

Human Resources

By Patti Martin Bartsche

Human Resources During COVID-19

Editor's Note: This information is up to date as of press time. Because the COVID-19 situation is dynamic, additional clarifications regarding the Families First Coronavirus Response Act as well as other government actions are possible.

COVID-19 is forcing firms large and small to rapidly change their approach to work, raising crucial human resources concerns. While business owners are acting to take necessary precautions, the pandemic offers an opportunity for firms to carefully review the strategies, policies and procedures they have in place to protect employees, customers and operations now and in the future.

We recently chatted with Stephanie Ramsey, senior business analyst and HR specialist at The Foresight Companies, and author of the quarterly HR Reality Check in American Funeral Director, to get her thoughts about some of the most common HR questions employers are asking surrounding this pandemic.

What impact does the Families First Coronavirus Response Act have on funeral service?

The intent of FFCRA is that employees of covered employers will be eligible for:

a. Two weeks (up to 80 hours) of

paid sick leave at the employee's regular rate of pay should they be unable to work due to quarantine* or because they are experiencing COVID-19 symptoms and seeking a medical diagnosis; or

b. Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay should they be unable to work because they must care for an individual subject to quarantine*, or care for a child (under 18) whose school or child care provider is closed for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Treasury and Labor; and

c. Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a need to care for a child whose school or child care provider is closed

for reasons related to COVID-19. (**Quarantined pursuant to federal, state or local government order or on the advice of a health care provider.*)

The FFCRA applies to certain public and private employers with fewer than 500 employees. There is a possibility for exemptions to be granted for small businesses with fewer than 50 employees in which employers are not required to give employees paid leave due to school closings or child care unavailability. This exception is to prevent small businesses from going under as a result of PTO during this time.

Are employees entitled to unemployment benefits if the decision is made to temporarily lay off employees?

Each state differs in its policy concerning unemployment benefits for those who are laid off as a result of COVID-19. For the most accurate and up-to-date information, see your official state website for employment-related benefits.

Are employees entitled to employer disability plans if they contract COVID-19?

In some cases, it is possible that employees will be able to prove negligence on behalf of the employer not adhering to COVID-19 precautions and recommendations. However, this is all still new and cases are in progress, so we do not know the final outcome.

Does an employee have a right to refuse to come to work because of a fear of infection?

Occupational Safety and Health Administration regulations permit employees to refuse to work if they believe that work would submit them to “imminent danger.” For conditions to be considered an “imminent danger,” there must be a reasonable expectation that working would expose the employee to COVID-19. However, symptoms of COVID-19 do not have to be immediate for the illness to be considered a result of workplace exposure. I recommend that funeral business owners consult with local legal counsel to better understand their rights. Funeral businesses are designated as essential business operations, and as long as they are providing appropriate personal protective equipment, then they should be in good standing. The real risk will occur if they are not able to provide adequate personal protective equipment.

Can an employer require a sick employee to go home or stay home?

Yes, it is within an employer’s right to send an employee home who might spread illness to others in the workplace. This instance will likely qualify for paid time off or sick leave.

Can a firm require an employee to use paid time off for self-quarantine or in the event they are sent home due to illness?

Employers are not required to pay employees for the first 10 days of illness-related absence. However, an employee may use any accrued PTO if they wish. After that initial 10 days, employers are required to pay no less

than two-thirds of an employee’s regular compensation for the same number of hours per week that the employee would usually work for up to 80 hours. This compensation cannot exceed \$200 per day or \$10,000 in aggregate. Those employees who are taking care of children whose school closed as a result of COVID-19 concerns are eligible for up to 12 weeks paid leave at 40 hours per week.

Does the Family and Medical Leave Act apply in COVID-19 cases?

The FMLA extension was passed into law March 18, 2020, and applies to employees who:

- a) Have been employed for no less than 30 days by an employer who employs fewer than 500 employees; and
- b) Are unable to work (on-site or remote) because they need to care for children (under 18) during times of school or daycare closures resulting from COVID-19.

The FMLA Expansion Act is applicable from April 1, 2020, to Dec. 31, 2020.

Can an employer temporarily suspend bonuses or commissions normally included in an employee’s compensation plan?

One suggestion to employers to reduce lost income from the economic downturn may be to

reduce current compensation rates. This is not a mandatory action but it is within the employer’s right to increase/decrease an employee’s compensation in accordance with that employee’s contract/plan.

How can firms communicate with their employees if they have a confirmed case of an employee infected with COVID-19?

The Americans with Disabilities Act and some state/local laws protect employees from the disclosing of confidential medical information by employers. Employers should strive to maintain confidentiality of the specific employee when informing other employees of potential exposure to COVID-19. As with all health information, any information on COVID-19 should be stored in a file separate from that employee’s personnel file.

Can an employer ask an employee if he/she has COVID-19?

Directly asking such a question would not be a wise course of action. Employers do have the right to request noticeably ill employees not be in the work environment. Should symptoms appear consistent with COVID-19, the employer can request the employee receive a doctor’s note indicating they are clear to be in the work environment. •

COVID-19 PANDEMIC

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www.afd-digital.com