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COVID FAQs for Employers

- **Is my business subject to the Families First Coronavirus Relief Act (FFCRA)?**

Any U.S. employer with less than 500 employees is required to offer certain benefits to employees impacted by COVID, including payment of sick leave and the offering of expanded family leave if the employee is caring for a child whose school or day care is closed. Employers with less than 50 employees may qualify for an exemption in paying out FFCRA benefits. The employer receives a 1:1 payroll tax credit for any FFCRA sick leave or extended family leave benefits.

- **What** are my obligations if one (or several) of my employees is directed by the Gallatin County Health Department to quarantine due to suspected COVID exposure?

The decision of whether to quarantine is up to the employee. The order is directed to the individual, not to the employer. Any employee who is out of work due to a Health Department or a physician's order to quarantine is entitled to up to 80 hours of sick pay at their regular rate of pay pursuant to the FFCRA.

- **What** if my employee has not been ordered to quarantine, but experiences COVID symptoms and is away from work due to these symptoms? Do I need to pay them FFCRA sick leave?

You are only required to pay out FFCRA sick leave payments if your employee has experienced COVID symptoms and is seeking a COVID diagnosis. Otherwise, the employee is not entitled to these sick leave payments, and would only receive sick leave pay if required by the employer's sick leave program.

- **What** if my employee has been exposed to COVID and voluntarily chooses to isolate without being directed to do so by the Health Department or a physician?

The employee is not entitled to receive FFCRA sick leave payments for their time away from work. They may be entitled to payment of sick leave if the employer's policies provide for sick leave benefits. Employers should consider whether to adopt a policy to address employees who want to isolate due to possible exposure- will this time be considered "approved" leave without pay, be paid by employer (even though employer may not be legally compelled to pay), or pay out at half the regular wages. The employer has discretion to set standards- if you want employees who have been exposed but not ordered to quarantine to stay at home, you can adopt programs to encourage. Alternatively, the employer can state that any unapproved absence that isn't due to an order to quarantine will be considered to be job abandonment.

- **What** if my employee is out of work caring for someone else who is subject to quarantine? Do I need to pay them?

The FFCRA provides for sick leave pay to those employees caring for an individual subject to quarantine.

- **Do** I need to pay my employee if they are out of work on a second or third quarantine?

It depends. The FFCRA has a maximum benefit of 80 total hours of sick pay. After this bank is exhausted, the employer is not required to pay out any sick leave benefits unless required by their own sick leave policies.

- **When** do the FFCRA provisions end?

At this time, the sick leave entitlements granted by the FFCRA are set to expire on December 31, 2020. These benefits may be extended, or refreshed, by Congress.

- **Can** I make an employee use their PTO if they are out of work due to quarantine?

Only after the employee has exhausted the 80 hours of FFCRA leave.

- **What** if my employee doesn't want to come to work because they are afraid of catching COVID?

As long as the employer is operating according to the Governor's and local orders on social distancing and wearing masks, an employee who stops working when work is available has effectively voluntarily terminated their employment. Employers should be sensitive to employees who may be entitled to a reasonable accommodation due to a disability, and to offer accommodations if reasonable given the nature of the work. Can the employee effectively work from home? Is it possible to rotate staff working from home and the office to distance workers? Montana law requires that employers provide reasonable accommodations to employees with a covered disability, which can include remote work, or an unpaid leave of absence. Remember, it is expensive and time consuming to replace workers. If there are ways to offer flexibility in the workplace, you may want to offer it. Be consistent and document what you agree to.

- **What** if I am forced to temporarily close my business due to a COVID outbreak, or because too many employees are out on quarantine?

Those employees who are not subject to quarantine, but are out of work due to temporary closure of the business, are eligible to receive unemployment benefits. Any benefits paid out due to COVID business disruption or closure do not "count" against the employer's Montana Unemployment Insurance experience rating. In other words, these claims for benefits will not increase the amount you need to pay into unemployment.

- **What** if one of my employees tells me they have tested positive for COVID? What steps should I take in my workplace?

If an employee tells you that they have tested positive for COVID, this does not automatically mean that the Health Department will issue a quarantine order to that individual. Because the Health Department is overloaded, they have stated that they are unable to contact every positive case and fully contact trace every positive result. The employee can contact the Gallatin County COVID hotline, (406) 414-2619 if the employer wants a copy of the quarantine order to determine FFCRA sick leave benefits eligibility. DOL guidance says that the employer can't require the employee to produce test results. If the COVID positive employee is interviewed by the Health Department, they will be asked to provide a list of close contacts. When community COVID numbers were more manageable, the Health Department was able to follow up and call close contacts, but as of now, the Health Department has announced that their contact tracing is focusing on high risk groups only. The COVID positive employee, and any other employees ordered to quarantine by the Health Department, are eligible to receive the FFCRA sick leave benefits. The business has the discretion to choose to close for cleaning, or due to being short-staffed, but is not obligated to close the business to the public if an employee has tested positive. *(Dated 11/19 - Subject to Change)*

**This FAQs sheet was written by attorneys Valerie Wyman Paul and Barbara Prescott
**This publication does not constitute legal advice. Please contact the Bozeman location of
Silverman Law Office at 582-8822 with questions about your specific situation, or access
other free resources on the web at www.mttaxlaw.com. We are here to help!****