



Dominion Payroll™



# HR *Matters*

COVID-19 and Your Workforce

July 22nd at 11:00 am

# Meet today's guest:



**Emily Schlaudecker**

*HR Pro at Mammoth/ThinkHR*

# The Workforce Returns

*(Maybe)*

The intersection of Covid-19 and your people may present unique challenges.

Know your rights. Know their rights.  
Be flexible. Be creative. Be compliant.





# Bringing Them Back

- *If you are recalling your employees from furlough or from remote work*, phase the Return to Work using consistent criteria (seniority? job function? at-risk population?)
  - Adjust schedules as necessary to keep capacity low
  - Recall your workforce in writing.
  - Document any that refuse to return to work for any reason.
- Allow employees in high-risk categories to work from home or remain on leave until they feel comfortable to return.
  - If that's not possible, take measures to protect them when working onsite
- Notify your state's unemployment agency of the employees that have been recalled to work, as well as any that have turned it down.
- Communicate all of your plans and precautions to the team.





# VA Workplace Safety Regulations

- First state to approve OSHA standard for COVID-19
- Goes into effect the week of July 27th
- This emergency temporary standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.



# VA Workplace Safety Regulations

- New standards require employers to:
  - Provide flexible sick-leave policies, telework options and staggered shifts when possible;
  - Provide both hand washing stations and hand sanitizer when feasible;
  - Assess risk level of employees, suppliers, and vendors before entry to the workplace;
  - Assess hazard level of all job tasks;



# VA Workplace Safety Regulations

- Determining hazard level for all jobs (all levels except Low require a written plan and point person):
  - **Very High** - COVID-19 related medical, postmortem, and laboratory work.
  - **High** - Healthcare, medical transport, first responders, and mortuary services.
  - **Medium** - Jobs that require more than a minimum exposure of less than 6 feet with other employees or the public.
  - **Low** - Any job that is not classified as above and individuals do not have sustained contact with other individuals.





# VA Workplace Safety Regulations

- New standards require employers to:
  - Notify employees within 24 hours if they may have been exposed to a positive case of COVID-19; **Do not identify the sick employee**
  - Notify the Virginia Department of Health within 24 hours of all positive COVID-19 tests;
  - Notify Virginia Department of Labor & Industry within 24 hours of three or more positive tests in a two-week period;
  - Post agency-prepared COVID-19 information to all employees;



# VA Workplace Safety Regulations

- New standards require employers to:
  - Provide COVID-19 training to all employees within 30 days (except for low-hazard places of employment);
  - Prepare infectious disease preparedness and response plan within 60 days;
  - Maintain air handling systems in accordance with manufacturer's instructions as well as ANSI and ASHRAE standards.



# VA Workplace Safety Regulations

- New standards require employers to:
  - Follow **test-based or symptom-based test** for admitting an employee back to work after they've had Covid-19 **with** symptoms; or consult with a medical professional
  - Follow **time-based test** for employee who tested positive but **didn't have symptoms**
  - NOT retaliate or discriminate against an employee who wears PPE if you haven't provided or in addition to what you have provided
  - NOT retaliate or discriminate against an employee who reports you for violating the new standards





# VA Workplace Safety Regulations

For known or suspected cases **with** symptoms:

## Symptom-based:

- 3 days (72 hours) since no fever without medication and improved respiratory symptoms, and at least 10 days since symptoms began

## Test-based:

- Resolution of fever without medication and improvement of respiratory symptoms AND negative test results from TWO tests taken more than 24 hours apart

For known or suspected cases **without** symptoms

- **Time-based:**

- At least 10 days since date of first positive test, assuming no symptoms have developed since. If they develop symptoms, use symptom- or test-based strategy.



# VA Workplace Safety Regulations

“Nothing in this standard shall limit an employee from refusing to do work or enter a location they feel is unsafe.”

**OSHA Rules: an employee's refusal to perform a task will be protected if all of the following conditions are met:**

- Where possible, the employee asked the employer to eliminate the danger, and the employer failed to do so
- The employee refused to work in “good faith,” which means that the employee must genuinely believe that an imminent danger exists
- A reasonable person would agree that there is a real danger of death or serious injury; and there isn't enough time, because of the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.



# Federally-Protected Employee Rights

## FFCRA

Employees may have a right to job-protected leave under the federal Families First Coronavirus Response Act (FFCRA). More on this in a minute!

## ADA and FMLA

Employees who are in a high-risk category may be entitled to a reasonable accommodation under the Americans with Disabilities Act (ADA) OR unpaid leave via FMLA if their situation doesn't qualify them for leave under the FFCRA (or if they have run out of that leave).

**It would be a reasonable accommodation under the circumstances to allow the employee to work from home or take unpaid leave.**





# Other ADA Considerations

Employees who live with someone who is high risk are **NOT** entitled to a reasonable accommodation under federal law (ADA).

**BUT**, still consider allowing them to work from home if possible or take an unpaid leave.

**Medically-documented anxiety is a condition that could warrant an ADA accommodation.**

If you want to keep them, being compassionate and flexible is your best bet.



# Families First Coronavirus Response Act (FFCRA)

## *Paid Leaves*

# FFCRA Paid Leaves – available through 12/31/20

## Distribute/Post the Model Notice if you haven't already

- Available on our website – [dominionpayroll.com](http://dominionpayroll.com)
- Available to all FT, PT and temporary employees through 12/31/20

### 1.) Emergency Paid Sick Leave (EPSL)

- Up to 80 hours, taken concurrently
- No waiting period for new hires or rehired former employees
- **6 qualifying conditions**, including childcare (see US DOL FAQs, both linked at [dominionpayroll.com](http://dominionpayroll.com)); 100% and 2/3 rate of pay depending on qualifier (max \$511/day and \$200/day)

### 2.) Expanded FMLA (EFMLA)

- 30 day waiting period -- “You are considered to have been employed by your employer for at least 30 calendar days if your employer had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin.”
- Up to 12 weeks, taken concurrently or intermittently
- **One qualifying condition** → Childcare (2/3 rate of pay; max \$200/day)



## What if an employee exhausts EFMLA leave and still cannot return to work because childcare is unavailable due to Covid-19?

You aren't *obligated* to allow further time off, but you have a few options:

- Allow the employee to use Emergency Paid Sick Leave if they haven't already
- Allow the employee to use any available PTO
- Allow the employee to request an unpaid Personal Leave of absence, following existing policy if applicable.
- Require the employee to return. If the employee cannot return, their option will be to resign, or they can terminate for failure to return from leave.

Consider what you “have” to do versus what the “right” thing is to do. In other words, terminating an employee because they need an extra week or two to return might not be a great morale booster for their remaining employees and/or their community. Plus you’ll have to hire someone else.

Things like this spread quickly in the court of public opinion and could affect your reputation as a company. Keep more than just what the law requires in mind while making this decision and apply your policies consistently!

# How do FFCRA paid leaves work with PPP loan funds and forgiveness?

- FFCRA leaves are paid for via dollar-for-dollar, real time tax credits.
- You CAN offer FFCRA leave if you are using PPP loan funds.
- You CANNOT claim FFCRA hours toward PPP loan forgiveness.

## OPTIONS:

1. Employee takes FFCRA; employer takes tax credits. Hours are tracked separately. Expenses are not factored into PPP forgiveness.
2. Employee takes FFCRA; employer pays salary with PPP funds. Once PPP funds are spent, if employee still needs FFCRA leave, employer takes tax credits.

\*Remember: FFCRA leaves are federally-mandated employee rights, which means you have to grant them if the employee qualifies (and you have <500 employees). Read US DOL FAQs for more info.

## But I have < 50 EEs, so I don't have to grant FFCRA leave, right?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing FFCRA paid leaves **when doing so would jeopardize the viability of the small business as a going concern.**

**A small business may claim this exemption if an authorized officer of the business has determined that:**

1. The provision of paid sick leave or EMFLA would result in the business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or EFMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; **OR**
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or EFMLA, and these labor or services are needed for the business to operate at a minimal capacity.

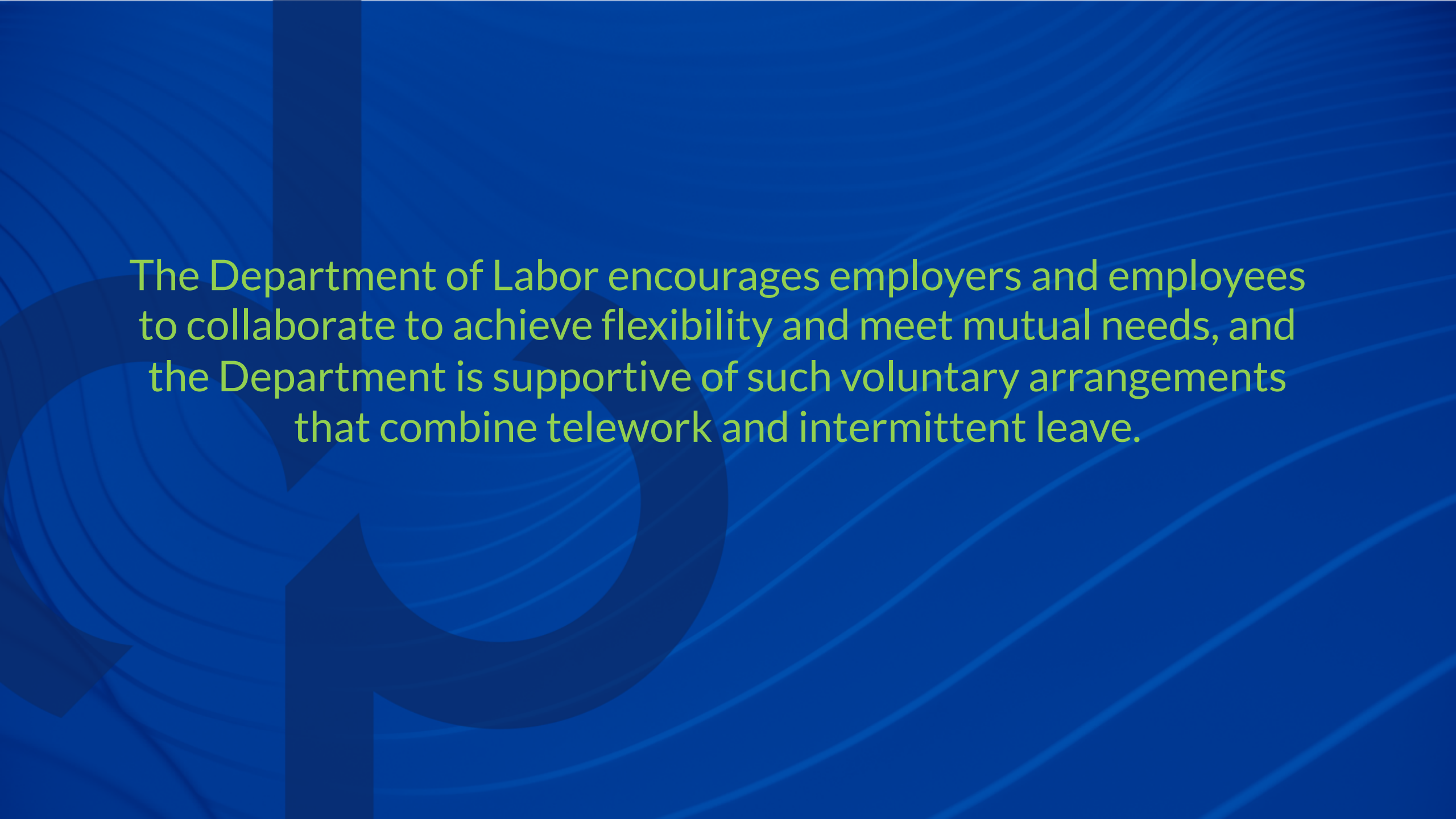


## Small business exemption documentation

So, in short, the exemption is self-determined and self-defended.

There is no place to submit this documentation. The US DOL recommends you document your rationale and keep it on file for up to 6 years in the event that you must defend your decision not to grant FFCRA leave.



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The Department of Labor encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

# Additional Best Practices

- Train managers on how to work with employees who are facing increased personal challenges and stress (loved ones affected by the virus, children and/or elderly parents at home, financial stress, etc.)
- Be flexible and adjust workloads to be reasonable.
- Use your Employee Assistance Program (EAP) or consider getting one if you don't already offer.
- Update your handbook!
- Communicate your appreciation as you welcome employees back to work.



- FFCRA Paid Leaves, ADA and “regular FMLA”
- What can you ask? What can't you?
- What are employers' options if an employee travels?
- If we require an employee to quarantine for 14 days, do we pay them even if they aren't working?
- What to do if an **employee** has symptoms or tests positive
- What to do if a **customer** has symptoms or tests positive

We are answering your questions live on the air right now.

Please submit questions through the **Q&A function**,  
*not the chat option* at the bottom of your screen.





# Questions?

Please email:

[questions@dominionpayroll.com](mailto:questions@dominionpayroll.com)

For resources, updates, webinar schedule, and FAQ's, please visit our

[COVID-19 Updates & Resources page](#)

