

Employment

(Corrections in red.)

3/19/2020

What is the Families First Coronavirus Response Act?

[The Families First Coronavirus Response Act](#) (the "Act") is a federal law that was passed by Congress on March 18, 2020, in response to COVID-19. The Act creates, among other things, Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. The Act provides payroll tax credits to employers to cover the wages paid to employees under the Act, but state and local governments are not eligible to claim these credits. The law goes into effect on ~~April 2, 2020~~ **April 1, 2020**, and the Department of Labor is required to issue guidelines within 15 days to assist employers in calculating the amount of emergency paid sick time.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

The Emergency Family and Medical Leave Expansion Act temporarily amends and expands the Family and Medical Leave Act until December 31, 2020, to provide paid job-protected leave to both a full-time and a part-time employee who has been employed for at least 30 calendar days ~~by an employer, including a city, with fewer than 500 employees.~~ **The law applies to any city regardless of size.**

What is an employee entitled to?

An employee is eligible for paid leave if the employee is unable to work or telework due to a need for leave to care for the employee's child if the child's school or child care provider has been closed, or the child care provider is unavailable, due to COVID-19.

Eligible full-time employees and part-time employees are entitled to 12 weeks of job-protected leave. The first 10 days of the 12-weeks job-protected leave shall be unpaid, but an employee may elect to substitute any accrued paid time off (including vacation, personal, medical or sick leave) offered to the employee by the city for the unpaid leave. However, the employee would still be eligible for emergency paid sick leave pursuant to the Emergency Paid Sick Leave Act at two-thirds the employee's regular rate of pay that would cover the first 10 days (see explanation under Emergency Paid Sick Leave Act, below). Subsequently, a city shall provide paid leave in an amount that is not less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work, up to \$200 per day and \$10,000 in the aggregate. For part-time employees whose schedules vary from week to week such that a city is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, the city shall use a number equal to the average number of hours that the employee was scheduled per day over the six-month period before the employee took leave, including any leave hours that the employee may have previously taken. If the employee did not work over such time-period, the city shall use the

average number of hours of day the city, at the time of hire, reasonably expected to normally schedule the employee.

Upon expiration of the 12-week leave period, an eligible employee who took leave shall, on return from such leave, be entitled to be: (1) restored to the position the employee held when the leave commenced; or (2) restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. These requirements do not apply to a city that employs less than 25 employees if: (1) the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in the operating conditions of the city that affect employment and are caused by COVID-19; (2) the city took reasonable efforts to restore the employee to an equivalent position with equivalent employment benefits; and (3) if the reasonable efforts fail, the city makes reasonable efforts to contact the employee within a one-year period (from date on which qualifying need for leave ended or the date the 12-weeks leave ends) if an equivalent position becomes available.

What notice is an eligible employee required to provide?

When the need for leave is foreseeable, an eligible employee shall provide the employer notice of leave as is practicable.

Are employees who are emergency providers exempt?

A city that employs an emergency responder may elect to not provide such employee with paid family and medical leave.

EMERGENCY PAID SICK LEAVE ACT

Who is eligible for emergency paid sick time?

A city that employs at least one employee is required to provide emergency paid sick leave to each full-time or part-time employee, regardless of how long the employee has been employed by the city, if the employee is unable to work or telework because of one or more of the following reasons, if related to COVID-19:

- The employee is subject to a federal, state, or local quarantine or isolation order;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order or has been advised to self-quarantine;
- The employee is caring for a child of the employee if the child's school or childcare provider has been closed or the childcare provider is unavailable due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor.

What is an employee entitled to receive?

Eligible full-time employees are entitled to 80 hours of emergency paid sick time at the employee's regular rate of pay (up to \$511 per day and \$5,110 in total) to self-quarantine, seek a diagnosis or preventative care, or receive treatment for COVID-19. Eligible part-time employees are entitled to emergency paid sick leave for the same reasons at their regularly rate of pay (up to \$511 per day or \$5,110 in total) for the number of hours equal to the number of hours that such employee works, on average, over a two-week period.

Additionally, full-time employees are entitled to 80 hours of emergency paid sick time at two-thirds the employee's regular rate of pay (up to \$200 per day and \$2,000 in total) to: (1) care for an individual who is subject to a quarantine or isolation order; (2) to care for a child whose school is closed or child care provider is closed or unavailable, or (3) if the person is experience any substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Labor.

Similarly, a part-time employee is entitled to emergency paid sick time for the same reasons at two-thirds of the employee's regular rate of pay (up to \$200 per day and \$2,000 in total) for the number of hours equal to the number of hours that such employee works, on average, over a two-week period. For part-time employees whose schedules vary from week to week, such that a city is unable to determine with certainty the number of hours the employee would have worked if the employee has not taken leave, the city shall use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period before the employee took leave, including any leave hours that the employee may have previously taken. If the employee did not work over such period, the city shall use the average number of hours of day the city reasonably expected would normally be scheduled for the employee at the time of hire.

A city may not require an employee to use other paid leave provided to the employee by the city before the employee can use emergency paid sick time. Additionally, a city cannot require, as a condition of providing emergency paid sick time, that the employee needing leave search for or find a replacement employee to cover the hours during which the employee is using paid sick time. Also, emergency paid sick leave cannot be carried over from one year to the next.

What notice is required?

After the first workday, or portion thereof, an employee receives emergency paid sick time, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

Are emergency responders exempt?

The Department of Labor has the authority to issue regulations to exclude certain emergency responders from the requirement of the law, including by allowing employers of such employees to opt out.

What notice is required?

An employer is required to post and keep posted in conspicuous places on the premises of the employer where notices to employees are customarily posted. A copy of the notice to be posted should be available from the Department of Labor by March 25, 2020.

What other legal obligations apply?

An employer is prohibited from discriminating and/or retaliating against an employee who takes emergency paid sick leave, files a complaint or testifies in any proceeding to enforcing the requirements of this law. An employer who violates the provisions of the emergency paid sick leave shall be considered to have failed to pay minimum wage in violation of the Fair Labor Standards Act, and is subject to penalties. Additionally, the provisions of the paid sick leave act do not diminish the rights or benefits that an employee is entitled to under any other state or local law, collective bargaining agreement or existing employer policy.

3/25/2020

Has the Department of Labor issued guidance on the Families First Coronavirus Response Act (FFCRA)?

Yes. We [reported](#) last week that, in response to the COVID-19 pandemic, Congress adopted new legislation that expands the Family and Medical Leave Act and provides for paid emergency sick leave. Yesterday, the Department issued an initial set of [questions and answers](#) (Q&As) interpreting this legislation. Of note is that the Q&A sets the effective date of the FFCRA provisions as April 1, 2020. Although the Q&A provides additional information, many questions remain unanswered. As provided under the legislation, further guidance and implementing regulations are expected in the near future. We will continue to monitor and report back on this issue.

The Department has also [indicated](#) that they do not intend to enforce the requirements of the Act through April 17, 2020, to enable covered employers to come into compliance with the new legislation.

Has the Department of Labor released a copy of the notice that an employer is required to post?

Yes. This morning, the Department released a copy of the [notice](#) that an employer is required to post. Each city must post the notice in a conspicuous place on its premises, and may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website. The Department has also issued a set of [FAQs](#) related to the notice.

How can a city participate in providing input to the Department of Labor in regard to the implementation of FFCRA?

The Department is providing an opportunity for employers, workers, and their advocacy groups to participate in a [national online dialogue](#) through Sunday, March 29, 2020. According to the

Department, “[t]his national online dialogue provides an opportunity for employers and workers to play a key role in shaping the development of the Department of Labor's compliance assistance materials and outreach strategies related to the implementation of FFCRA. The Wage and Hour Division (WHD) will use the ideas and comments gathered from this dialogue to develop compliance assistance guidance, resources and tools, as well as outreach approaches that assist employers and workers in understanding their responsibilities and rights under the paid leave provisions of the FFCRA.”

Interested cities must [register](#) to participate.

3/27/2020

Has the Department of Labor issued further guidance on the Families First Coronavirus Response Act?

Last evening (Thursday, March 26), the Department of Labor issued further [guidance](#) on the FFCRA (see questions 15-37 within the guidance). The DOL’s questions are printed here verbatim. Go to the guidance document for the answers.

Documentation of Leave:

- What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?
- What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?
- May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?
- May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?
- May I take my expanded family and medical leave intermittently while my child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

Work Closures, Furloughs, and Reduced Work Hours:

- If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?
- If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?
- If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?
- If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

-If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

-If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?

-May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

Health Coverage:

-If I elect to take paid sick leave or expanded family and medical leave, must my employer continue my health coverage? If I remain on leave beyond the maximum period of expanded family and medical leave, do I have a right to keep my health coverage?

Use of Pre-existing Employer-Provided Paid Leave:

-As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

-If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

-If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

-If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

3/30/2020

Has the Department of Labor issued further guidance on the Families First Coronavirus Response Act?

Yes. Yesterday (Sunday, March 29), the Department of Labor issued its third round of [guidance](#) on the Families First Coronavirus Response Act (see questions 38-59 within the [guidance](#)). Go to the guidance document for the questions and answers.

4/1/2020

Has the Department of Labor issued final regulations related to the Families First Coronavirus Response Act (FFCRA)?

Yes. This afternoon, the Department issued a 124-page [final rule](#) (pending publication) implementing the emergency paid sick leave and expanded family and medical leave provisions of the FFCRA. League staff will review and provide more information in a future update.

4/2/2020

Are certain employees exempt from paid emergency sick leave and emergency family and medical leave under the Families First Coronavirus Response Act?

The Families First Coronavirus Response Act allows, but does not require, an employer to exclude an employee who is a “healthcare provider” or “emergency responder” from taking emergency paid sick leave and/or emergency family and medical leave. 29 C.F.R. §826.30(c).

The definition of an “emergency responder” is expansive and includes “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”

Id. § 826.30(c)(2).

Similarly, a health care provider includes, among others, anyone employed at any hospital, health care center, clinic, a local health department or agency, or a facility that performs laboratory or medical testing. *Id.* § 826.30(c)(1). Additionally, the governor and the mayor, as the highest officials of their territories, may, as applicable, determine other categories of emergency responders and health care providers, as necessary.

As mentioned above, a city is not required to exclude an otherwise eligible health care provider or emergency responder from taking emergency paid sick leave or emergency family and medical leave. The Department of Labor notes that “the authority for employers to exempt emergency responders is reflective of a balance struck by the FFCRA . . . [to] provide[] for paid sick leave and expanded family and medical leave so employees will not be forced to choose between their paychecks and the individual and public health measures necessary to combat COVID-19 . . . [and that] providing paid sick leave or expanded family and medical leave does not come at the expense of fully staffing the necessary functions of society, including the functions of emergency responders.”

A city that chooses to exclude otherwise eligible healthcare providers and/or emergency responders from taking leave under the FFCRA, must act affirmatively to do so. A city’s exercise of this option does not impact the employee’s earned or accrued sick, personal, vacation or other employer-provided leave under the city’s established policies. Additionally, a city may not prevent an employee who is a health care provider or emergency responder from taking accrued leave in accordance with established policies.

4/3/2020

What notice and documentation must an employee provide in support of leave under the Families First Coronavirus Response Act?

An employee is required to provide notice of leave only after the first workday (or portion thereof) for which the employee takes emergency paid sick leave or emergency family and medical leave. 29 C.F.R. §826.90(b). A city may adopt reasonable notice procedures for an employee to follow, after the first workday (or portion thereof), including requiring oral notice and sufficient information for an employer to determine whether the requested leave is covered; requiring the employee comply with the city's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances; and allowing an employee's spouse, adult family member or other responsible party to provide notice to the city if the employee is unavailable. Id. §§826.90(a), (b), (c). A city may encourage, but not require, that an employee provide notice of leave in advance or as soon as practicable (except that an employee who is taking leave to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 reasons, must provide notice of such leave as soon as practicable if the need for said leave was foreseeable). Id. §826.90(a). If an employee fails to provide the proper notice, the city should give the employee notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave. Id.

An employee is required to provide the city documentation in support of emergency paid sick leave or emergency family and medical leave. Such documentation must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement that the employee is unable to work or telework because of the COVID-19 qualifying reason. Id. §826.100(a). An employee is required to provide additional documentation depending on the type of COVID-19 qualifying reason for leave. An employee requesting emergency paid sick leave because the employee is subject to a government quarantine or isolation order must provide the name of the government entity that issued the quarantine or isolation order to which the employee is subject. Id. §826.100(b). An employee requesting emergency paid sick leave to self-quarantine upon the advise of a health care provider must provide the name of the health care provider who advised him or her to self-quarantine for COVID-19 related reasons. Id. §826.100(c). An employee requesting paid sick leave to care for an individual must provide either the name of: (1) the government entity that issued the quarantine or isolation order to which the individual is subject; or (2) the name of the health care provider who advised the individual to self-quarantine, as applicable. Id. §826.100(d). An employee requesting to take emergency paid sick leave or emergency family and medical leave to care for his or her child must provide the following information: (1) the name of the child being cared for; (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave. Id. §826.100(e).

An employer is required to retain all documentation provided pursuant to a request for leave for four years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request for paid sick leave or expanded family and medical

leave, the employer is required to document and retain such information for four years. Id. §826.140.

For leave taken under the FMLA for an employee's own serious health condition related to COVID-19, or to care for the employee's spouse, son, daughter, or parent with a serious health condition related to COVID-19, the normal FMLA certification requirements still apply. See 29 CFR 825.306.

May an employee take emergency paid sick leave and/or emergency family and medical leave intermittently?

A city may, but is not required to, allow an employee who teleworks to take emergency paid sick leave and/or emergency family and medical leave intermittently (i.e. in separate periods of time, rather than one continuous period). Id. §826.50(c). Similarly, an employee who reports to a work-site may, with the city's permission, take such leave intermittently only if the leave is to care for the employee's child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons. Id. §826.50(b)(1). The agreement to allow an employee to take leave intermittently need not be in writing, but there must be a clear and mutual understanding that the employee may take the leave intermittently. Id. §826.50(a). Additionally, both the city and the employee must agree on the increments in time in which leave may be taken.

In contrast, an employee who reports to a work-site is prohibited from taking emergency paid sick leave intermittently, notwithstanding any agreement between the city and the employee, if the leave is taken because the employee: (1) is subject to a federal, state or local quarantine or isolation order related to COVID-19; (2) has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; (3) is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; (4) is caring for an individual who is subject to an order described in (1), above, or has been advised as described in (2), above; or (4) is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services. Id. §826.50(b)(2). Once such employee begins taking emergency paid sick leave for one or more of the reasons set forth above, they must use the leave continuously until either the employee uses the full amount of leave or no longer has a qualifying reason for taking the leave. Id. The Department of Labor has determined that in these instances, taking intermittent leave poses an unacceptably high-risk that the employee might spread COVID-19 to other employees when reporting to the employee's worksite.

4/6/2020

Has the Department of Labor issued additional guidance on the implementation of the Families First Coronavirus Response Act?

Following its publication of a final rule implementing the FFCRA, the Department issued, on Friday April 3, additional [guidance](#) (questions 60-79) that provides - among others - answers to the following questions: (1) what is a "place of care" and a "child care provider; (2) can an employee take paid emergency sick leave to care for someone else's child; (3) how to calculate

the pay for seasonal employees with irregular schedules; and (4) how the FFCRA interplays with workers' compensation and short-term disability.

Additionally, the Department has prepared a webinar that can be accessed [here](#) (also see [webinar slides](#)) which provides a general overview of the FFCRA.

Has the Equal Employment Opportunity Commission issued guidance on the interaction between the Americans with Disabilities Act and COVID-19?

Yes. The EEOC recently updated its [guidance](#) on pandemic preparedness in the workplace and the ADA to address its application to COVID-19. The guidance addresses, among other things, the following questions:

- How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?
- When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?
- Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?
- When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?
- If an employer is hiring, may it screen applicants for symptoms of COVID-19?
- May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?
- May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?
- May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

4/9/2020

Are city employees entitled to hazard pay?

Hazard pay for city employees is not mandated by state or federal law. State law requires state agencies to pay its eligible state employees hazard duty pay. Tex. Gov't Code §659.302. But no similar law requires a city to provide hazard pay to its employees. A city can choose to do so by enacting a policy allowing for such pay. Additionally, city personnel should review their emergency management plan to determine if and under what conditions hazard pay is authorized.

What is a furlough?

The term "furlough" does not have an exact legal definition, but it is generally understood to mean mandatory unpaid time off from work for a certain time period that is limited in duration. A reduction in pay alone, without any corresponding unpaid time off, is not typically considered to be a furlough. Employers typically use furloughs in times of significant economic downturns that are temporary in nature as an alternative to terminating or laying off employees or

implementing across-the-board pay cuts. A furlough can be accomplished in a number of ways, including by reducing – for a certain time period – the number of hours or days an employee works with an equivalent reduction in pay or requiring an employee to take a certain amount of unpaid time off. A furlough may include all employees or may exclude some employees, such as employees who provide or support essential or critical services. Additionally, unlike a termination or a layoff in which there is a separation of the employment relationship, a furloughed employee is still considered to be an employee.

A city that is considering a furlough for all or some of its employees should work with local counsel to develop a policy that addresses, among other things, which employees will be subject to a furlough, who approves furloughs, how long a furlough will be in place, and what benefits, if any, an employee will continue to accrue during a furlough. A city should also review any contractual requirements, including any meet and confer agreements and collective bargaining agreements, before taking action to furlough employees who are subject to those agreements.

May a city furlough exempt and non-exempt employees?

Absent any contractual obligations, a city may furlough both exempt and non-exempt employees. Because an employer is only required to pay for the hours a non-exempt employee actually works, a city may reduce the number of hours a non-exempt employee is scheduled to work provided that the employee is paid at least the minimum wage (\$7.25/hour) for all hours worked and any applicable overtime pay.

Generally, under the Fair Labor Standards Act (FLSA), certain exempt employees (executive, professional, administrative, and certain computer employees) must be paid a “predetermined salary” (a minimum of \$684/week) for any workweek in which the employee works without regard to the quantity or quality of work. Failure to do so generally results in the exempt employee losing his or her exempt status. However, a special rule applicable only to public sector employers, including a city, allows for an exempt employee to retain his or her exempt status except in the workweek when furlough is taken and the employee’s salary is reduced accordingly. See 29 C.F.R. §541.710. This provision allows an exempt employee to take furlough in less than full workweeks. For example, an exempt employee can take every Tuesday (8 hours) as a furlough day, and the city is only required to compensate the employee for 32 hours worked during that workweek. During such workweek, the employee is treated as a non-exempt employee, is paid on an hourly basis, and is entitled to overtime pay if the employee works more than 40 hours in that workweek. Cities should ensure that in a workweek when furlough is taken, the combination of worked hours and furlough hours do not exceed 40 hours, otherwise the employee will be entitled to overtime. As such, most furlough policies prohibit an employee from performing any work on the day(s) when the employee is on furlough, including tasks such as checking or responding to emails or voicemails, answering phone calls, or attending meetings.

Cities that are contemplating a furlough may want to review the [Department of Labor Fact Sheet #70](#), which provides additional information on wages issues that may come up during a furlough.

Can an employee use his or her paid accrued time off to supplement the employee's pay during a furlough?

Yes, but only if a local policy allows for it. Some policies require or allow an employee to use his or her accrued paid time in lieu of a furlough. Others prohibit an employee from using any accrued time off to supplement pay during a furlough. Cities should carefully consider these options when drafting a furlough policy taking into account the city's budget.

Is an employee's health insurance coverage impacted during a furlough?

Whether an employee (and any dependents of the employee) who is on furlough will be eligible for continued group health insurance benefits with the city will depend on whether the health benefit plan documents allow benefits to continue when an employee fails to work the required number of hours specified in the plan documents. Some health benefit plans require that an employee work a specific number of hours (for example, 20 hours) in order to be eligible for health care benefits. A city considering a furlough should review the plan documents and any stop-loss policy to determine how coverage is affected during a furlough. If it is determined that continued coverage is unavailable for furloughed employees, a city may reach out to its health insurance carrier to determine if a waiver of any work hour threshold requirements is available for employees whose work hours are reduced as a result of a furlough. Cities who are members of TML Health should note that TML Health has temporarily [waived](#) its actively-at-work eligibility requirements until May 31, 2020, for employees whose hours are temporarily reduced due to COVID-19, provided certain conditions are met.

The loss of health care benefits that results from a temporary reduction in the number of hours worked due to a mandatory furlough is a qualifying event that triggers the Consolidated Omnibus Budget Reconciliation Act (COBRA). A city that employs 20 or more employees and that offers health plan coverage must follow COBRA requirements, including providing COBRA election notices to employees (and their eligible dependents) who have a qualifying event. The employee may elect to continue health coverage at the employee's own expense, but a city also has the option of assisting its employees by paying a portion of the COBRA premiums. COBRA requirements apply even if the employee is furloughed for a short-time period such as a month.

Keep in mind that an employee who takes leave under the Family and Medical Leave Act (FMLA) or who takes emergency family and medical leave and emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA) is entitled to continued group health coverage under the city's group health plan on the same terms as if the employee did not take leave.

Does an employee continue to accrue leave benefits (e.g. sick, vacation, personal time off) during a furlough?

There is no legal requirement for such employer-provided benefits to accrue during a furlough, unless otherwise provided in a local policy. For purposes of the FMLA and emergency family and medical leave under the FFCRA, any benefits that would be maintained while the employee is on other forms of leave (including paid leave if the employee substitutes accrued paid leave

during FMLA leave) must be maintained while the employee is on FMLA leave or emergency family and medical leave.

May an employee scheduled to take Family and Medical Leave Act (FMLA) or Families First Coronavirus Relief Act (FFCRA) leave be furloughed?

Yes. However, no days associated with the furlough should count against the FMLA or FFCRA leave entitlement. Also, the request for FMLA leave cannot be used as a selection reason to decide who gets furloughed.

Is an employee who is placed on furlough able to collect unemployment insurance benefits?

An employee whose hours are reduced due to a mandatory furlough may be eligible for partial unemployment benefits. Such employees should [contact](#) the Texas Workforce Commission to determine eligibility. Additionally, the Commission is encouraging employers, as an alternative to layoffs, to participate in the voluntary [Shared Work](#) program, which allows employers to supplement their employees' wages that are lost because of a reduction in work hours with partial unemployment benefits if certain conditions are met.

4/10/2020

Has the EEOC provided additional guidance on Equal Employment Opportunity (EEO) laws?

Yes. On April 6, we reported that the EEOC had provided guidance that focused on the application of the Americans with Disabilities Act (ADA) during a pandemic. Yesterday, April 9, the EEOC [published](#) Q&As addressing the application of other equal employment opportunity laws and updating its guidance on the ADA. The Q&As specifically address disability-related inquiries and medical exams; confidentiality of medical information; hiring and onboarding; reasonable accommodations; and harassment on the basis of national origin, race, and other protected classes.

Additionally, the EEOC has created a [webpage](#) that provides COVID-19 resources in the employment context, including a pre-recorded webinar addressing frequently asked questions on EEO laws and COVID-19.

4/20/2020

Has the Department of Labor provided guidance on the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

Yes. The Department issued a [fact sheet](#) reminding employers of the federal right to employment and reemployment for members of the National Guard or Reserves who are called to active duty in response to the COVID-19 pandemic. Specifically, the Department provides that an employer may not delay a service member's reemployment out of concern that the service member's service in a COVID-19 affected area may have affected him or her to COVID-

19. If the employee satisfies the prerequisites to reemployment, the employee should be promptly reemployed in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. Promptness generally depends on the length of time an individual was away, ranging from the next day after returning from duty, if the deployment was relatively short, to up to fourteen days in the case of a multi-year deployment. When reemploying a service member who might have been exposed to COVID-19, an employer must make reasonable efforts in order to qualify the returning employee for his or her proper reemployment position. This can include temporarily providing paid leave, remote work, or another position during a period of quarantine for an exposed reemployed service member or COVID-19 infected reemployed service member, before reemploying the individual into his or her proper reemployment position.

While service in the Texas state military forces is not considered “service in the uniformed services” under USERRA, state law provides that individuals serving in the state military forces have the same protections in employment, reemployment, and retention in employment as provided by USERRA. Tex. Gov’t Code §431.202(d). This provision is limited to cities with five or more employees.

Does state law provide for paid time off for members of the Texas state military?

Yes. An employee of a city who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence of up to 15 working days in a fiscal year for authorized training or duty. Tex. Gov’t Code §437.202(a). These individuals must be paid and cannot be subject to lost time, loss of an efficiency rating, or a loss of vacation, personal, or sick leave. Id.

Has the EEOC provided further guidance on the Americans with Disabilities Act as it relates to COVID-19?

Yes. On April 17, the EEOC provided additional [guidance](#) specifically addressing requests for reasonable accommodations and guidance on ADA compliance when employees return to work during the pandemic. With respect to reasonable accommodations, the guidance provides, among other things that:

-An employer may ask employees with disabilities to request accommodations that they believe they may need in the future when the workplace re-opens.

-If there is some urgency to providing an accommodation, or the employer has limited time available to discuss the request during the pandemic, an employer may provide a temporary accommodation. In addition, when government restrictions change, or are partially or fully lifted, the need for accommodations may also change, including short-term accommodations.

Employers may wish to adapt the interactive process – and devise end dates for the accommodation – to suit changing circumstances based on public health directives. Whatever the reason for shortening or adapting the interactive process, an employer may also choose to place an end date on the accommodation (for example, either a specific date such as May 30, or when the employee returns to the workplace part- or full-time due to changes in government

restrictions limiting the number of people who may congregate). Employers may also opt to provide a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation. Choosing one of these alternatives may be particularly helpful where the requested accommodation would provide protection that an employee may need because of a pre-existing disability that puts the employee at greater risk during this pandemic. This could also apply to employees who have disabilities, such as a mental illness or disorder, exacerbated by the pandemic. Employees may request an extension that an employer must consider, particularly if current government restrictions are extended or new ones adopted.

-An employer does not have to provide a particular reasonable accommodation if it poses undue hardship (i.e. "significant difficulty or expense"). However, in some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now. An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the facts of the particular job and workplace. For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.

-Additionally, prior to the COVID-19 pandemic, most accommodations did not pose a significant expense when considered against an employer's overall budget and resources (always considering the budget/resources of the entire entity and not just its components). But, the sudden loss of some or all of an employer's income stream because of this pandemic is a relevant consideration. Also relevant is the amount of discretionary funds available at this time - when considering other expenses - and whether there is an expected date that current restrictions on an employer's operations will be lifted (or new restrictions will be added or substituted). These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic. For example, even under current circumstances, there may be many no-cost or very low-cost accommodations.

With respect to returning to work, an employer may:

-Make disability-related inquiries and conduct medical exams if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety. Direct threat is to be determined based on the best available objective medical evidence such as guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time. For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) of all those entering the workplace. Similarly, the CDC recently posted [information](#) on return by certain types of critical workers. Employers should make sure

not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

-An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example regular hand washing and social distancing protocols). However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if doing so is feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

5/1/2020

Has the governor announced new guidance for unemployment claimants?

Yes, the governor issues the following press release yesterday (April 30):

“Governor Greg Abbott today announced that the Texas Workforce Commission (TWC) has issued new guidance to unemployment claimants concerning their eligibility for unemployment benefits should they choose not to return to work at this time due to COVID-19. Under this guidance, Texans can continue to receive unemployment benefits throughout the COVID-19 response if they choose not to return to work for certain reasons as specified by TWC.

‘As the Lone Star State begins the process of safely and strategically opening the economy, our top priority is protecting the health and safety of all Texans—especially those who are most vulnerable to COVID-19,’ said Governor Abbott. ‘This flexibility in the unemployment benefit process will help ensure that Texans with certain health and safety concerns will not be penalized for choosing not to return to work.’

Each unemployment insurance claim is currently evaluated on an individual basis. However, because of the COVID-19 emergency, the following are reasons benefits would be granted if the individual refused suitable work.

Reason for refusal:

-At High Risk: People 65 years or older are at a higher risk for getting very sick from COVID-19.

-Household member at high risk: People 65 years or older are at a higher risk of getting very sick from COVID-19.

-Diagnosed with COVID: The individual has tested positive for COVID-19 by a source authorized by the State of Texas and is not recovered.

-Family member with COVID: Anybody in the household has tested positive for COVID-19 by a source authorized by the State of Texas and is not recovered and 14 days have not yet passed.

-Quarantined: Individual is currently in 14-day quarantine due to close contact exposure to COVID-19.

- Child care: Child's school or daycare closed and no alternatives are available.
- Any other situation will be subject to a case by case review by TWC based on individual circumstances."

7/20/2020

Figuring out what to do if an employee has been exposed to or tests positive for COVID-19 or becomes symptomatic is complicated. Can you break it down for us?

Of course. The following Q&As attempt to make it a little less complicated. But it is, in fact, complicated, so always consult with your city attorney prior to taking any personnel actions.

The CDC has issued [Interim Guidance for Businesses and Employers](#) (updated May 6, 2020) and [Interim Guidance for Critical Infrastructure Workers](#) (updated April 20, 2020) for implementing safety practices for workers who may have confirmed or suspected COVID-19. Recently (July 11), the CDC also issued a number of [FAQs](#) expounding on the above guidance. The CDC guidance are recommendations, and they may be adapted by state and local health departments to respond to rapidly changing local circumstances. We've included, below, excerpts of some FAQs that are applicable to cities as employers.

What should I do if an employee comes to work with COVID-19 symptoms?

Employees who have [symptoms](#) when they arrive at work or become sick during the day should immediately be separated from other employees, customers, and visitors and sent home. Employees who develop symptoms outside of work should notify their supervisor and stay home.

Sick employees should follow [CDC-recommended steps](#) to help prevent the spread of COVID-19. Employees should not return to work until they have met the criteria to [discontinue home isolation](#) and have consulted with a healthcare provider.

Employers should not require sick employees to provide a COVID-19 test result or healthcare provider's note to validate their illness, qualify for sick leave, or return to work. Healthcare provider offices and medical facilities may be extremely busy and unable to provide such documentation in a timely manner.

What should I do if an employee is suspected or confirmed to have COVID-19?

In most cases, you do not need to shut down your facility. But do close off any areas used for prolonged periods of time by the sick person. Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.

Follow the [CDC cleaning and disinfection recommendations](#):

- Clean dirty surfaces with soap and water before disinfecting them.

- To disinfect surfaces, use [products that meet EPA criteria for use against SARS-Cov-2](#), the virus that causes COVID-19, and are appropriate for the surface.
- Be sure to follow the instructions on the product labels to ensure safe and effective use of the product.
- You may need to wear additional personal protective equipment (PPE) depending on the setting and disinfectant product you are using.

In addition to cleaning and disinfecting, employers should determine which employees may have been exposed to the virus and need to take additional precautions:

- If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).
- Employees who test positive for COVID-19 (using a viral test, not an antibody test) should be excluded from work and [remain in home isolation](#) if they do not need to be hospitalized. Employers should provide education to employees on [what to do if they are sick](#).
- Employers may need to [work with local health department officials](#) to determine which employees may have had close contact with the employee with COVID-19 and who may need to take [additional precautions](#), including exclusion from work and remaining at home.
- Most workplaces should follow the [Public Health Recommendations for Community-Related Exposure](#) and instruct potentially exposed employees to stay home for 14 days, telework if possible, and self-monitor for [symptoms](#).
- Critical infrastructure workplaces should follow the guidance [Implementing Safety Practices for Critical Infrastructure Employees Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#).

Sick employees should follow [CDC recommended steps](#). Employees should not return to work until they have met the criteria to [discontinue home isolation](#) and have consulted with a healthcare provider. [Antibody test results](#) should not be used to make decisions about returning persons to the workplace.

If employees have been exposed but are not showing symptoms, should I allow them to work?

Employees may have been exposed if they are a “close contact” of someone who is infected, which is defined as being within about six feet of a person with COVID-19 for a [prolonged period of time](#):

- Potentially exposed employees who have symptoms of COVID-19 should self-isolate and follow [CDC recommended steps](#).
 - Potentially exposed employees who do not have symptoms should remain at home or in a comparable setting and practice social distancing for 14 days.
- All other employees should self-monitor for [symptoms](#) and wear cloth face coverings when in public. If they develop symptoms, they should notify their supervisor and stay home.

See [Public Health Recommendations for Community-Related Exposure](#) for more information.

To ensure continuity of operations of essential functions, CDC advises that [critical infrastructure employees](#) may be permitted to continue work following potential exposure to COVID-19, provided they remain symptom-free and additional precautions are taken to protect them and the community:

-[Critical infrastructure businesses](#) have an obligation to limit, to the extent possible, the reintegration into the worksite of in-person employees who have been exposed to COVID-19 but remain symptom-free in ways that best protect the health of the employee, their co-employees, and the general public. (Remaining at home for 14 days may still be the most preferred and viable option for exposed employees.)

-An analysis of core job tasks and workforce availability at worksites can allow the employer to match core activities to other equally skilled and available in-person employees who have not been exposed.

-A critical infrastructure employee who is symptom-free and returns to work should wear a [cloth face covering](#) at all times while in the workplace for 14 days after last exposure. Employers can issue cloth face coverings or can approve employees' supplied cloth face coverings in the event of shortages.

See [Implementing Safety Practices for Critical Infrastructure Employees Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#) and [COVID-19 Critical Infrastructure Sector Response Planning](#).

What should I do if I find out several days later, after an employee was present at work, that they were diagnosed with COVID-19?

You should take the following steps:

-If it has been less than 7 days since the sick employee used the facility, clean and disinfect all areas used by the sick employee following the [CDC cleaning and disinfection recommendations](#).

-If it has been 7 days or more since the sick employee used the facility, additional cleaning and disinfection is not necessary. Continue routinely cleaning and disinfecting all high-touch surfaces in the facility.

-Other employees may have been exposed to the virus if they were in "close contact" (within approximately 6 feet) of the sick employee for a prolonged period of time. If that's the case:

1. If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).
2. Those who have symptoms should self-isolate and follow [CDC recommended steps](#).
3. In most workplaces, those potentially exposed but with no symptoms should remain at home or in a comparable setting and practice social distancing for 14 days.
4. Critical infrastructure employees should follow [Implementing Safety Practices for Critical Infrastructure Employees Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#). A critical infrastructure employee who is symptom-free and returns to work should wear a [cloth face covering](#) at all times while in the workplace for 14 days after last

exposure. Employers can issue cloth face coverings or can approve employees' supplied cloth face coverings in the event of shortages.

Employees not considered exposed should self-monitor for [symptoms](#). If they develop symptoms, they should notify their supervisor and stay home.

When should an employee suspected or confirmed to have COVID-19 return to work?

Sick employees should follow [steps to prevent the spread of COVID-19](#). Employees should not return to work until they meet the criteria to [discontinue home isolation](#) and have consulted with a healthcare provider.

Employers should not require a sick employee to provide a negative COVID-19 test result or healthcare provider's note to return to work. Employees with COVID-19 who have stayed home can stop home isolation and return to work when they have met one of the sets of criteria found [here](#).

Should we be screening employees for COVID-19 symptoms (such as temperature checks)? What is the best way to do that?

Screening employees is an optional strategy that employers may use. Performing screening or health checks will not be completely effective because asymptomatic individuals or individuals with mild non-specific symptoms may not realize they are infected and may pass through screening. Screening and health checks are not a replacement for other protective measures such as social distancing.

Consider encouraging individuals planning to enter the workplace to self-screen prior to coming onsite and not to attempt to enter the workplace if any of the following are present:

- [Symptoms](#) of COVID-19.
- Fever equal to or higher than 100.4 degrees.
- Are under evaluation for COVID-19 (for example, waiting for the results of a viral test to confirm infection).
- Have been diagnosed with COVID-19 and not yet cleared to discontinue isolation.

Content of screening questions

If you decide to actively screen employees for symptoms rather than relying on self-screening, consider which symptoms to include in your assessment. Although there are [many different symptoms that may be associated with COVID-19](#), you may not want to treat every employee with a single non-specific symptom (e.g., a headache) as a suspect case of COVID-19 and send them home until they meet [criteria for discontinuation of isolation](#).

Consider focusing the screening questions on "new" or "unexpected" symptoms (e.g., a chronic cough would not be a positive screen). Consider including these symptoms:

- Fever or feeling feverish (chills, sweating)

- New cough
- Difficulty breathing
- Sore throat
- Muscle aches or body aches
- Vomiting or diarrhea
- New loss of taste or smell

Protection of screeners

There are several methods that employers can use to protect the employee conducting the screening. The most protective methods incorporate social distancing (maintaining a distance of six feet from others), or physical barriers to eliminate or minimize the screener's exposures due to close contact with a person who has symptoms during screening. Examples to consider that incorporate these types of controls for temperature screening include:

-Reliance on Social Distancing: Ask employees to take their own temperature either before coming to the workplace or upon arrival at the workplace. Upon their arrival, stand at least 6 feet away from the employee and: (1) ask the employee to confirm that their temperature is less than 100.4 degrees and confirm that they are not experiencing coughing or shortness of breath; (2) make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue; and (3) screening staff do not need to wear personal protective equipment (PPE) if they can maintain a distance of 6 feet.

-Reliance on Barrier/Partition Controls: During screening, the screener stands behind a physical barrier, such as a glass or plastic window or partition, that can protect the screener's face and mucous membranes from respiratory droplets that may be produced when the employee sneezes, coughs, or talks. Upon arrival, the screener should wash hands with soap and water for at least 20 seconds or, if soap and water are not available, use hand sanitizer with at least 60 percent alcohol. Then: (1) make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue; (2) conduct temperature and symptom screening using this protocol: (a) put on disposable gloves; (b) check the employee's temperature, reaching around the partition or through the window. Make sure the screener's face stays behind the barrier at all times during the screening; (c) if performing a temperature check on multiple individuals, make sure that you use a clean pair of gloves for each employee and that the thermometer has been thoroughly cleaned in between each check, except if disposable or non-contact thermometers are used and you did not have physical contact with an individual, you do not need to change gloves before the next check; and (d) remove and discard PPE (gloves), and wash hands with soap and water for at least 20 seconds - if soap and water are not available, use hand sanitizer with at least 60 percent alcohol.

If social distance or barrier controls cannot be implemented during screening, PPE can be used when the screener is within six feet of an employee during screening. However, reliance on PPE alone is a less effective control and more difficult to implement given PPE shortages and training requirements.

Reliance on Personal Protective Equipment (PPE)

Upon arrival, the screener should wash their hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60 percent alcohol, put on a face mask, eye protection (goggles or

disposable face shield that fully covers the front and sides of the face), and a single pair of disposable gloves. A gown could be considered if extensive contact with an employee is anticipated. Then: (1) make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue, and confirm that the employee is not experiencing coughing or shortness of breath; (2) take the employee's temperature; and (3) after each screening or after several screenings, where you did not have physical contact with an individual, remove and discard PPE and wash hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60 percent alcohol.

I don't provide paid sick leave to my employees. What should I do?

Employers that do not currently offer sick leave to some or all of their employees may want to draft non-punitive "emergency sick leave" policies. Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies.

[The Families First Coronavirus Response Act](#) (FFCRA) requires [all municipalities] to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Should I require employees to provide a doctor's note or positive COVID-19 test result?

Employers should not require sick employees to provide a COVID-19 test result or a healthcare provider's note to validate their illness, qualify for sick leave, or to return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.

Should I allow critical infrastructure employees to work if they have been exposed but are not showing symptoms of COVID-19?

Functioning [critical infrastructure](#) is imperative during the response to the COVID-19 emergency, for both public health and safety as well as community well-being. When continuous remote work is not possible, critical infrastructure businesses should use strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and implementing social distancing. These steps can preserve and protect the workforce and allow operations to continue.

To ensure continuity of operations of essential functions, CDC advises that [critical infrastructure employees](#) may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional safety practices are implemented to protect them and the community. However, reintegrating exposed, asymptomatic employees to onsite operations, while discussed in the critical infrastructure guidance, should not be misinterpreted as always being the first or most appropriate option to pursue in managing critical work tasks. Staying home may still be the most preferred and protective option for exposed employees. Critical infrastructure businesses have an obligation to limit, to the extent possible, the reintegration of in-person employees who have experienced an exposure to COVID-19 but

remain symptom-free in ways that best protect the health of the employee, their co-employees, and the general public.

Create a [critical infrastructure sector response plan](#). Cross-training employees to perform critical job functions so the workplace can operate even if key employees are absent and match critical job functions with other equally skilled and available employees who have not experienced an exposure to COVID-19.

Critical infrastructure employees who have been exposed but remain symptom-free and must return to in-person work should adhere to the following practices before and during their work shift:

- Pre-screen for symptoms.
- Monitor regularly for symptoms.
- Wear a [cloth face covering](#).
- Practice social distancing.
- Clean and disinfect workspaces.

Employees with symptoms should be sent home and should not return to the workplace until they have met the [criteria to discontinue home isolation](#).

See [Implementing Safety Practices for Critical Infrastructure Employees Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#)

8/10/2020

Can you explain how the President's latest executive orders affect cities?

We'll try our best. On Saturday (August 8), the president issued four executive orders, three of which are relevant to cities. (The order relating to student loans won't be discussed here. It brought back nightmares because it took your *Update* editor fifteen years to pay off his law school debt. Could've bought two Porsche 911 Turbos for the same price.)

One observation: Many media reports and statements from some politicians don't accurately reflect what's in the orders. That means city officials should carefully review with their attorneys the two that could affect them as employers and regulators: (1) the payroll tax order; and (2) the eviction order. We've also included an explanation of the unemployment order.

-Payroll Taxes: The president's [executive order](#) on "payroll taxes" halts federal collection of the taxes from employers from September 1, 2020, until December 31, 2020, for workers who earn less than \$4,000 every two weeks. "Payroll taxes" aren't defined in the order, but they would typically mean federal withholding related to Medicare and Social Security.

The order doesn't "forgive" the taxes. They will come due from the employer when the deferral period ends. Thus, an employer (including a city) may wish to continue withholding from employees the amounts due lest it later be on the hook for them.

-Evictions: The president's [executive order](#) on "evictions" doesn't stop evictions. Rather, it directs Health and Human Services Secretary Alex Azar and Centers for Disease Control and Prevention Director Robert Redfield to "consider" whether an eviction ban is needed.

The Texas Supreme Court had a ban that expired in May. The CARES Act contained a prohibition on evictions that expired in July. A handful of cities and counties have bans in place, but the Texas attorney general [opined](#) that those are preempted by state law. Those actions leave the eviction decision up to landlords acting through the court process, typically justice courts.

-Unemployment Benefits: The president said that he is extending the unemployment "bonus" at \$400 per week through the end of the year. That statement leaves out many details and raises many questions.

The \$600 was part of a "booster fund" in the federal CARES Act. With some exceptions, that money was being added "on top of" state unemployment benefits. The \$600 booster expired last Saturday because Congress hasn't been able to agree on the terms of the next stimulus bill.

The president's executive order attempts to allocate \$44 billion to unemployment benefits from the Department of Homeland Security's Disaster Relief Fund, which is typically used for hurricanes, tornadoes, and similar disasters. Most agree that only Congress can appropriate from that fund. Moreover, assuming no legal challenge ends the switch, the \$44 billion will run out long before the end of the year.

The president's proposed benefit is at two-thirds of the CARES Act amount (\$400 versus \$600), and a state actually has to cover \$100 of it to receive any federal money. The [order](#) suggests that states have plenty of money from the CARES Act's Coronavirus Relieve Fund to cover that amount. State leaders in Texas haven't yet decided whether they will participate.

8/13/2020

**How many Texans have been infected with the novel Coronavirus thus far?
What's going on with the President's Executive Order relating to unemployment benefits?**

According to [The Texas Tribune](#), "President Trump's senior aides acknowledged on Tuesday (August 11) that they are providing less financial assistance for the unemployed than the president initially advertised amid mounting blowback from state officials of both parties."

The President originally explained the order as providing a benefit of \$400 per week, with 75 percent coming from the federal government and a 25 percent mandatory state match. The \$400 would replace the \$600 Congress initially allocated through legislation that expired last week.

"We modified slightly the mechanics of the deal," said White House National Economic Council Director Larry Kudlow.

The "slight modification to the mechanics" of the original plan guarantees only an extra \$300 per week for unemployed Americans. States will not be required to add anything to their existing

state benefit programs to qualify for the federal benefit. Even though the plan is changing, any additional benefit will be good news for the over three million unemployed Texans. Unfortunately, according to the *The Texas Tribune*, federal funds to pay even the reduced benefit may run out in just a few weeks.

8/14/2020

What's the latest on the implementation of the president's unemployment benefits plan?

While cities have no formal role in the administration of unemployment benefits, we continue to receive questions about the process. Interested city officials should know that yesterday (August 13), the Federal Emergency Management Agency (FEMA) released this [fact sheet](#) detailing how states can access the grant funding to supplement unemployment payments.

8/24/2020

What's the latest with regard to the President's executive order extending the federal unemployment benefit subsidy?

According to *The Texas Tribune*, "Unemployed Texans could begin receiving \$300 in extra weekly jobless payments as soon as next week." That's according to a Texas Workforce Commission spokesperson, after the state received Federal Emergency Management Agency funding approval on Friday.

"We are anticipating to try to have that ready by next week so when people make their payment request, we can begin adding that on," said the agency spokesperson. "It is possible there could be some delays, but it should be pretty quick."

The final subsidy is less than the expired \$600 amount provide for in the CARES Act and the \$400 originally-proposed by the President. The State of Texas has chosen to forgo an additional \$100 state component, but \$300 per week will certainly be welcomed by out-of-work Texans.

The Texas Workforce Commission has provided [detailed benefits information](#) for out-of-work Texans. The Federal Emergency Management Agency also published a [Lost Wages Supplemental Payment Assistance Fact Sheet](#) and [Frequently Asked Questions](#) page providing answers to common questions raised by states.

8/27/2020

What is the Safeguarding America's First Responders Act of 2020?

On August 14, 2020, the President signed into law the [Safeguarding America's First Responders Act of 2020](#), which creates a presumption of eligibility for federal death and disability benefits. The presumption flows from the [Public Safety Officers Benefits Program](#), which provides [benefits for public safety officers](#) (PSOs) who contract COVID-19 in the line of duty.

Eligible PSOs include law enforcement officers, firefighters, chaplains, certain emergency management personnel, and EMS personnel, including rescue squads, ambulance drivers, paramedics, and EMTs.

Specifically, PSOs are eligible for death benefits if: (1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021; (2) the officer was diagnosed with COVID-19 during the 45-day period beginning on the last day of duty of the officer; and (3) evidence indicates that the officer has COVID-19 (or complications therefrom) at the time of the officer's death.

Similarly, PSOs are eligible for disability benefits if: (1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021; and (2) the officer was diagnosed with COVID-19 during the 45-day period beginning on the last day of duty of the officer.

Has a court ruled on the validity of the Department of Labor regulations implementing the [Families First Coronavirus Response Act \(FFCRA\)](#)?

Yes. On August 3, 2020, a federal court in New York, in response to a lawsuit filed by the State of New York, [struck down](#) certain provisions of the DOL's regulations implementing the FFCRA.

What does this decision mean for employers, including cities, in Texas? In its lawsuit, the State of New York did not ask that the ruling be applied nationwide, and the court did not issue a nationwide injunction. As such, it's likely the decision is only instructive to those who are outside the court's jurisdiction (e.g., Texas employers, including cities).

Specifically, the court:

- Struck down the "work-availability" requirement, which excludes employees whose employers do not have work for them from qualifying for paid benefits under the FFCRA. This means that eligible employees who are on furlough or are unable to temporarily work due to a site closure may qualify for paid FFCRA leave.

- Determined that the DOL's definition of healthcare provider (who may be excluded from receiving benefits) was too broad because it did not tie the definition to the duties of the employee.

- Invalidated the DOL's requirement that employer consent is required before an employee can intermittently (i.e. in separate periods of time, rather than one continuous period) take emergency paid sick leave for certain qualifying reasons, as well as emergency family and medical leave. However, the court upheld the DOL's rule that prohibits the use of intermittent emergency paid sick leave where there is a high risk that an employee will spread COVID-19 to other employees.

- Concluded that the DOL's requirement that an employee furnish documentation before taking leave was an invalid exercise of its authority, but upheld the requirement that an employee provide documentation to support the employee's need for leave.

As of today (August 27), the DOL has neither appealed the decision nor amended its regulations to comply with the court's decision. We will continue to monitor this issue and provide updates accordingly.

What guidance has the Department of Labor issued about tracking teleworking employees' hours of work?

On August 24, 2020, the DOL issued [Field Assistance Bulletin No. 2020-5](#). The bulletin requires, in accordance with the Fair Labor Standards Act (FLSA), requires employers to track the number of hours an employee works, regardless of whether the employee is teleworking or working remotely. It applies only to non-exempt employees (i.e. generally those who are eligible for overtime pay).

The FLSA requires an employer to pay its employees for all hours worked, including work the employer did not request but nonetheless "suffered or permitted," including work performed at home. This means, if the employer knows or has reason to believe that work is being performed, the time worked must be counted as hours worked. Additionally, if the employer has, through reasonable diligence (as discussed in the bulletin), acquired knowledge of additional unscheduled hours, such work hours must be counted as hours worked.

Of course, a city may still implement or enforce a policy that prohibits unauthorized overtime and/or or discipline employees for violating such policy.

8/31/2020

Has the IRS issued guidance related to the [Presidential Memorandum](#) deferring payroll taxes?

Yes. Late last Friday (August 28), the Treasury Department issued a three-page [Notice](#) that ostensibly provides "guidance" on the deferral of withholding, deposit, and payment of certain payroll taxes in response to COVID-19.

Our preliminary interpretation of the guidance is that: (1) a city as employer has the option of deciding whether or not to withhold taxes during the deferral period; (2) the employer, not the employee, will likely be responsible for any tax obligations if the deferred taxes are not paid by April 30, 2021 (city attorneys may want to review this issue in light of the "gift prohibition" in Article III, Section 52, of the Texas Constitution); and (3) city officials should review the factors to consider in the Q&A below prior to deciding how to proceed.

Here is a more detailed analysis of the document:

-What payroll taxes may be deferred? The deferral applies only to the employee's share of social security taxes, and then only for wages paid to an employee from September 1, 2020, through December 31, 2020. Further, the deferral applies only to employees who are paid less than \$4,000 on a bi-weekly pay period, or an equivalent threshold amount with respect to other pay periods. Each pay period is considered separately.

-Are employers required to temporarily stop withholding taxes? The guidance does not explicitly state that the tax deferral is optional for employers, and it makes no mention of an employee's right to defer (or not defer) withholding of the employee's portion of the social security tax.

In a footnote, the guidance provides that the deposit obligation for an employee's social security tax does not arise until the tax is withheld, and by postponing the time for withholding the tax, the deposit obligation is delayed. The guidance further provides that this "Notice does not separately postpone the deposit obligation." *In a round-about-way, this language seems to indicate that because deferral is triggered by an employer withholding taxes, the employer has the option of deciding whether or not to withhold taxes during the deferral period. As this issue is not clear, each city should consult with its local counsel.*

-What happens after the deferral period? If a city chooses to temporarily stop withholding taxes, the amount deferred shall be deferred without any penalties, interest, additional amount, or addition to the tax until April 30, 2021. After this date, the employer shall accrue interest, penalties and additions to tax for any unpaid taxes. An employer has between January 1, 2021 and April 30, 2021, to withhold and pay the total applicable taxes that the employer deferred. However, the employer may make arrangements to otherwise collect the total taxes from the employee. *It is likely that the employer, not the employee, will be responsible for any tax obligations if the deferred taxes are not paid by April 30, 2021.*

-What should a city consider before it temporarily stops withholding taxes? A city that is contemplating the tax deferral may want to consider the following: (1) give an employee the option to defer (or not defer) the tax; (2) inform employees that the deferred taxes will have to be paid back between January 1, 2021 and April 30, 2021; (3) enter into an agreement with the employee that clearly provides how the city will recoup the deferred taxes between January 1 and April 30, 2021, including whether the employee will be subject to double withholding; and (4) enter into an agreement with the employee that spells out how the employee will reimburse the city for deferred taxes should the employee no longer be employed by the city at the time the deferred taxes are due or in the event the employee is not making enough money to pay back the tax. Each city should consult its legal counsel before taking any final action on this issue.

Has the Department of Labor issued guidance related to school re-openings and paid leave under the FFCRA?

Yes. On August 27, 2020, the Department issued the following new [guidance](#) related to school re-openings and eligibility for paid leave under the FFCRA (the numbering matches those in the guidance):

98. My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively “closed” to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child’s remote-learning days.

99. My child’s school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?

No, you are not eligible to take paid leave under the FFCRA because your child’s school is not “closed” due to COVID–19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her. See [FAQ 63](#).

Also, as explained more fully in [FAQ 98](#), if your child’s school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child’s remote-learning days because the school is effectively “closed” to your child on those days.

100. My child’s school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances?

Yes, you are eligible to take paid leave under the FFCRA while your child’s school remains closed. If your child’s school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school’s operations. See [FAQ 98](#) and [99](#).

Has the Department of Labor issued guidance related to school re-openings and eligibility for Pandemic Unemployment Assistance?

Yes. On August 27, 2020, the Department issued [this](#) letter to State Workforce Agencies spelling out the eligibility of individuals who are caregivers of students and who are affected by school re-openings for unemployment benefits, as well as providing guidance on the intersection of the PUA with paid leave under the Families First Coronavirus Response Act.

9/8/2020

/

Has the IRS issued additional guidance related to the [Presidential Memorandum](#) deferring employee payroll taxes?

Yes. Last Thursday (September 3), the IRS stated on a payroll industry conference call that the deferral is optional for the employer. In fact, according to the IRS, an employer doesn't have to temporarily stop withholding taxes even if the employee requests that it do so. (However, if the employer chooses to temporarily stop withholding taxes, the employer may allow employees to opt-in or opt-out of the deferral.)

The advice given on the call confirms what we reported in the [August 31 Update](#):
“Are employers required to temporarily stop withholding taxes? The guidance does not explicitly state that the tax deferral is optional for employers, and it makes no mention of an employee's right to defer (or not defer) withholding of the employee's portion of the social security tax. In a footnote, the guidance provides that the deposit obligation for an employee's social security tax does not arise until the tax is withheld, and by postponing the time for withholding the tax, the deposit obligation is delayed. The guidance further provides that this “Notice does not separately postpone the deposit obligation.” **In a round-about-way, this language seems to indicate that because deferral is triggered by an employer withholding taxes, the employer has the option of deciding whether or not to withhold taxes during the deferral period.** As this issue is not clear, each city should consult with its local counsel.”

9/9/2020

What is the latest from the EEOC regarding equal employment opportunity laws and COVID-19?

Yesterday (September 8), the EEOC updated its technical assistance document, [What You Should Know About COVID-19 and the ADA, Rehabilitation Act, and Other EEO Laws](#), which addresses common questions about COVID-19 and federal employment laws.

The updated document adds 18 new Q&As that have been adapted from various EEOC resources, including [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) and a March 27, 2020 EEOC [webinar](#). Additionally, the EEOC updated two existing Q&As (A.6 and D.8) which clarify that an employer, when evaluating an employee's initial or continued presence at the workplace, may rely on current recommendations by the CDC and other public health authorities to determine whether, when, and for whom testing or other screening is appropriate. Below are the new and updated questions (responses are available [here](#)):

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace? (4/23/20; updated 9/8/20 to address stakeholder questions about updates to CDC guidance)

A.8. May employers ask all employees physically entering the workplace if they have been diagnosed with or tested for COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 1)

A.9. May a manager ask only one employee—as opposed to asking all employees—questions designed to determine if she has COVID-19, or require that this employee alone have her temperature taken or undergo other screening or testing? (9/8/20; adapted from 3/27/20 Webinar Question 3)

A.10. May an employer ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 4)

A.11. What may an employer do under the ADA if an employee refuses to permit the employer to take his temperature or refuses to answer questions about whether he has COVID-19, has symptoms associated with COVID-19, or has been tested for COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 2)

A.12. During the COVID-19 pandemic, may an employer request information from employees who work on-site, whether regularly or occasionally, who report feeling ill or who call in sick? (9/8/20; adapted from Pandemic Preparedness Question 6)

A.13. May an employer ask an employee why he or she has been absent from work? (9/8/20; adapted from Pandemic Preparedness Question 15)

A.14. When an employee returns from travel during a pandemic, must an employer wait until the employee develops COVID-19 symptoms to ask questions about where the person has traveled? (9/8/20; adapted from Pandemic Preparedness Question 8)

B.5. Suppose a manager learns that an employee has COVID-19, or has symptoms associated with the disease. The manager knows she must report it but is worried about violating ADA confidentiality. What should she do? (9/8/20; adapted from 3/27/20 Webinar Question 5)

B.6. An employee who must report to the workplace knows that a coworker who reports to the same workplace has symptoms associated with COVID-19. Does ADA confidentiality prevent the first employee from disclosing the coworker's symptoms to a supervisor? (9/8/20; adapted from 3/27/20 Webinar Question 6)

B.7. An employer knows that an employee is teleworking because the person has COVID-19 or symptoms associated with the disease, and that he is in self-quarantine. May the employer tell staff that this particular employee is teleworking without saying why? (9/8/20; adapted from 3/27/20 Webinar Question 7)

B.8. Many employees, including managers and supervisors, are now teleworking as a result of COVID-19. How are they supposed to keep medical information of employees confidential while working remotely? (9/8/20; adapted from 3/27/20 Webinar Question 9)

D.8. May an employer invite employees now to ask for reasonable accommodations they may need in the future when they are permitted to return to the workplace? (4/17/20; updated 9/8/20 to address stakeholder questions)

D.14. When an employer requires some or all of its employees to telework because of COVID-19 or government officials require employers to shut down their facilities and have workers telework, is the employer required to provide a teleworking employee with the same reasonable accommodations for disability under the ADA or the Rehabilitation Act that it provides to this individual in the workplace? (9/8/20; adapted from 3/27/20 Webinar Question 20)

D.15. Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19. When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who requests to continue this arrangement as an ADA/Rehabilitation Act accommodation? (9/8/20; adapted from 3/27/20 Webinar Question 21)

D.16. Assume that prior to the emergence of the COVID-19 pandemic, an employee with a disability had requested telework as a reasonable accommodation. The employee had shown a disability-related need for this accommodation, but the employer denied it because of concerns that the employee would not be able to perform the essential functions remotely. In the past, the employee therefore continued to come to the workplace. However, after the COVID-19 crisis has subsided and temporary telework ends, the employee renews her request for telework as a reasonable accommodation. Can the employer again refuse the request? (9/8/20; adapted from 3/27/20 Webinar Question 22)

D.17. Might the pandemic result in excusable delays during the interactive process? (9/8/20; adapted from 3/27/20 Webinar Question 19)

D.18. Federal agencies are required to have timelines in their written reasonable accommodation procedures governing how quickly they will process requests and provide reasonable accommodations. What happens if circumstances created by the pandemic prevent an agency from meeting this timeline? (9/8/20; adapted from 3/27/20 Webinar Question 19)

F.2. What are additional EEO considerations in planning furloughs or layoffs? (9/8/20; adapted from 3/27/20 Webinar Question 13)

H.2. If an employer is choosing to offer flexibilities to other workers, may older comparable workers be treated less favorably based on age? (9/8/20; adapted from 3/27/20 Webinar Question 12)

9/10/2020

What's the latest with regard to the President's executive order extending the federal unemployment benefit subsidy?

The Federal Emergency Management Agency [notified the Texas Workforce Commission](#) that federal funding for the additional \$300 weekly benefit program (announced last month) has

already run dry. Recipients should continue to receive their “normal” state unemployment benefits.

9/15/2020

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

In response to an August 3, 2020, federal district court ruling out of New York that invalidated four parts of the Department of Labor’s rule implementing the FFCRA (we reported on this case [here](#)), the Department has issued a [temporary rule](#) reaffirming and revising its regulations, and further clarifying its position. Specifically, the Department:

- Reaffirms that an employee is not eligible for paid sick leave and expanded family and medical leave if the employer does not have work available for the employee (this means that employees who are on furlough or unable to temporarily work because of, for example, a site closure may not qualify for paid FFCRA);
- Reaffirms that where intermittent leave is permitted, employer consent is required before an employee can take emergency paid sick leave or expanded family and medical leave intermittently;
- Revises the definition of “health care provider” to include only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care;
- Revises to clarify that the information that the employee must provide the employer to support the need for leave need not be given prior to taking leave, but should be provided to the employer as soon as practicable; and
- Corrects an inconsistency on when employees may be required to provide employers notice of their need to take expanded family and medical leave.

The temporary rule will be effective on September 16, 2020.

9/24/2020

How should cities treat COVID-19 health screening records?

Luckily, the Texas State Library and Archives Commission (TSLAC) is here to help with the answer. Earlier this week, TSLAC [posted on their blog](#), *The Texas Record*, some helpful guidance on how cities handle COVID-19 screening records.

12/17/2020

Our city is considering a requirement that certain employees, public safety for example, must receive a COVID-19 vaccination by a certain date to continue working with the public. If we adopt such a requirement, how should we handle requests by employees for an exception based on a disability of some sort?

When to allow exceptions to vaccination requirements is complicated. Cities should consult with their city attorney before taking adverse employment actions.

That being said, the U.S. Equal Employment Opportunity Commission (EEOC) recently updated their COVID-19 technical assistance Q&A to include helpful [questions and answers](#) to many vaccination-related questions, including this one about disability exceptions. What follows is quoted directly from the EEOC guidance related to disability exceptions.

The ADA allows an employer to have a [qualification standard](#) that includes “a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.” However, if a safety-based qualification standard, such as a vaccination requirement, screens out or tends to screen out an individual with a disability, the employer must show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” [29 C.F.R. 1630.2\(r\)](#). Employers should conduct an individualized assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. A conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus at the worksite. If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent [undue hardship](#)) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat.

If there is a direct threat that cannot be reduced to an acceptable level, the employer can exclude the employee from physically entering the workplace, but this does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities. For example, if an employer excludes an employee based on an inability to accommodate a request to be exempt from a vaccination requirement, the employee may be entitled to accommodations such as performing the current position remotely. This is the same step that employers take when physically excluding employees from a worksite due to a current COVID-19 diagnosis or symptoms; some workers may be entitled to telework or, if not, may be eligible to take leave under the Families First Coronavirus Response Act, under the FMLA, or under the employer’s policies. *See also [Section J. EEO rights relating to pregnancy](#).*

Managers and supervisors responsible for communicating with employees about compliance with the employer’s vaccination requirement should know how to recognize an accommodation request from an employee with a disability and know to whom the request should be referred for consideration. Employers and employees should engage in a flexible, interactive process to identify workplace accommodation options that do not constitute an undue hardship (significant difficulty or expense). This process should include determining whether it is necessary to obtain supporting documentation about the employee’s disability and considering the possible options for accommodation given the nature of the workforce and the employee’s position. The

prevalence in the workplace of employees who already have received a COVID-19 vaccination and the amount of contact with others, whose vaccination status could be unknown, may impact the undue hardship consideration. In discussing accommodation requests, employers and employees also may find it helpful to consult the Job Accommodation Network (JAN) website as a resource for different types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

Employers may rely on CDC recommendations when deciding whether an effective accommodation that would not pose an undue hardship is available, but as explained further in [Question K.7.](#), there may be situations where an accommodation is not possible. When an employer makes this decision, the facts about particular job duties and workplaces may be relevant. Employers also should consult applicable Occupational Safety and Health Administration standards and guidance. Employers can find OSHA COVID-specific resources at: www.osha.gov/SLTC/covid-19/.

Managers and supervisors are reminded that it is unlawful to disclose that an employee is receiving a reasonable accommodation or retaliate against an employee for [requesting an accommodation](#).

1/5/2021

Will Texas cities be likely to mandate COVID-19 vaccinations as a condition of returning/continuing to work as a general employee or, more specifically, as emergency service personnel?

It doesn't appear that such mandates will be widespread according to the survey results of an informal working group of Texas municipal human resource officials. Cities in the workgroup were asked the following question: "Will your city mandate the COVID vaccination for general employees? What about emergency response personnel?"

Of the 27 cities that responded, 22 cities answered "no" to both questions. Several of those 22 said that vaccines would be "highly encouraged" or something similar, though not mandated.

The remaining 5 cities were undecided.

No city reported that they for sure will mandate vaccines for either category of employees.

Thank you to Heather Morehead from the City of Arlington and Kathleen Shields from the City of DeSoto for compiling these answers and letting us reference them.

If we hear any changes in this trend, we will report on them in future Updates.

3/25/2021

Cities are seeing rising numbers of fraudulent unemployment benefits claims from current employees, recently-retired employees, and even elected officials. Where do we report a suspected fraudulent claim?

The [Texas Workforce Commission](#) (TWC) has become aware of the fraudulent activity through reports of individuals or businesses receiving correspondence from TWC when no claim has been filed and the individuals are employed.

The agency encourages anyone who suspects potential fraudulent activity involving unemployment benefits to report it through the [TWC fraud submission portal](#). You can also email TWC.fraud@twc.state.tx.us or leave a message at the TWC Fraud Hotline at 800-252-3642.

3/31/2021

Correction: Last week's Update included the following question, which left out crucial language. The Texas Workforce Commission has indeed seen an increase in fraudulent unemployment claims, but they aren't being made *BY* city officials and employees. Rather, they are being made by persons fraudulently *ALLEGING TO BE* city officials or employees. We apologize for the error.

Cities are seeing rising numbers of fraudulent unemployment benefits claims made by persons posing as current employees, recently-retired employees, and even elected officials. Where do we report a suspected fraudulent claim?

The [Texas Workforce Commission](#) (TWC) has become aware of the fraudulent activity through reports of individuals or businesses receiving correspondence from TWC when no claim has been filed and the individuals are employed.

The agency encourages anyone who suspects potential fraudulent activity involving unemployment benefits to report it through the [TWC fraud submission portal](#). You can also email TWC.fraud@twc.state.tx.us or leave a message at the TWC Fraud Hotline at 800-252-3642.