Human Resources FAQs Regarding the COVID-19 Pandemic
from the Vermont League of Cities and Towns

*Note: Recently revised text is underlined and indicated by a black line in the left margin.*

For employer-specific COVID-19 information and resources, see the U.S. Department of Labor (DOL) website: [https://www.dol.gov/coronavirus](https://www.dol.gov/coronavirus) and [https://www.dol.gov/agencies/whd/pandemic](https://www.dol.gov/agencies/whd/pandemic).

Q. May we send employees home if they come to work sick?
To protect the safety and health of other employees, employers may send employees home if they exhibit signs of a contagious illness. You must not attempt to diagnose an illness, but you may suggest that the person seek medical care.

Employers should encourage employees to stay home when sick and take other precautions as advised by the Vermont Health Department and Centers for Disease Control. Additionally, for guidance specific to workplaces, see OSHA’s Guidance on Preparing Workplaces for COVID-19 and the CDC’s Resources for Business and Employers web page.

Q. If we decide to temporarily close some parts of our operations, do we have to pay employees who are not working?
Under the Fair Labor Standards Act (FLSA), employers do not have to pay covered (non-exempt) employees when they perform no work. Exempt employees (i.e. those not covered by the FLSA), with a few exceptions, generally must be paid their full weekly salary if they perform at least some work during a work week.

However, you should carefully review relevant personnel policies, collective bargaining agreements, and other contracts, and the financial, morale, and wellness effects on those employees who would lose pay if they don’t work.

Elected officials are not covered by the FLSA.

Please also review the next question about paid leave, including federal emergency paid sick leave.

Here are FLSA Q&As from the U.S. Department of Labor regarding COVID-19: [https://www.dol.gov/agencies/whd/flsa/pandemic](https://www.dol.gov/agencies/whd/flsa/pandemic)

Q. With Vermont schools and adult daycares closing, and employees and their family members potentially being exposed to COVID-19, how do paid leave laws apply?
State and federal leave laws intersect and overlap in complex and potentially confusing ways under normal circumstances. With COVID-19, there likely will be an additional, overarching federal law to follow, as noted in #2 below. When both federal and state laws apply, and certain provisions overlap and conflict, employers must follow the provision that is most generous to the employee.
1. Vermont’s Earned Paid Sick Leave Law (Act 69)

Check your personnel policy to be sure it complies with this Vermont law, which covers an employee’s use of leave for their own or a family member’s illness or to care for a family member whose school or care facility is closed. Make sure all eligible employees, including certain part-time or seasonal employees, accrue at least the minimum amount of earned paid leave, as required. The minimum amount earned paid leave is one hour for every 52 hours worked. Eligible employees are those who:

- are age 18 or older; and
- work more than 20 weeks during the year; and
- work an average of 18 or more hours per week, during the year.

See VLCT’s Act 69 FAQs for more information on this Vermont law: vlct.org/resource/paid-sick-leave-faqs.

2. New Federal Law -- Families First Coronavirus Response Act

On March 18, 2020 the U.S. Senate passed, and the President signed into law, the “Families First Coronavirus Response Act” (the Act). The Act includes emergency paid sick leave and expanded Family and Medical Leave Act (FMLA) leave mandates for employers with fewer than 500 employees. Private employer expenses related to this leave will be refundable via payroll tax credits—; however, it appears at this point that this law creates an unfunded mandate for municipalities. This new law takes effect on April 21, 2020 and will sunset on December 31, 2020.

For details about the employer mandate to provide paid sick leave and expanded family leave, as well as payroll tax refunds, please see the U.S. Department of Labor (USDOL)’s

- Wage and Hour COVID-19 webpage: dol.gov/agencies/whd/pandemic, and click on “Families First Coronavirus Response Act: Employer Paid Leave Requirements”.

The USDOL workplace poster required by this law is also available at dol.gov/agencies/whd/pandemic: under the Posters heading, click on “Federal Employee Rights …”.

Q. Since older individuals and those with an underlying health condition are at higher risk with COVID-19, may we suggest or require that these employees stay home?

You must not single out employees who belong to legally protected categories and treat them differently than other employees. There are numerous state and federal non-discrimination laws, such as the Americans with Disabilities Act (ADA) or Age Discrimination in Employment Act (ADEA,) that prohibit disparate treatment. Protected categories include disability, age, national origin, place of birth, ancestry, pregnancy, HIV status, health insurance status, and more. Here is information from the Equal Employment Opportunity Commission (EEOC) on pandemic preparedness, including how to survey employees without specifically identifying those within a protected classification, such as having a disability or being older: eeoc.gov/facts/pandemic_flu.html.

Q. Should we encourage, or even require, teleworking to help prevent the spread of infection?
Telework may work well for certain jobs. If you decide to implement temporary telework arrangements in response to COVID-19, clarify expectations and understanding in areas such as:

- IT security procedures and computer requirements;
- Workspace and additional equipment requirements;
- Safety and ergonomic protocol;
- Communication methods and timing of check-ins;
- Other expectations of employee and supervisor;
- Work hours and overtime expectations;
- Timekeeping procedures;
- Estimated timing and duration of the arrangement.

Q. If an employee is exposed to the COVID-19 virus through their work, what will VLCT-PACIF workers’ compensation insurance cover?

Whether, when, and how much workers’ compensation insurance covers, in a given situation, is dependent on the specific facts of the case. It is important to report all claims to VLCT-PACIF as quickly as possible. VLCT-PACIF claim representatives are happy to work with you and answer your questions about specific claims.

Q: If I am required to lay off an employee temporarily due to a suspended program or non-essential job function, can I keep them on our group’s health insurance coverage?

Yes. Both Blue Cross and Blue Shield of Vermont (BCBSVT) and MVP Health Care (MVP) have confirmed that an employer may continue to carry coverage for an employee who is temporarily suspended or laid off due to the COVID-19 pandemic, so long as the employer continues to pay the premiums for the employee.

However, if an employee is terminated entirely and their coverage is no longer paid for by the employer, this is a COBRA qualifying event. The employer should extend a notice of COBRA eligibility to the former employee, who can choose to continue coverage under the federal COBRA or state equivalent mandates or enroll directly in the Exchange under Vermont Health Connect. For more information, please refer to the US Department of Labor COBRA web site at www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra or you can contact BCBSVT (800-255-4550) or MVP (844-865-0250) directly for assistance.