

FAQ's for HR MANAGERS and SUPERVISORS

**Please note – this document will be updated periodically as new information and guidance emerges.
Updated April 20, 2020**

COVID-19 Human Resources/Occupational Health FAQs

Use these questions and answers as a guide, as they may not cover all situations. Refer to policy or Memoranda of Understanding. Contact your agency's human resource professional with questions not addressed here.

We recognize that these are examples of questions and may not cover every concern held by the employee or manager. Internally, we have created a working group to handle occupational health and human resources questions and concerns that may arise. Please avoid addressing these questions to the Health Department. Questions regarding occupational health or human resources concerns can be sent to: HR-COVID19-Questions@baltimorecity.gov

General Information

For more information on preventative care go to:

- <https://health.baltimorecity.gov/novel-coronavirus-2019-ncov>
- <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>
- <https://phpa.health.maryland.gov/Pages/Novel-coronavirus.aspx>

1. What policies or Memoranda of Understanding provisions apply in the case of a pandemic? **UPDATED MARCH 29, 2020**

Agencies will operate according to normal policy and procedures, City HR policies, rules and Memoranda of Understanding. To the extent that it becomes necessary to amend, modify or temporarily suspend a normal policy, protocol or section(s) of an MOU to address the emergency or conform to laws and/or regulations, appropriate guidance will be provided by the Department of Human Resources and the Office of the Labor Commissioner in consultation with the Law Department.

2. What is the City doing to protect employees? **UPDATED MARCH 29, 2020**

The City has directed all employees that are able to perform their job duties



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remotely via telework to do so. Additionally, full-time regular employees who are unable to perform their duties remotely and whose responsibilities are not designated as essential for City operations during this time will be placed on permission leave.

In-person gatherings have been limited and areas that typically have high traffic are currently closed to the public or have limited access to ensure that social distancing protocols can be managed effectively.

As an additional precautionary measure, heightened cleaning and disinfection practices are being implemented in the facilities that are in use. Everyone is urged to follow the recommended precautions such as thorough hand washing and proper coughing/sneezing hygiene to prevent the spread of disease.

3. Is COVID-19 considered a "serious health condition" under FMLA? UPDATED April 20, 2020

Yes. Under the Family and Medical Leave Act (FMLA), eligible employees may take leave for their own serious health condition that may make them unable to perform the essential functions of their positions, or to care for immediate family members with serious health conditions. Section 101 (11) of FMLA defines serious health condition as “an illness, injury, impairment, or physical or mental condition that involves either: inpatient care in a hospital, hospice, or residential care facility; or continuing treatment by a healthcare provider.” Under the statutory language, any absence involving inpatient care qualifies as a serious health condition. The legislative history states that the meaning of serious health condition “is broad and intended to cover various types of physical and mental conditions” and “is intended to cover conditions or illnesses that affect an employee’s health to the extent that he or she must be absent from work on a recurring basis or for more than a few days for treatment or recovery.”

On March 18, 2020, the United States Senate passed the revised “Families First Coronavirus Response Act,” (“FFCRA”) that had been passed by the United States House, which President Trump has now signed. The FFCRA becomes effective on April 1, 2020. Under the FFCRA, the City will be required to provide paid Expanded Family Medical Leave (“EFML”) to employees who have been employed for at least 30 days and are unable to work or telework because they are needed to care for a child under the age of 18 due to school closures or childcare



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unavailability resulting from the COVID-19 pandemic. The first 10 days of this EFML may be unpaid but thereafter, the leave must be paid at a rate of two-thirds of the employee's regular rate of pay, capped at \$200 per day or \$10,000 total per employee.

4. What benefits does the FFCRA provide for City employees? **UPDATED April 20, 2020**

Notable provisions of the FFCRA for include the following:

- **Emergency Paid Sick Leave (“EPSL”).** The City must provide up to 80 hours of paid leave to all full-time employees who need to miss work and are unable to telework because of illness or quarantine, or to care for family members who are ill, quarantined or are children under the age of 18 without school or child care because of the COVID-19 pandemic. Part-time employees are also entitled to two weeks pro rata paid leave. This mandatory paid leave is in addition to any other paid leave already provided to such employees and is capped at a maximum of \$511/day where the employee him or herself is ill or quarantined and \$200/day if the leave is necessary to care for a family member.
- **Expanded Family Medical Leave (“EFML”).** The City will be required to provide paid EFML leave to employees who have been employed for at least 30 days and are unable to work or telework because they are needed to care for a child under the age of 18 due to school closures or childcare unavailability resulting from the COVID-19 pandemic. At the employee's election, the first 10 days of this EFML may be unpaid but thereafter, the leave must be paid at a rate of two-thirds of the employee's regular rate of pay, capped at \$200 per day or \$10,000 total per employee.

5. Can an employee take intermittent leave for EPSL and EFML? **UPDATED APRIL 20, 2020**

It depends on why the employee is taking EPSL and whether the agency agrees. Voluntary arrangements to achieve flexibility and satisfy mutual needs, between employees and agencies for intermittent leave use, are highly encouraged.

EPSL for qualifying reasons related to COVID-19 illness must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:



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- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Once the employee begins taking EPSL for one or more of the aforementioned qualifying reasons, the employee must continue to take EPSL each day until either (1) the employee uses the full amount of EPSL or (2) the employee no longer has a qualifying reason for taking EPSL. This limit is imposed because if the employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such EPSL as necessary to keep the employee from spreading the virus to others.

In contrast, if management and the employee agree, an employee may take EPSL intermittently if the employee is taking EPSL to care for the employee's minor child whose school or childcare facility is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons. For example, if an employee's child is at home because his or her school or place of care is closed because of COVID-19 related reasons, management and the employee could agree that the employee may take EPSL on Mondays, Wednesdays, and Fridays to care for the employee's child, but work at the employee's normal worksite on Tuesdays and Thursdays.

6. How does taking EPSL and EFML impact an employee's traditional FMLA eligibility? **UPDATED APRIL 20, 2020**

Use of EPSL has no impact on an employee's FMLA allotment. However, the EFML is **NOT** an additional 12-week allotment of leave in addition to the traditional FMLA. Eligibility for expanded family and medical leave depends on how much leave you have already taken during the applicable rolling 12-month



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period used for FMLA leave. You may take a total of 12 workweeks of traditional FML or EFML during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

**7. Are any employees exempted from the benefits provided by the FFCRA?
UPDATED APRIL 20, 2020**

The City will provide the EPSL to *all* employees.

The City is electing to exempt emergency responders from the EFML provided by the FFCRA. Emergency responders include: sworn law enforcement officers, firefighters, emergency medical services personnel, emergency medical technicians, paramedics, Baltimore City Health Department personnel, emergency management personnel, 911 operators and public safety dispatchers, and public works personnel in the bureaus of solid waste and water/wastewater.

8. What if 2/3 of an EFML eligible employee's regular pay rate falls below the State/Federal minimum wage? UPDATED MARCH 29, 2020

Per the FFCRA, EFML will be paid at a rate of two-thirds of the employee's regular rate of pay, capped at \$200 per day or \$10,000 total per employee.

9. When does the additional paid sick leave expire? UPDATED MARCH 29, 2020

All unused Emergency Paid Sick Leave hours and Emergency Family Leave hours provided by the FFCRA will expire on December 31, 2020.

10. What proof can an employer require for all the leave time elements contained in the FFCRA? UPDATED APRIL 20, 2020

When requesting EPSL or EFML, employees must provide management the following information:

- Employee's name;



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- The date(s) for which employee is request leave;
- The reason for leave; and
- A statement that the employee is unable to work because of the enumerated reason.

If an employee requests leave because the employee is subject to a quarantine or isolation order or to care for an individual subject to such an order, the employee should additionally provide the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, the employee should additionally provide the name of the health care provider who gave advice.

If an employee requests leave to care for the employee's child whose school or place of care is closed, or childcare provider is unavailable, the employee must also provide:

- The name and age of the employee's child;
- The name of the school, place of care, or child care provider that has closed or become unavailable; and
- A statement that no other suitable person is available to care for the employee's child.

In addition to the above information, employees must also provide to management written documentation in support of EPSL as specified in applicable IRS forms, instructions, and information.

Please also note that all existing certification requirements under the FMLA remain in effect for leave requested because of existing qualifying reasons under the FMLA. For example, if an employee requests leave beyond the two weeks of emergency EPSL because the employee's FMLA qualifying medical condition, the employee must continue to provide medical certifications under the FMLA as required by the City.

11. An employee was on vacation in an affected area and is experiencing COVID-19 like symptoms. The employee extends their time off using appropriate leave. Can I require the employee to obtain a release from a doctor before I allow them back in the workplace? UPDATED MARCH 29, 2020

Yes, according to normal policy and procedures and if management has reason to believe the employee may be a health hazard to themselves or others or that the



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employee's health condition would interfere with his or her ability to perform the job. Refer to the respective Memoranda of Understanding if applicable. If the employee's condition meets the criteria of a serious health condition for FMLA purposes, follow City policy, AM-203-2, Family and Medical Leave.

12. An employee comes to work and later exhibits COVID-19 like symptoms, what options are available to that employee?

That employee may request to go home and use sick leave or with supervisory approval, use other accrued leave, emergency advance sick leave, or leave without pay.

13. Can management send an employee home who appears to exhibit COVID-19 like symptoms?

Yes. If the Agency Head or designee has reason to believe that the employee is a health hazard to themselves or others or that the employee's symptoms are interfering with his or her ability to perform the job. The employee will remain out until released by a healthcare provider. (See Section 10 of the DHR Emergency Response Plan.)

14. What happens if an employee is sent home for appearing to exhibit COVID-19 like symptoms is not infected and is returned to work by a healthcare provider?

Those instances will be handled on a case by case basis. Please consult your agency HR professional.

15. If employee 'A' comes to work ill and employee 'B' is concerned about getting sick from being exposed to employee 'A', what options does employee 'B' have?

Employee 'B' may request, subject to supervisory approval, to use vacation, personal leave, or compensatory time. At the Agency Head or designee's discretion and where applicable, teleworking may be permitted. This situation does not excuse an employee from performing their assigned duties. Refer to applicable policies in the Personnel or Administrative Manuals and the respective Memoranda of Understanding.



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16. An employee works in a direct public contact position. The employee is reluctant to come to work for fear of exposure from the public. What options are available to the employee?

The employee may request, subject to supervisory approval, to use vacation, personal leave, or compensatory time. Refer to policies and the respective Memoranda of Understanding.

Subject to operational requirements and the discretion of management, an employee may use hand sanitizer, wipes or agency approved personal protective equipment (“PPE”), as required by specific occupations. These measures may help the employee feel comfortable in the performance of his or her duties.

17. My child's school or childcare closes and I have to stay home with my child who is not ill, what type of leave do I use? **UPDATED MARCH 29, 2020**

Requests made prior to April 1, 2020, subject to supervisory approval, an employee may request to use vacation, personal leave, compensatory time, or leave without pay. Teleworking may be an option for some positions. An Agency Head, or designee will determine if teleworking is applicable. Refer to policy and the respective Memoranda of Understanding. Sick leave is not appropriate for a healthy parent staying home with a healthy child or dependent.

Beginning April 1, 2020 Employees may request Emergency Paid Sick Leave or Expanded Family Medical Leave pursuant to the FFCRA. (See FAQs #2-3).

In all other circumstances, employees who need to take leave must use subject to supervisory approval, personal, vacation, compensatory leave or leave without pay.

18. Who decides if an agency should close and under what circumstances?

A supervisor or manager should contact the Agency Head or designee who will consult with the Mayor's Office and the Health Commissioner. Assessing whether an agency should close will occur on a case-by-case basis.

19. Should an agency cancel discretionary functions, such as public outreach events?



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The Agency Head should consult with and follow the recommendations of the Mass Gatherings guidelines put forth by the City. This guidance will be updated regularly.

20. If a facility closes, does the agency pay its employees or do the employees use accrued leave?

If the facility closes, permission leave, approved by the Labor Commissioner will be available.

21. How do employees that have been placed on permission leave report their time? **UPDATED MARCH 29, 2020**

A unique leave code has been created to report permission leave associated with the COVID-19 pandemic. Work with your agency HR representative who will receive guidance from the Office of the Labor Commissioner.

22. If an employee resides with anyone who has COVID-19, can the employee come to work?

No, it is required they stay home and use sick leave or with prior supervisory approval, use other accrued leave, emergency advance sick leave, or leave without pay.

23. What if an employee needs to stay home to care for a member of their household but the employee does not have accrued leave?

Follow normal policies and Memoranda of Understanding provisions. The manager/supervisor may approve advanced use of sick leave, leave without pay or request permission leave from the OLC. Telework may be appropriate subject to supervisory approval.

24. Can I refuse an employee's request to wear a medical mask or respirator?

Yes. Absent a legally recognized disability, unique physical condition, or an occupation where employees work directly with those impacted by a condition such as the COVID-



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19 coronavirus or flu, you are generally not required to allow workers to wear masks at work.

25. Can a manager take an employee's temperature at work to determine whether they might be infected?

No. the Americans with Disabilities Act (“ADA”) places restrictions on the inquiries that an employer can make into an employee's medical status.

26. At what point can a manager discuss health issues with an employee?

If a manager observes an employee not feeling well, the manager may inquire, "Are you feeling OK?" We do not recommend asking an employee what is specifically wrong.

**27. An employee of ours has tested positive for COVID-19. What should we do?
UPDATED MARCH 29, 2020**

The appropriate supervisor should send home all employees who worked closely with that employee since their symptoms started to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them since their symptoms started to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws. You must also contact building maintenance and request a deep cleaning of your affected workspace(s). If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

28. One of our employees has a suspected but unconfirmed case of COVID-19. What should we do?

Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that an employee has not tested positive for the virus but has been exhibiting symptoms.

29. How can we distinguish between a “suspected but unconfirmed” case of COVID-19 and a typical illness?



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There is no easy way for you to make this determination, especially given community transmission occurring throughout our state and in Baltimore City. Some of the most common documented symptoms of COVID-19 include fever, cough, and shortness of breath. If an employee is exhibiting these symptoms, you should err on the side of caution but not panic.

The EEOC has provided guidance that you can inquire into an employee's symptoms, even if such questions are disability-related, as you would be considered to have a "reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat." Inquiries into an employee's symptoms should attempt to distinguish the symptoms of COVID-19 from the common cold, seasonal allergies and the seasonal flu. This should include inquiries into whether an employee is experiencing:

- Fever > 100.4
- Fatigue
- Cough
- Sneezing
- Aches and pains
- Runny or stuffy nose
- Sore throat
- Diarrhea
- Headaches
- Shortness of breath

It is important to remember that you must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

30. If we learn or suspect that one of our employees has COVID-19, do we have a responsibility to report this information to the CDC or the Health Department?

The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

31. What steps can we take now to minimize risk of transmission?

Perhaps the most important message employers can give to employees is to stay home if sick. In addition, instruct your workers to take the same actions they would to avoid the flu. For example:



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- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.
- Ensure that employees have ample facilities to wash their hands, including tepid water and soap, and that third-party cleaning/custodial schedules are accelerated.
- Teleconference in lieu of meeting in person if available.
- Have a single point of contact for employees for all concerns that arise relating to health and safety.
- Follow updates from the CDC and the BCHD regarding additional precautions.

You may reference the Occupational Safety and Health Administration's (OSHA's) [Guidance on Preparing Workplaces for an Influenza Pandemic](#) for additional information on preparing for an outbreak.

32. Can Management prohibit an employee from traveling to a non-restricted area on their personal time?

No. However, supervisors should educate employees before they travel to try to work out a solution. In an effort to protect the City's workforce, the City reserves the right to prohibit employees return to work upon return from travel.

33. Does the COVID-19 coronavirus emergency supersede HIPAA privacy rules?

No.

34. How should we treat medical information?

We recommend you treat all medical information as confidential and afford it the same protections as those granted by HIPAA in connection with your group health plan.

35. Does contraction of COVID-19 coronavirus implicate the ADA?

Generally, no, but consult with your agency HR Professional.



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36. One of our employees is in an elevated risk category (over 60, pre-existing health conditions) and is either designated essential or is not eligible for telework. What are the options available to that employee? UPDATED MARCH 29, 2020

An at-risk employee may request their supervisor to:

- Move them to a less-forward facing position or otherwise ensure adequate social distancing; or
- If accommodation is not possible, they may use accrued leave (annual, compensatory, or personal). Employees in an elevated risk category with no accrued leave will be considered on a case by case basis. Consult your agency HR Professional for guidance.

Important: Management/supervisory personnel should take measures to assist “at-risk” employees and employees with disabilities if the employee self-identifies or if such measures are consistent with an ADA accommodation. This employee population includes employees over the age of 60, employees with chronic, serious or underlying medical issues, and individuals with cognitive or mental disabilities. Those employees should self-identify, and not be involuntarily removed from the worksite or subject to treatment unlike other employees unless for reasons cited in DHR guidance/FAQs. Further existing ADA accommodation should be utilized unless future guidance provides alternate accommodations to meet changing operational issues.

