

Employer questions

1. Is my business covered by the Stay at Home Executive Order and are my employees covered by the critical sector worker exemptions?

On March 25, 2020, Governor Tim Walz issued [Executive Order 20-20](#), directing Minnesotans to limit movements outside of their homes from March 27 at 11:59 p.m. to April 10 at 5 p.m. to help slow the spread of COVID-19. The Minnesota Department of Employment and Economic Development (DEED) has information on its website about how this will impact your employment, your employees and your personal life. To determine if a worker is part of a critical sector, please refer first to the [Critical Sector Workers Definitions and Clarifications document](#). This document contains a comprehensive list of critical sectors, along with clarifications that have been added since the executive order was issued. Additional information about eligibility for critical sector worker exemptions can be found at <http://mn.gov/deed/critical> and any requests for clarification can be sent to CriticalSectors@state.mn.us.

2. While the Stay at Home Executive Order is in effect, can an employer require a critical sector employee to come to work instead of working from home?

The executive order does not restrict virtual work or telework (work from home). The order encourages Minnesotans working in any field to work from their home or residence as much as possible. The order identifies critical sector workers and states “all [critical sector] workers who can work from home must do so.” The order states that critical sector workers, “who are performing work that cannot be done at their home or residence through telework or virtual work and can be done only at a place of work outside of their home or residence” may leave home to go to work. Employers should not force Critical Sector employees who can do their work from home to go to work. The resources available at <https://mn.gov/deed/newscenter/covid/business-exemptions/> are meant to help you determine eligibility for critical sector worker exemptions.

If there is a dispute about an employee’s ability to work from home, we encourage the employer and employee to work collaboratively to come up with a solution in light of the order’s directive that all critical sector workers who can work from home must do so. If a dispute remains unresolved, employees can contact SEOC through the hotline at 651-297-1304 or 800-657-3504 or via email at SAHviolations@state.mn.us. The Minnesota Department of Public Safety will work with local law enforcement officials to ensure compliance with the Executive Order. The governor’s focus is on education and voluntary compliance with the order, but the order has the force of law and a willful (intentional) violation is a misdemeanor.

3. While the Stay at Home Executive Order is in effect, do critical sector employees need a certificate or permit to show they are in a critical sector?

Employers and employees are not required to have a certificate or permit to show they are in a critical sector. An employer could choose to provide this type of permit or certificate to employees, but it is not currently required.

4. Is my business in an industry that has been required to be temporarily closed by the executive order?

You can review Gov. Walz's COVID-19 Executive Orders online at www.leg.state.mn.us/lrl/execorders/eoresults?gov=44&title=&number=&ft=, which include those orders related to business closures. If you are not sure whether your business is included, you can contact licensing or regulatory authorities that oversee your business type (Board of Cosmetology for nail salons). If you do not know what licensing or regulatory authorities oversee your industry, you can call the Small Business Assistance Office at DEED at 651-259-7476.

5. Are employers required to pay an employee's accrued paid time off (PTO), vacation or sick time at the time an employee is laid off or terminated?

Minnesota wage and hour laws do not directly address this question. An employer should look at the applicable leave policy, employment contracts or collective bargaining agreements to determine their obligations.

6. My business was affected by Executive Order 20-04, ordering the temporary closure of bars, restaurants and other places of public accommodation. If I pay accrued PTO, vacation or sick time to employees at the time they are laid off, are they eligible for unemployment?

DEED recommends workers exhaust other forms of leave because those will pay more than unemployment insurance, but that is subject to availability and the desire of the individual worker. Unemployment benefits are designed to provide about 50% of the employee's regular wages, while paid leave benefits typically provide more income.

7. If my business has been temporarily closed due to Executive Order 20-04, are employers required to pay all wages to employees within 24 hours?

Minnesota law provides that when an employer discharges an employee, the employee can make a demand for all wages earned and those wages must be paid within 24 hours of the demand. If an employee is not discharged, the employee must be paid on the regular pay schedule.

8. As an employer, can we require workers to work from home?

Employers can determine the location of work but must track, record and pay for all hours of work performed by employees. [Executive Order 20-20](#) encourages workers in any field to work from home and orders all employees in critical sectors who can work from home to do so.

9. Can an employer change the regular work schedules of its employees?

Employers may determine work schedules for their employees unless there are restrictions to schedule changes in an employment contract or collective bargaining agreement.

10. If an employer decides to change paid vacation, sick time, or paid time-off accruals and the terms of their use or the wage rate of an employee, what is required?

Employers are required to provide written notice to employees of any changes to the information required in the employee notice prior to those changes taking effect. This requirement includes changes to rates of pay or changes to leave accruals and the terms of their use. The change can be communicated in paper or electronic form.

11. With students taking classes at home, are employers held to the same work-hour restrictions for students in the child labor laws?

Yes, the time of day work restrictions in the child labor laws for school days apply when normal classes are in session during the regular school year in the school district. These restrictions will apply to days identified as distance learning days. Therefore, any minor 14 or 15 years of age cannot work on school days during school hours unless they have an employment certificate issued by their school district's superintendent or designee as outlined in Minn. Stat. 181A.05.

Employee questions

12. Can an employer require an employee to use accrued PTO, vacation or sickleave?

If an employee is eligible for paid leave under the provisions of the federal Families First Coronavirus Relief Act (FFCRA), an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid leave pursuant to that legislation.

If an employee is eligible for paid leave under the provisions of the federal Families First Coronavirus Relief Act (FFCRA), an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid leave pursuant to that legislation. An Employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the unpaid portion of the leave provided in the expanded FMLA under the FFCRA. However, this may not be necessary if the employee is eligible and chooses to utilize the paid sick leave under the FFCRA for the 10-day unpaid portion of the expanded FMLA. The U.S. Department of Labor's Wage and Hour Division administers and enforces the FFCRA's paid leave requirements. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave or call the Wage and Hour Division at 612-370-3341.

Whether or not an employer can require the use of personal leave benefits outside of the application of the FFCRA will depend on the applicable leave policy, employment contract or a collective bargaining agreement.

13. I have an underlying health condition that puts me at higher risk, does my employer have to let me work from home?

Individuals with disabilities have the right to request "reasonable accommodations" from employers that are subject to the Americans with Disabilities Act and/or the Minnesota Human Rights Act (MHRA). If the employee has a disability that affects the employee's risk for contracting COVID-19 or being harmed if the employee does contract this virus, they should request a reasonable accommodation from the employer. A reasonable accommodation may include working from home. This process applies to critical sector workers,

too.

14. Does an employer need to pay an employee accrued or earned personal leave benefits when the employee is laid off or terminated?

Minnesota wage and hour laws do not directly address this question. An employee should look at the applicable leave policy, employment contracts or collective bargaining agreements to determine their right to be paid earned or accrued leave benefits.

15. If my workplace closes or I am otherwise laid off, when is an employer required to pay employees their final wages?

If your employment ends and your former employer has not paid you your final wages, there are several steps you can take to ensure you are paid all the wages you are due. To learn what steps you can take to receive your final wages, visit the "Making a demand for final wages" page at www.dli.mn.gov/business/employment-practices/making-demand-final-wages.

16. I understand the federal government recently enacted a new paid sick leave law and expanded benefits under the Family Medical Leave Act (FMLA) related to COVID-19. How do I access those benefits?

FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The U.S. Department of Labor's Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from April 1 through Dec. 31, 2020. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave#_ftn3 or call the Wage and Hour Division at 612-370-3341.

17. I am not feeling well, but I'm concerned about losing income if I can't work. What can I do?

The state's unemployment program was recently expanded to ensure those whose presence in the workplace would jeopardize the health of others will have access to unemployment income for the time they are unable to work. To get more information about Unemployment Insurance or to apply for benefits, visit www.uimn.org.

18. I do not feel like my job is a safe work environment. What can I do to remain safe, but also keep my job?

All employers must continue to follow OSHA workplace standards and should adhere to Minnesota Department of Health recommendations for businesses. Your employer may not retaliate against you for reporting health and safety concerns at work. If you believe your employer retaliated against you, you may file a complaint with Minnesota OSHA (MNOSHA) Compliance within 30 days of the adverse employment action.

You have the right to refuse to work under conditions you, in good faith, reasonably believe present an imminent danger of death or serious physical harm to you. Serious physical harm may include a work illness that results in permanent disability, temporary total disability or medical treatment. A reasonable belief of imminent danger of death or serious physical harm includes a reasonable belief of the employee that the employee has been assigned to work in an unsafe or unhealthful manner with an infectious agent.

Your employer may not fire you or otherwise discriminate against you for your good faith refusal to perform assigned tasks if you have asked your employer to correct the hazardous conditions but they remain uncorrected. If you have refused in good faith to perform assigned tasks and your employer does not reassign you to other work, you may contact MNOSHA Compliance to request assistance. MNOSHA Compliance will contact your employer to try to resolve your concern. If MNOSHA Compliance determines you would have been placed in imminent danger of death or serious physical harm by performing the work, then you are entitled to receive pay for the work you would have performed.

Contact Minnesota OSHA Compliance at osha.compliance@state.mn.us, 651-284-5050 or 877-470-6742 with questions.

19. I live with a vulnerable family member and I am concerned I may contract COVID-19 at work and then bring it home. Can I take a leave of absence from work even though my family member is not currently sick?

The Stay at Home Executive Order encourages Minnesotans working in any field to work from their home or residence as much as possible. The order identifies critical sector workers and states “all [critical sector] workers who can work from home must do so.”

If you are unable to work from home, it is typically up to your employer to determine whether to grant a leave of absence. Sometimes, employers have written policies or contract language outlining leave of absence terms.

20. I was exposed to someone with COVID-19 but my employer still insists that I come to work. What should I do?

If you are concerned because of exposure or because you are experiencing COVID-19 symptoms, you should seek the advice of a health care provider. You may be eligible for up to two weeks of **paid sick leave under the federal Families First Coronavirus Response Act if you are** unable to work because you are quarantined at the advice of a health care provider and/or experiencing COVID-19 symptoms and seeking a medical diagnosis. For more information about this law, visit www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave#_ftn3 or call the Wage and Hour Division at 612-370-3341.

21. Can my employer require me to be tested for COVID-19 or require other medical tests?

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance stating that during a pandemic, ADA-covered employers may ask employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with ADA. EEOC has also advised ADA does not interfere with the guidance outlined by the Centers for Disease Control and Prevention (CDC) that employees experiencing symptoms of COVID-19 should leave the workplace. You can view additional guidance from EEOC at www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

If you believe your employer is discriminating against you on the basis of race, disability, national origin or other protected class status, contact the Minnesota Department of Human Rights at 651-539-1133, 800-657-3704 or info.mdhr@state.mn.us. Complete the form at mn.gov/mdhr/intake/consultationinquiryform.

22. Can my employer take my temperature before I am allowed to work?

EEOC has advised that, generally, measuring an employee's body temperature is a medical examination. Because CDC and state and local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware some people with COVID-19 do not have a fever. You can view additional guidance from EEOC at www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

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23. If I am not a critical-sector employee, how should I respond if my employer directs me to come to work?

If you are not a critical-sector employee and your employer has directed you to work you can inform your employer that it is a violation of the Stay at Home Executive Order for non-critical sector employees to report to work. Minnesota law states that an employer may not retaliate against an employee for reporting a violation or suspected violation of law. It is also a violation of Minnesota law for an employer to retaliate against an employee for refusing an employer's order to perform an action that the employee reasonably believes violates a law. Executive Order 20-20 has the force and effect of law. If your employer retaliates or takes adverse employment action against you for reporting the violation or refusing to perform an action that violated the law, you may be able to seek damages or other relief such as back pay or reinstatement.

If your employer still directs you to come to work, contact the State Emergency Operations Line at 651-297-1304 or 800-657-3504 or via email at SAHviolations@state.mn.us and be prepared to provide:

- 1) the name of the company,
- 2) the address of the company and address of their workplace (if different),
- 3) the type of business their employer is engaged, and
- 4) what kind of work the employee does for the employer.

If the employee is not a critical sector employee, the Minnesota Department of Public Safety will work with local law enforcement officials to ensure compliance with the Executive Order. The Governor's focus is on education and voluntary compliance with the order, but the order has the force of law and a willful (intentional) violation is a misdemeanor.

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