



COVID-19 HR Guide for your Practice – Frequently Asked Questions (Updated 05/12/20)

Dear IDOC Member,

Many of you have reached out to us with HR questions related to COVID-19. In response to the needs of our members, IDOC HR Services has created a Human Resources (HR) Rapid Response Team to quickly address your questions during this challenging time. The Team has developed this HR Guide using the frequently asked questions that are coming in from our members.

This document will be updated regularly as new developments arise. For this issue, we have included information relating to:

- OSHA Obligations
- Vacation, paid time off, and paid sick leave
- Furloughs, Layoffs
- Wage and hours
- Closures, reduction in force/WARN
- Unemployment (*New Information*)
- Emergency Family & Medical Leave Expansion Act

After reviewing the FAQs enclosed in this guide, if you have any remaining questions please submit your question(s) using our COVID-19 question form, which can be found in this link - [IDOC Questions or Suggestions in Response to COVID-19](#).

For additional support, we encourage you to go to our **COVID-19 Resource Center** where you will find more tools and information related to COVID-19: <https://optometry.idoc.net/covid19>

We are here to support you through this trying time. Stay safe and healthy!

Best Regards,

IDOC HR Rapid Response Team
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OSHA Obligations

What is my obligation under OSHA to my employees?

As an employer, under OSHA, you have an obligation to provide a work environment free of hazards or safety concerns for your employees. This includes protection, as best as it can be provided, from the COVID-19 virus. If an employee or patient tests positive for Coronavirus, as an employer it is imperative that you report this to the CDC and notify employees. As it related to your HIPAA obligation, you should not disclose the name of the patient or employee, rather, you should inform staff that an employee or patient has tested positive for the virus.

If I have an employee(s) who has traveled or will be traveling, should I require a 14-day quarantine?

Although the risk varies depending on destination, you can advise the employee not to travel. However, deciding to travel is the employee's choice. Because of your obligation to your employees and patients, you can require an employee to self-quarantine for 14 days before returning to work. It is recommended that any employee quarantine after travel at this point, no matter where they have been. Please be aware that requiring quarantine is only considered acceptable practice right now because of COVID-19 and typically would not be condoned.

How can I protect my employees and patients while remaining open?

Preventing sick patients and employees from coming into the practice is important.

- You could start with sanitation and communications with patients – there is a patient communication form that you can use found on our COVID-19 resource center website - <https://optometry.idoc.net/covid19>
- It is recommended that you update your check-in process to reduce the risk of a patient coming into the practice sick. Here are some actions you can take:
 1. You can require these patients to wear a mask.
 2. You can ask your patients if they are sick, have been exposed to someone who is sick or have recently traveled (*although there are bans to and from certain countries, any air travel at this point is considered risky*).
 3. You can deny service and reschedule them unless they have a serious eye condition or injury.
 4. You can call to confirm the appointment and reschedule anyone who says they have recently traveled (*anywhere*), are sick or have been exposed to someone who is sick
 5. You can check temperatures of patients during the check-in process.
 6. You and your employees can use masks when near patients, like in the exam lane during certain tests.

There are some other ways you can keep your employee safe. Here are the CDC recommendations:

- Avoid close contact with people who are sick. (*this would be the changes to your check-in process*).
- Avoid touching your eyes, nose, and mouth.
- Stay home when you are sick. (*Encourage your employee to stay home if they are sick, even if it is allergies*)
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash. (*Or at least sneeze or cough into your sleeve*).

- Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe (*Often, at least once an hour for open areas, after each patient for exam lanes, and after each patient in optical*).
- New CDC's recommendations for using a facemask.
 - Facemasks should be used by people who show symptoms of COVID-19 to help prevent the spread of the disease to others. The use of facemasks is also crucial for health workers and people who are taking care of someone in close settings (*at home or in a health care facility*).
 - Recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g. grocery stores and pharmacies), **especially** in areas of significant community-based transmission.
 - Use simple cloth face coverings to slow the spread of virus and help people who may have the virus and do not know it from transmitting it to others.
- Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom, before eating, and after blowing your nose, coughing, or sneezing.
 - If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

Can we require an employee to be tested for COVID-19 before allowing them to return to the Practice?

It may not be possible or feasible for the employee to get tested. If the employee is under quarantine because of potential exposure, they should be allowed to return after a 14-day symptom free period. If the employee is ill but has recovered, it is the recommendation of the CDC to have the employee stay home until they are “free of a fever, signs of fever, or any other symptoms for at least 24 hours, within medication or the use of a fever reducer.” However, it is the Practice’s discretion whether to access that employee back into the Practice.

Can we send an employee home who shows symptoms of being sick or ill?

If the employee is experiencing symptoms of a fever or any other symptoms, you may send the employee home asking them to quarantine for 14-days or until they are free of any fever or cold symptoms. If your employees don’t feel comfortable around the employee experiencing symptoms or if they feel unsafe, you can share the plan with employees. Make sure you are getting updates from the employee who is experiencing symptoms as they can return to work after they haven’t been experiencing any symptoms for 14-days.

What if an employee has a close relative or immediate family member whose company closed due to another employee being tested positive for coronavirus?

- It is recommended that you ask the employee to stay home since the employee may be potentially exposed to the virus. However, the practice should not discuss the specific employees’ diagnosis as discussing the diagnosis with others results in a HIPAA violation. You can choose to furlough or layoff the employee and they can apply for unemployment or if you are able, you can keep them on your payroll if they can telework. If you believe your employees may have been exposed or impacted, you can choose to close the practice (however, it is not required) and temporarily layoff your employees asking them to self-quarantine for 14 days. Once all employees haven’t shown symptoms for 14-days you can then choose to hire them back.
- The employee also qualifies for FFCRA sick leave if they are caring for the family member who is subject to federal, state, or local quarantine isolation order related to coronavirus

- It is also recommended that you communicate the office closure to patients, if needed. Your obligation as a practice is to keep employees safe during this time and any potential exposure can impact this protection.

Vacation, paid time off, and paid sick leave

What is the difference between furlough and layoff?

- Furlough means temporary layoff and the employee is required to work fewer hours or take a certain amount of unpaid time off
- Layoff means the employee is terminated from employment/payroll
- Some states have work-sharing programs that allow employees with reduced hours to receive unemployment benefits even if they do not meet the standard requirements for unemployment
 - Please check your states DOL site for more information

If I furlough or layoff my staff do they lose their vacation or PTO?

- No, employees would just pick up where they left off as if they were not off
- Changes to this may only apply if the employee has been off for more than 90 days and there wouldn't be an exception during this time

Furloughs, Layoffs

Should we put furloughs or layoffs in writing?

Yes, you should always have documentation of these decisions for unemployment purposes through the Department of Labor. We've posted templates you can use on our **COVID-19 Resource Center**. You would just need to update the template with employee and practice specific information.

What if an employee wants to travel and use time off during this time?

There is some discretion/flexibility with this. It is recommended to ask employees to self-quarantine for 14 days after they return from a trip. As an employer and medical practice, you are responsible for the total safety of your employees and patients. *See above section about OSHA obligation.* A quarantine allows you to fulfill that obligation. The issue that arises is that a 14-day leave, in addition to time off, might not be affordable for your employee. We recommend that you work with your employee(s) to pay for some of that time as either good-will funding or a borrow against their PTO balance. You must determine what is affordable for you and come to an agreement with your employee.

Are COVID-19 absences covered by applicable state or local paid sick leave laws?

Sick time related to a COVID-19 illness is now covered under the Families First Coronavirus Response Act (FFCRA) See below.

May an employer advance any vacation time and/or paid time off to employees to cover COVID-19 absences?

Yes, which some practices are already doing. Employers that do so should consider drafting policies and agreements so if employees are required to repay advanced time off first from newly earned vacation time/PTO, they are aware. Where not otherwise prohibited by state law, employers may be able to deduct any advanced time off from a departing employee's vacation time/PTO payout of final paycheck.

Would you consider an employee who is out on leave due to a health risk a furloughed employee?

This employee would be considered a voluntary layoff employee as the employee made the decision to go on leave based on a concern for their health and the health of others. This employee can still apply for unemployment through the state's department of labor. It is recommended that the employee complete a voluntary lay off form. The template for this can be found on the COVID-19 Resources Center.

What happens to an employee's health insurance should they be furloughed?

- Generally, employees must work a minimum number of hours per week in order to be eligible to participate in employer-sponsored health benefits.
- Four (4) major insurance carriers have extended coverage for furloughed employees on "fully insured" contracts for a determined amount of time assuming all premium payments are made. The coverage extensions vary by carrier –
 - Aetna: July 31, 2020
 - Anthem: May 31, 2020
 - Cigna: May 31, 2020
 - UHC: furloughed employees are temporarily covered, but no end date has been provided
- Employees must be full-time employment status by the conclusion of the eligibility period

Wage and hours

May a practice require employees to use vacation time/PTO in less than full day increments?

Time off is time that is set by the practice and offered to employees as an additional benefit. The practice can choose to require vacation time/PTO in hourly, ½ day or full day increments. Specific states may require practices to payout vacation/PTO upon termination, so we recommend confirming this with your state's department of labor site. However, the practice can require employees to use vacation time/PTO in ½ day increments and should have a policy in place around vacation/PTO specifically.

How do you manage a salaried employee who has exhausted their vacation/sick/PTO?

If a salaried employee takes time off and has exhausted their time off, you can choose not to pay your salaried employee during the time that they are off as salaried employees can be docked full days if no work has been completed. Keep in mind, if during their time off they are performing work-related duties (*e.g. charting, making work calls, checking in on patients*) they must be paid for the days they completed the work.

If the Practice is choosing to lay off staff, reduce hours or close and the salaried employee has exhausted all time off, the employee can apply for unemployment for reduced hours or if they are laid off, dependent on state law.

If I reduce an exempt employee's days/hours/pay, can I continue to classify them as an exempt employee who isn't eligible for earned overtime pay?

- To be considered exempt, an employee must be paid at least \$684 (higher in some states) per week on a salaried basis regardless of the hours worked, and the job must meet one of the applicable duties as outlined by FLSA.
- If you reduce an employee's wages below the required threshold and/or change the employees job duties, these changes may cause the employee to no longer qualify for exemption of

overtime. In this instance, the employee may still be paid a salaried wage, but they must be paid for all hours worked and at an overtime rate for any hours worked beyond 40 hours/week.

Unemployment

Can employees file for unemployment if their hours are reduced, they are furloughed, or their employment is terminated as a result of work slowdown or required workplace shutdown?

- Yes, employees impacted by the above should file for unemployment.
 - Requirements and wait times will vary by state.
 - Their total benefit will be based off contributed hours.
- One must have worked a certain number of hours as an employee during the year to be eligible.
- Please refer to your state's UI claim site through your state's Department of Labor for additional information. *We've provided a link to local state DOL in the Resources section at the end of this document.*
- Most states have waived the waiting period for unemployment benefits due to COVID-19 closures or quarantines

Can I reduce my hours and allow my employees to apply for unemployment?

- You can claim UI if you are full-time or part-time as it doesn't matter what you have been working for UI. They look at the last 2-3 quarters and average those earnings together to get your maximum.
- Employees must file as required – every or every other week. So, the Sunday (*most file on Sunday*) after they worked those hours, they must be claimed in their UI reporting. If they do not claim them, they are allowed a misstep or two and will be docked for those hours the next week. However, if they continue to miss claim submissions, they can get kicked off their benefits. It is very important that they claim any hours worked.
- You can claim underemployment. For example, if you were working 40 hours and now you are working 20 or so, you can claim the difference; that is supplemental. It works the same as above, still based on the last 2-3 quarters of earnings and adjusted based on the hours worked. Supplemental and working some hours typically work out in the employee's favor when the state has a shared work program. State to state percentages are different but the practice shouldn't be surprised if the employee only receives up to 50% what they were making, with or without recorded hours.
- In terms of salaried employees – salaried employees can be docked full days if no work has been completed if this is considered a voluntary agreement. If they are logging some hours in practice, they likely would need to be paid for the whole day (salary divided by 260 is daily rate). They can apply for Supplemental UI.
- They also can apply for UI benefits for total loss. If the salaried employee is on contract, you can suspend the contract as well, but I would verify this with your lawyer.

Please refer to your state's DOL for guidance. The above guidance may vary from state-to-state.

Can a Practice Owner apply for unemployment?

Yes, a Practice Owner can also apply for unemployment as your salary and revenue have been impacted by COVID-19 IF you are paid as a W-2 employee. If you are an LLC or If you are paying yourself a W-2 wage as required by the IRS and you have been paying state and federal unemployment taxes to those wages, you should be able to apply.

What happens to a staff member's unemployment benefits if they do not return to work? (NEW)

Practices must provide employees with a reinstatement letter once they are ready to return employees back to work. If an employee refuses to come back to work after the Practice Owner has offered them a job, it is the Practice's obligation to notify their state's DOL that the Practice requested the employee to return to work and the employee refused by submitting the reinstatement letter and the reason for not returning. The employee should also be made aware that by refusing to return to work, this may impact their eligibility for unemployment benefits.

If my employee is returning to work, should I cancel the unemployment claim? (NEW)

Once the employee has been reinstated back to work, the employee should stop submitting the unemployment claim and the claim will essentially cancel itself. However, every state manages unemployment claims differently so it is recommended that you consult with your state's Department of Labor on how the employee should manage the claim.

Closures, reductions in force/WARN

How is the federal government supporting small businesses during this time?

The SBA (federal) is offering small businesses disaster loans during this time to help keep your business afloat. You can find out more about this at <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>

If a practice must lay off employees temporarily due to COVID-19, is the federal WARN Act implicated?

For most practices, the WARN Act will not apply because there is a size requirement for the business. Federally, businesses of 100+ employees must provide 30-90 days' notice for a closure (temporary or permanent). Some states require a business of 50+ employees to provide similar protections. If your practice is of this size and you are considering closures, please check with your state's Department of Labor for guidance and next steps: <https://www.dol.gov/agencies/whd/state/contacts#MI>

I've reduced my practice hours and/or no longer seeing patients, should I lay off my employees?

As the practice slows, there are different options the practice can choose from:

- Have the team work on things that they typically "don't have time for".
- Ask the team if they would like to reduce their hours temporarily to help ease the burden on the practice.
- Put in mandatory reduction of hours before going straight to layoffs – the team can claim unemployment for supplemental income. See your state's DOL.
- Temporary layoffs lasting less than 2 weeks – consider having them use up their PTO and then pay the team at 60% of their income.
- Layoffs until the practice can return to normal will allow employees to claim for UI benefits and save on payroll burden.
- Should you lay off employees, you can have them back for per-diem shifts to support the practice and they can claim supplemental benefits.
- For more information about UI and layoffs, please check out your state's Department of Labor site.

It is recommended that practices try other means of maximizing their cashflow so that you can return your staff once business starts to pick up. Incremental income will help in your transition. Nathan Hayes, Finance Consultant at IDOC, has posted several resources on our COVID-19 Resource Center to help guide our members through finance options in response to the COVID-19 disruption.

What is the impact on continued health coverage and benefits if an employer must close its business?

Whether benefits can remain in place during a temporary business closure, a furlough or lay-off requires review of your group health plan documents, such as insurance carrier contracts. Often, benefits can be continued for a certain limited period if the layoff or furlough is temporary. Typically, carriers have been leaving the decision to keep employees as active without transitioning to COBRA to the employer's discretion.

If permitted by the plan materials, benefit continuation may be extended and done so pursuant to the Federal Family and Medical Leave Act (FMLA), whereby employees remit their customary portion of premiums to the employer via personal check. You can also plan to collect payment once employees return to work. We recommend checking with your Plan Administrator to see if they would allow you to make the decision to continue benefits under these circumstances

For more details on the rules, and how premiums are handled during a FMLA-qualifying leave, please refer to the following online resources:

- [Employee Payment of Premiums](#)
- [Cafeteria Plans and the Family and Medical Leave Act](#)

What is the protocol for paying my employees if the practice must shut down?

- Non-exempt employees (*hourly*) are only eligible for pay for hours they work, and any benefit offered.
- Exempt employees (*salaried*) are paid for the week if they are performing work during that time. Salaried employees can be docked for a whole day of pay if they did not complete any work.
 - More information can be found under Fair Labor Standards Act (FLSA) at either your state department of labor or <https://www.dol.gov/agencies/whd/flsa>
- Generally, for PTO, there have been suggestions made by SHRM, CDC and other HR Consulting firms to offer additional benefits of time off OR to allow them to generate a negative PTO balance of time. This is exclusively to mitigate the risk of a sick employee trying to “power through” and continuing to work, creating an exposure risk and reduce the financial burden (*where you can*) for your employees. However, this would only be to supplement limited hours or a temporary closure like 2 weeks.
- Should you feel a closure of longer than 2 weeks is necessary, we recommend Practices follow up with their state's Department of Labor and the Small Business Association. These employees would likely have to be temporarily laid off and could then collect unemployment benefits.

What if an employee doesn't feel safe serving emergency patients during this time?

If the practice is open and the employee doesn't feel comfortable working with emergency patients, the employee can choose to complete a Voluntary Layoff form

Can employees refuse to return to work after being reinstated and still collect unemployment? (NEW)

- In most cases no, however it will ultimately be up to the state unemployment agency to determine if unemployment will be continued.

- The Practice must notify their states unemployment agency of the offer of reinstatement made to the employee.
- Depending on the circumstance though, an employee may be unavailable to work due to COVID-19 related challenges; for example, stay-at-home order still in place, caring for a child whose school closed or caring for someone who has been diagnosed with COVID-19.
- The employee may also feel unsafe to return to work due to the pandemic.
- However, if the employee doesn't accept the reinstatement to work, they will need to notify the unemployment agency as to why they cannot work due to COVID-19 or for another qualifying reason and it is up to the unemployment agency to determine if unemployment benefits would continue.

Families First Coronavirus Response Act (FFCRA) & CARES Act

- Please reference **The Families First Coronavirus Response Act & CARES FAQs** in IDOC's COVID-19 Resource Center - <https://optometry.idoc.net/covid19>
 - There is a separate FAQ document that outlines what we know so far about the Families First Coronavirus Response Act (FFCRA) & CARES Act
 - There is a separate CARES Finance Playbook on the IDOC COVID-19 Resource Page to reference for finance specific questions
- Please also reference these DOL FAQs on this act for more information - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Helpful links

- IDOC COVID-19 Resources - <https://optometry.idoc.net/covid19>
- State Labor Office - <https://www.dol.gov/agencies/whd/state/contacts#MI>
- The full details Extended Paid Sick Leave - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- WARN Act - <https://www.doleta.gov/layoff/warn/>
- US DOL Wage & Hour Division - <https://www.dol.gov/agencies/whd/flsa>
- Small Business Administration - <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>
- Family First Coronavirus Response Act Q&A - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Sources

- SHRM - <https://www.shrm.org/>
- Ogletree Deakins - <https://ogletree.com/>
- Center for Disease Control and Prevention - <https://www.cdc.gov/>
- Center for Disease Control and Prevention – Slowing the Spread - <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>
- Employment law Handbook - <https://www.employmentlawhandbook.com/state-employment-and-labor-laws/>
- The National Law Review - <https://www.natlawreview.com/>
- Jackson Lewis - <https://www.jacksonlewis.com/>
- US Department of Labor - <https://www.dol.gov/agencies/whd/pandemic>