

# EMPLOYMENT LAW ISSUES AND OHIO'S PUBLIC LIBRARIES IN LIGHT OF THE COVID-19 PANDEMIC

**IMPORTANT NOTE:** Like the effect of the COVID-19 virus itself on our lives, federal, state, and local responses are fluid and evolving constantly. Therefore, libraries are urged to contact their legal counsel or the Ohio Library Council with questions about the application of these laws in a particular situation, as well as to confirm the most recent information. Nothing in these materials should be construed as legal advice. This information is presented solely for informational and educational purposes and does not fully address the complexity of the issues that a library must take under applicable laws.

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## UNEMPLOYMENT COMPENSATION BENEFITS

Governor Mike DeWine issued an executive order expanding unemployment benefits for employees whose workplaces are shutdown or who are quarantined as a result of COVID-19. The Ohio Department of Jobs and Family Services (ODJFS) released a list of questions and answers on this expanded availability. We have applied this information for libraries below.

### WILL EMPLOYEES QUALIFY FOR UNEMPLOYMENT BENEFITS IF COVID-19 CAUSES A LIBRARY TO SHUT DOWN OPERATIONS?

Yes. Employees can receive unemployment benefits if they are laid-off due to the loss of production caused by COVID-19. Unemployment benefits will also be available for individuals who are requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19, even if they are not actually diagnosed with COVID-19. In addition, the waiting period for eligible employees to receive unemployment benefits is waived (normally, employees must wait one week before receiving benefits).

### IF AN EMPLOYEE RECEIVES UNEMPLOYMENT BENEFITS AS A RESULT OF A COVID-19-RELATED BUSINESS SHUTDOWN, WILL THE LIBRARY'S UNEMPLOYMENT TAXES INCREASE?

It depends on whether the library is a contributing employer or a reimbursing employer.

Public libraries are *reimbursing* employers by default, but may request to become a contributory employer. A reimbursing employer is required to reimburse the State for charges on a dollar-for-dollar basis. The federal CARES Act will provide states with federal funds for unemployment relief, a portion of which is expected to be used to reimburse libraries for their unemployment costs. Details on this process are forthcoming.

For *contributory* employers, charges during Ohio's emergency declaration period relating to COVID-19 will be charged to the mutualized account as opposed to the account of the individual employer who laid off employees.

### UNEMPLOYMENT TAKEAWAYS

- Employees who are isolated or quarantined at the request of a medical professional are eligible for unemployment benefits.
- Employees are not required to serve a waiting period before receiving benefits.
- Employees who are isolated or quarantined are not required to look for work.
- The federal CARES Act extends benefits for employees who have been terminated or who are unable to work due to COVID-19, and who are not eligible for regular unemployment compensation or extended benefits (including those who have exhausted their benefits or extended benefits already). These payments will be funded by the federal government.

### LINKS AND RESOURCES

- [Unemployment Form to Give to Employees](#)
- [ODJFS Information for Employers](#)
- [U.S. Department of Labor Guidance on Unemployment Benefits](#)
- [Mass Layoff Instruction Sheet](#)

### **IF AN ASYMPTOMATIC EMPLOYEE IMPOSES A SELF-QUARANTINE BECAUSE OF COVID-19, WILL HE OR SHE BE ELIGIBLE FOR UNEMPLOYMENT BENEFITS?**

No. Unemployment benefits are available to individuals who are instructed to isolate or quarantine by a medical professional, local health authority, or employer. An employee who does not want to come to work out of a generalized fear of COVID-19 is not eligible for unemployment.

### **DOES A LIBRARY HAVE TO PROVIDE NOTICE TO ODJFS IF IT INTENDS TO LAYOFF EMPLOYEES?**

If the library plans to lay-off 50 or more employees within a seven-day period, it must notify ODJFS at least three working days before the first day of the layoff. This allows ODJFS to obtain advance information from employers in order to expedite processing of benefits. ODJFS has established a mass lay-off number (2000180) for employers to provide to employees laid off because of COVID-19. This number is also pre-populated on the Mass Layoff Instruction Sheet.

### **CAN AN EMPLOYEE CONTINUE TO ACCRUE BENEFITS AND STILL RECEIVE UNEMPLOYMENT?**

Yes. If you lay-off an employee, then the employee is allowed to remain on your health insurance plan and still receive unemployment compensation. If you furlough an employee, then the employee can also continue to accrue benefits (i.e. vacation or PTO) in addition to remaining on your health insurance plan and receiving unemployment compensation. Libraries should review their policies and benefit plans before making any decisions on whether to proceed with a lay-off or furlough.

#### **COORDINATION OF UNEMPLOYMENT AND OTHER BENEFITS**

In the next section, we discuss the new federal expansion of the Family and Medical Leave Act and requirement that employers provide paid sick leave. If an employee is not eligible for, or exhausts their eligibility for expanded FMLA leave or paid sick leave, the employee may be eligible to apply for and receive unemployment benefits, as described immediately below.

#### **THE FEDERAL CARES ACT AND UNEMPLOYMENT BENEFITS**

The just-enacted federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides additional funding and other changes to address the COVID-19 pandemic. With respect to unemployment:

- Employees are eligible for unemployment if they are diagnosed with COVID-19, experiencing symptoms and seeking diagnosis, have a household member with COVID-19, caring for a family member with COVID-19, affected by a workplace closure, advised to self-quarantine, or caring for a child whose school is closed.
- Employees can receive up to 39 weeks of benefits (instead of the usual 26), and can collect an extra \$600 per week in addition to the benefits collected under state law until 7/31/2020.

## **EXPANDED FAMILY AND MEDICAL LEAVE AND EMERGENCY PAID SICK LEAVE BENEFITS**

The federal Families First Coronavirus Response Act (FFCRA) is effective on April 1, 2020, and applies only to leave taken between April 1, 2020, and December 31, 2020. Among other things, the FFCRA expands the scope of the Family and Medical Leave Act (FMLA) and provides for emergency paid sick leave for employers with fewer than 500 employees. The DOL will not bring enforcement actions against an employer for violations of the FFCRA that occur before April 17, 2020, if the employer has made reasonable, good faith efforts to comply.

### **DO EXPANDED FMLA REQUIREMENTS APPLY TO LIBRARIES?**

Yes. The FFCRA makes these expanded FMLA requirements applicable to all public employers regardless of size. Note that this is different from traditional FMLA, where libraries with less than 50 employees are typically exempt from providing FMLA leave.

### **WHAT LEAVE IS AVAILABLE UNDER THE EXPANDED FMLA?**

The FFCRA amends the FMLA to provide for a new type of family leave related to the COVID-19 pandemic. Specifically, it provides for 12 weeks of FMLA leave to care for a minor son or daughter if the child's school or place of care has been closed or the child's care provider is unavailable due to an emergency declared by a federal, state, or local authority related to COVID-19.

Employees will become eligible for this leave after only 30 days of service – as opposed to the 12 months for most FMLA leave.

The expanded FMLA leave will be two weeks of unpaid leave with the potential for 10 subsequent weeks of leave paid at two-thirds of the employee's regular pay (capped at \$200/day). During the two weeks of unpaid leave, employees are permitted to substitute available paid vacation, personal, medical, or sick leave, including the new Emergency Paid Sick Leave described below.

### **EXPANDED FMLA TAKEAWAYS**

- The expanded FMLA applies to all public employers.
- It covers employees on the payroll as of March 2, 2020.
- Employees can take 12 weeks of leave (2 unpaid and 10 paid) to care for a child whose school or childcare provider is closed due to COVID-19.
- Employees are eligible for leave after being employed for 30 days.
- Employees cannot be required to use other paid leave instead of the expanded FMLA leave
- For employers with fewer than 25 employees, the FMLA job protections still apply, but the employer does not have to return the employee to the previous position if it no longer exists.
- Expanded FMLA does *not* provide 12 weeks of leave *in addition to* traditional FMLA. If an employee has used traditional FMLA in the past 12 months, those weeks count toward the 12 weeks available under expanded FMLA.
- Employees terminated after 3/1/2020 and then rehired by the same employer are eligible for expanded FMLA leave if they worked for that employer for 30 of the 60 calendar days before their termination.

Importantly, the rest of the FMLA rules remain intact. For example, a person who has been employed between 30 days and one year is not eligible for unpaid FMLA leave for any other reason.

### WHAT DOES THE NEW EMERGENCY PAID SICK LEAVE REQUIRE?

The FFCRA requires employers to provide two weeks of *paid* sick time to employees for certain reasons related to COVID-19. The requirement applies to private employers with fewer than 500 employees and to all public employers. Employees are eligible for paid sick leave immediately upon hire. Full-time employees are entitled to 80 hours of paid sick time. Part-time employees are entitled to paid sick time in an amount equal to the average number of hours they work in a two-week period.

Paid sick time must be provided when an employee is unable to work (or telework) due to a need for leave 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 health care 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 or advisement as described in numbers 1 and 2;
5. Is caring for a son or daughter (as defined by the FMLA) if, due to COVID-19 precautions, the child’s school or place of care has been closed or the child care provider of such child is unavailable; or
6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

The amount that the employee must be paid varies depending on the reason for the leave.

### LINKS AND RESOURCES

- [U.S. DOL Employee Fact Sheet](#)
- [U.S. DOL Employer Fact Sheet](#)
- [U.S. DOL FAQs on New Poster Requirement](#)
- [U.S. DOL COVID-19 Mandatory Poster](#)
- [U.S. DOL FAQs on Expanded FMLA Leave](#)

#### PAID SICK LEAVE TAKEAWAYS

- Employers must provide up to 80 hours of paid sick leave for certain COVID-19 reasons.
- The amount of pay varies with the reason for using the sick leave, and there are daily and total caps on pay.
- All employees are eligible for the paid sick leave.
- Employers cannot require that employees use other leave before using the new paid sick leave.
- Unless the employee is teleworking, paid sick leave cannot be taken intermittently and can only be taken in full-day increments, for reasons 1, 2, 3, 4, and 6 to the left. If the employer agrees, leave may be taken intermittently to care for a child whose school or place of care is closed (reason 5).

| Leave Reason  | Amount of Pay  |
|---------------|--|
| Reason 1 to 3 | Paid 100% of their regular rate of pay times the number of hours of paid sick leave, capped at \$511 per day and \$5,110 per employee      |
| Reason 4 to 6 | Paid 2/3 of their regular rate of pay times the number of hours of paid sick leave, capped at \$200 per day and \$2,000 per employee total |

### HOW DO THE EXPANDED FMLA AND NEW PAID SICK LEAVE BENEFITS COORDINATE WITH ONE ANOTHER?

An employee can receive both paid sick leave and expanded FMLA benefits. An employee who is absent to care for a child as a result of a COVID-19-related school or day care closing would get 10 days of paid sick leave benefits during the first two weeks and then expanded FMLA benefits for the following ten weeks, until coverage is exhausted.

For example, assume an employee has a third-grade child whose school has been closed due to Governor DeWine's order. The employee has worked for over 30 days and is a full-time employee. What leave does he get to stay home with his child?

For the first 80 work hours (basically two weeks), he gets the time off with sick pay under the new paid sick leave law. For the remaining 10 weeks after that, he is on 2/3 pay under the expanded FMLA, subject to caps of \$200 per day and \$10,000 in the aggregate.

### DO THE EXPANDED FMLA AND PAID SICK LEAVE LAW APPLY TO LAYOFFS THAT ARE DUE TO COVID-19?

No. Both laws are limited to specific absences resulting from medical conditions or school/day care provisions caused by COVID-19. The expectation is that laid-off or furloughed

#### **MORE ABOUT PAID SICK LEAVE COORDINATION**

**What if the employee has COVID-19?** She receives her full regular rate (not 2/3) subject to caps of \$511 per day or \$5,110 total for the first 80 hours. The same is true if her doctor asked her to self-quarantine. She would not have sick pay under the expanded FMLA because the law does not apply to the employee's own illness. Thus, she would have paid benefits for the first 80 hours, but none afterwards.

**If an employee can't work or telework because her child's school is closed, is she automatically eligible for both kinds of leave?** Not necessarily. Expanded FMLA is only available to employees who have been employed for 30 days before the start of the need for leave. Paid sick leave is available to employees regardless of the amount of time they have been employed.

Remember, you can only receive the additional 10 weeks of expanded FMLA leave for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.



employees will receive increased unemployment benefits as discussed above.

### **DOES A LIBRARY'S OBLIGATIONS UNDER OTHER EMPLOYMENT LAWS STILL REMAIN?**

Yes. Even if the expanded FMLA doesn't apply, traditional FMLA might apply. Thus, an employee who is sick or caring for a sick relative may still be entitled to up to 12 weeks of unpaid FMLA leave (assuming that the library has 50 or more employees and the employee is otherwise eligible). Additionally, the Americans with Disabilities Act, Ohio Civil Rights Act, and local laws may require reasonable accommodation depending on the employee's condition. While the expanded FMLA provides additional leave rights, it does not reduce the other protections that employees have.

### **WHAT HAPPENS IF A LIBRARY CEASES OPERATIONS**

If a library ceases all operations, then its employees are not eligible for expanded FMLA leave or paid sick leave. However, if a library is closed to customers but continues to require certain employees to work (either remotely or in person), then those employees would be eligible for the expanded FMLA leave or paid sick leave.

### **CAN A LIBRARY SUPPLEMENT THE PAY PROVIDED BY THE EXPANDED FMLA OR PAID SICK LEAVE?**

A library may pay its employees in excess of the law's requirements. But it cannot require an employee to use existing vacation, sick, PTO, or leave the employee has available instead of taking paid sick leave or expanded FMLA.

### **HOW ARE EMPLOYERS REIMBURSED FOR THIS EXPANDED FMLA BENEFIT AND EMERGENCY PAID SICK LEAVE?**

#### **COMMON QUESTIONS ABOUT PAID SICK LEAVE AND EXPANDED FMLA**

**How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?** A part-time employee is entitled to leave equal to the average number of work hours in a two-week period. If an employee's hours are unknown or varying, you may use a six-month average to calculate the average daily hours.

**Are employees limited to 80 hours of paid sick leave?** Yes. The total number of hours for which an employee may take paid sick leave is capped at 80 hours. This cap is regardless of the number of reasons for which he or she may qualify for taking sick leave.

**May employees collect unemployment while on paid sick leave and/or expanded FMLA?** No.

**Does the Library have to continue health coverage for employees on paid sick leave or expanded FMLA?** Employees are entitled to continue group health coverage as they continue to work. Family coverage must be continued during expanded FMLA. Employees are still required to pay their contributions. Employees who no longer qualify may be able to continue coverage under the federal COBRA law or Ohio law.



The law provides for a refundable payroll tax credit for employers subject to the expanded FMLA and required Emergency Paid Sick Leave. The tax credits will be applied against FICA taxes (Medicare and Social Security). Because most libraries do not pay FICA taxes, it is currently unclear how or if libraries will be reimbursed for these costs.

### **WHAT ARE A LIBRARY'S POSTING REQUIREMENTS?**

A Library must post the U.S. DOL's [notice](#) in conspicuous places where it normally posts other employment notices. The DOL has stated that, in light of the focus on teleworking, employers may satisfy the posting requirements by emailing or direct mailing the notice to employees, or by electronically posting the notice on an internal or external website accessible to employees.

### **WHAT ARE A LIBRARY'S RECORDKEEPING OBLIGATIONS**

Employers must keep certain records when their employees take paid sick leave or expanded FMLA leave:

- Employee's name;
- Qualifying reason for requesting leave;
- A statement that the employee is unable to work or telework because of that reason;
- Dates for which leave is requested; and
- Documentation of the reason for leave.

### **TELEWORKING, PAID SICK LEAVE, AND EXPANDED FMLA**

Telework is work the employer permits or allows to be performed at home or outside of the normal workplace.

Paid leave is not necessary if the employee is able to telework while caring for a child due to the closure of the child's school or child care.

An employer may permit an employee to take intermittent paid sick leave or expanded FMLA while teleworking.

Employers must maintain an accurate record of hours worked for all employees participating in telework and must pay at least minimum wage and overtime to non-exempt employees. Exempt employees still must perform primarily exempt duties when teleworking.

## **COMMON WAGE-HOUR ISSUES**

### **PAYING NON-EXEMPT EMPLOYEES**

Under the FLSA, non-exempt employees must be paid at least the minimum wage for all hours worked and are paid only for the hours they actually do work. Non-exempt employees also must be paid overtime compensation at time-and-a-half for all hours worked over 40 in a workweek. Employers can reduce non-exempt employees' schedules and do not have to pay them for hours they would have otherwise worked. Employers can also reduce non-exempt employees' hourly pay rate, provided that such rate remains at or above the minimum wage.

### **PAYING EXEMPT EMPLOYEES**

Unlike non-exempt employees, exempt employees generally must receive their full salary in any week in which they perform *any* work, subject to certain very limited exceptions. So, no deductions can be taken from an exempt employee's weekly salary if the employee performs any work during the work week – even if the office is closed for most of the week. In contrast, if the exempt employee performs no work for the entirety of a workweek, then the employee does not need to be paid.

An employer also may direct exempt employees to take vacation or debit their leave bank account in the case of an office closure, whether for a full or partial day, provided the employees receive payment in an amount equal to their guaranteed salary. However, an exempt employee who has no accrued benefits in the leave bank account, or has limited accrued leave and the reduction would result in a negative balance in the leave bank account, still must receive the employee's guaranteed salary for any absence(s) occasioned by the office closure.

## **Links and Resources**

- U.S. DOL website with COVID-19 information:  
<https://www.dol.gov/agencies/whd/pandemic>
- COVID-19 and the Fair Labor Standards Act:  
<https://www.dol.gov/agencies/whd/flsa/pandemic>

## **WORKERS' COMPENSATION**

The information below is based on recent guidance from the Ohio Bureau of Workers' Compensation (BWC).

### **CAN LIBRARIES DELAY THEIR PREMIUM INSTALLMENT PAYMENTS DUE TO COVID-19?**

Yes. Unpaid insurance premium installment amounts due for March, April, and May for the current policy year can be deferred by all public and private employers (including Libraries) until June 1, 2020. The deferral is automatic – no application is necessary. Employers that wish to submit payments for March, April, and May are free to do so. BWC will not lapse (cancel) coverage or assess penalties for amounts not paid because of the COVID-19 pandemic.

### **IF AN EMPLOYEE CONTRACTS COVID-19, IS THAT A COMPENSABLE CLAIM?**

It depends on how the employee contracted it and the nature of his or her occupation. Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public. However, if the employee works in a job that poses a special hazard or risk and contracts COVID-19 from the work exposure, BWC could allow the claim. It is unlikely that a library employee would be deemed working in a job that poses such a special risk or hazard.

## **Links and Resources**

- Ohio BWC [Frequently Asked Questions about COVID-19](#)
- Industrial Commission: [www.ic.ohio.gov](http://www.ic.ohio.gov)

## **EMPLOYEE BENEFITS PLANS**

Both Ohio and the federal government have enacted significant changes to employee benefit plans in light of the COVID-19 pandemic.

### **IS TESTING AND TREATMENT FOR COVID-19 COVERED BY HEALTH PLANS?**

Yes. Emergency medical conditions under Ohio law include the testing and treatment related to the COVID-19 virus. COVID-19 testing and treatment must be covered without preauthorization and must be covered at the same cost sharing level as if provided in-network.

### **HOW WILL EMPLOYEES' ELIGIBILITY FOR HEALTH INSURANCE BE PROTECTED DURING THIS TIME?**

Under Ohio law, insurers are: (1) required to permit employers to continue covering employees under group policies even if the employee would otherwise become ineligible due to a decrease in hours worked per week; (2) required to continue providing coverage to employees regardless of any "actively at work" or similar eligibility requirement in its policies; and (3) prohibited from increasing premium rates based on a group's decreased enrollment or participation due to COVID-19.

### **WHAT IF EMPLOYEES HAVE DIFFICULTY PAYING FOR THEIR INSURANCE?**

All insurers are required to give their insureds the option of deferring premium payments coming due, interest free, for up to 60 calendar days from each original premium due date.

### **WHAT HAPPENS WITH EMPLOYEES' HEALTH INSURANCE COVERAGE IF THEY ARE LAID-OFF OR FURLOUGHED?**

For employees who are laid-off or furloughed, Ohio has issued regulations that should allow those employees to remain on your health plan as if normally employed. However, please check with your insurer before proceeding.

## **Links and Resources**

- Ohio Department of Insurance:  
<https://insurance.ohio.gov/wps/portal/gov/odi/about-us/divisions/communications/resources/insurance-coronavirus-covid-19>

## **VORYS COVID-19 TASK FORCE**

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://vorys.com/coronavirus).

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