receive partial unemployment insurance benefits while working reduced hours. Participants must meet these requirements: (1) must be full time or regular part time employees; not seasonal, temporary, or intermittent workers, (2) worked for employer for at least one year, (3) employer can be included if they elected optional unemployment insurance coverage, (4) salaried employees can be included if their hours are reduced with a corresponding reduction in pay. Employers can submit a request to modify their plan to adjust participant hours, add or remove participants, add a uniform shutdown, modify the end date of the plan, or cancel the plan. Employers can cancel a Shared Work Plan at any time with seven days' notice.

I am an associate at a dental practice and I am paid by a combination of production and a base amount each pay period. I am currently not able to work due to my dental office being closed. Do I still qualify for unemployment?

The Minnesota Unemployment Insurance Program does not specifically address this compensation scenario in Executive Order #20-05 but encourages employees to apply for benefits so that they can review the employment circumstances on a case by case basis to determine eligibility.

Employee Protections

What employee protections are available as it relates to sick leave and COVID-19?

Minnesota employers are not required to provide personal sick leave benefits, either paid or unpaid. However, some employers are required to allow eligible employees to be absent from work under the Family and Medical Leave Act (FMLA), the Minnesota Pregnancy and Parental Leave law or under Sick and Safe Time ordinances in Duluth, Minneapolis and St. Paul.

If an employer offers sick leave, PTO or personal leave to employees, then the employer must also allow their employees to take time off to care for an ill minor child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Reasonable Accommodation

Can an employee request a reasonable accommodation from their employer if they have a disability that affects their risk of contracting COVID-19?

The Minnesota Human Rights Act (MHRA) protects employees from discrimination on the basis of disability, race, national origin, age and other protected class. Individuals with disabilities have the right

to request “reasonable accommodations” from employers who are subject to the Americans with Disabilities Act and/or MHRA.

If an employee has a disability that affects their risk for contracting COVID-19 or being harmed if they do contract the virus, the employee has the right to request a reasonable accommodation from their employer.

Workers’ Compensation

Is an employee entitled to workers’ compensation benefits if they contract COVID-19 out of and in the course of their employment?

If an employee contracts a disease that arises out of and in the course of and in the course of their employment, they may be entitled to worker’s compensation benefits, including payment of wage loss and medical benefits. However, the employee must show that they contracted the disease due to their employment. If an employee is not ill, but must stay home from work because they were exposed to the virus, they are not entitled to workers’ compensation benefits.

Employer’s Costs

If an employee receives unemployment benefits as a result of the COVID-19 pandemic, will an employer’s Unemployment Insurance costs increase?

Employers are typically responsible for the cost of unemployment benefits paid to their workers. Executive Order #20-05 has relieved taxpaying employers of benefit charges associated with COVID-19. This means that any unemployment benefits that an employer’s workers collect as a result of the pandemic will not be used in computing your future Unemployment Insurance tax rate.

Are their financial resources or technical assistance available that can help an employer’s business recover from COVID-19 related costs?

The Governor’s office was recently granted an Economic Injury Disaster Loan declaration from the US Small Business Association **Now, online applications for these loans are open to Minnesota businesses at: <https://disasterloan.sba.gov/ela/>** This program can provide low-interest loans of up to \$2 million to small businesses and private non-profits. These loans can go toward working capital to meet needs including payroll, accounts payable, and fixed debt payments that can’t be paid due to the COVID-19 pandemic. The current interest rate is 3.75% for small businesses. The non-profit rate is 2.75%. These loans have long-term repayment options, up to a maximum of 30 years. The Minnesota Legislature is also considering special measures to provide targeted financial assistance to businesses affected by COVID-19.

Families First Coronavirus Response Act

What is the Families First Coronavirus Response Act (FFCRA)?

The federal government has passed legislation that created emergency paid sick leave and emergency expansion of family and medical leave. The legislation is scheduled to go into effect on April 2, 2020 unless Congress takes additional action to move up the effective date. The sick leave provision would require employers to provide two weeks of additional paid sick leave under certain circumstances. Under the expansion of family and medical leave, employers must provide up to 12 weeks of leave with the first two weeks unpaid and the following weeks paid. The employer will be reimbursed by the federal government through a tax credit. The credit is applied to the tax the employer pays for each employee’s Social Security, in hopes of lessening the financial burden on employers.

Private sector employers with fewer than 500 employees, government employers, and all other non-private entity employers with more than one employee are required to provide their employees with paid

sick leave. The bill entitles employees of covered employers to paid sick leave regardless of how long the employee has worked for the employer. The legislation further gives the Secretary of Labor the authority to exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.

The ADA and other entities have submitted a request to the Secretary of Labor requesting a blanket exemption from the FFCRA for dental offices and other small business entities who have 50 or fewer employees. The Secretary of Labor has not yet responded to the exemption request and is working on a guidance for covered employers.

Minnesota Executive Orders

Have all non-emergent or elective dental care service been postponed in the State of Minnesota?

On March 19, 2020, Governor Tim Walz issued Executive Order #20-09, directing delay of inpatient and outpatient elective surgery and procedural cases during the COVID-19 peacetime emergency. Beginning no later than March 23, 2020 at 5:00 p.m., and continuing for the duration of the peacetime emergency, (which currently appears to expire on April 13, 2020 but can be extended or modified by the Governor and the Legislature) all non-essential or elective surgeries and procedures, including non-emergent or elective dental care, that utilize personal protective equipment or ventilators be postponed indefinitely. A non-essential surgery or procedure is a surgery or procedure that can be delayed without undue risk to the current or future health of a patient.

Is there a timeline for social distancing and business closures?

On March 13, 2020, Governor Tim Walz issued Executive Order #20-01 declaring a peacetime emergency in the State of Minnesota. In order to take proactive steps to ensure that Minnesota is ahead of the curve on COVID-19 prevention and response, Executive Order #20-01 calls for Minnesotans to follow the Minnesota Department of Health guidelines regarding public gatherings and social distancing. The order remains in effect until the peacetime emergency expires (which currently appears to be on April 13, 2020 but can be extended or modified by the Governor and the Legislature) or until it is rescinded by property authority. Additionally, on March 19, 2020, Governor Walz issued Executive Order #20-09, postponing indefinitely all non-essential and elective surgeries and procedures, including non-emergent or elective dental care. Executive Order #20-09 remains in effect until the peacetime emergency declared in Executive Order #20-01 is terminated or until it is rescinded by property authority.

Health Insurance Coverage

If an employee has applied for unemployment benefits, can the employer continue to pay the employee's health insurance premiums? If unemployment extends to several weeks, does an employee have to transfer to COBRA if they will ultimately be returning to work?

COBRA gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss or reduction in the hours worked. Qualified individuals may be required to pay the entire premium for coverage up to 102% of the cost to the plan. In order to be entitled to elect COBRA continuation coverage, your group health plan must be covered by COBRA, a qualifying event must occur, and you must be a qualified beneficiary for that event.

Layoffs can be treated like other employment termination situations. There is a COBRA triggering event for the health benefits (medical, dental, vision, etc.) upon termination for those covered under one of the benefit plans. Employers can choose but are not required to subsidize COBRA for terminated or laid off

employees. Some employers are taking this action when they anticipate or desire to rehire the terminated or laid off employees when business returns to normal.

Employees placed on furlough may or may not maintain benefit eligibility depending on how eligibility is addressed in the underlying plan. If eligibility for health care benefits is maintained during a furlough, the employer can collect the employee's share of premium to maintain the coverage during a paid or unpaid leave of absence. If the employee fails to pay the required premium, coverage can be terminated for non-payment.

General Employment Questions

How do I implement an employee layoff?

Ideally an employer would notify employees in writing but there is generally no required way to notify employees of a layoff. It is important to try to provide as much information as possible to employees at the outset of the layoff and to regularly check in with employees to provide updates on the status and duration of the layoff.