



August 3, 2020

GUIDANCE FOR EMPLOYERS AND EMPLOYEES ON WORKERS' RIGHTS AND SAFETY DURING PHASE 4 OF THE RESTORE ILLINOIS PLAN

Federal and Illinois law require employers to maintain a safe and healthy workplace. As we enter Phase 4 of the Restore Illinois plan and more Illinoisans return to work, employers and employees are navigating difficult questions about how to maintain a safe and healthy workplace during the COVID-19 pandemic. COVID-19 also has raised other employment-related questions involving issues like pay and benefits, leave, and eligibility for unemployment insurance.

This guidance is intended to help both employers and employees educate themselves about minimum required workplace safety requirements, best practices to promote a safe and well-functioning workplace during the COVID-19 pandemic, and to answer some frequently asked questions about COVID-19 and the workplace.

A. Minimum Workplace Safety Requirements During Phase 4

Employers are required to follow the [Governor's Executive Orders](#), including those workplace safety measures outlined in the [Restore Illinois](#) plan and guidelines from the Illinois Department of Public Health (IDPH) and Illinois Department of Commerce and Economic Opportunity. The Executive Orders require employers to:

- Continue to evaluate which employees can work from home and are encouraged to facilitate remote work when possible.
- Ensure employees practice social distancing and wear face coverings when social distancing is not possible. Employers in retail, manufacturing, and office settings must provide face coverings to employees not able to maintain a minimum 6-foot social distance at all times.
- Ensure all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing.
- Ensure visitors (customers, vendors, etc.) to the workplace can practice social distancing. If maintaining a 6-foot social distance will not always be possible, visitors should be encouraged to wear face coverings.
- Prominently post the [guidance](#) from IDPH and the Office of the Illinois Attorney General regarding workplace safety during the COVID-19 emergency.

B. Anti-Discrimination and Anti-Retaliation Laws Applied to COVID-19

State and federal law protect employees from retaliation for raising safety and health concerns with the employer or with their coworkers. State and federal law require employers to maintain a workplace free of harassment or discrimination regardless of age, disability, sex, race, national origin, religion, or any other protected category.

1. Protections from Retaliation

- a. Employers are prohibited from retaliating against an employee for raising concerns about COVID-19 or their overall safety and health concerns internally or to a government agency. Employers are further prohibited from retaliating against an employee when they disclose information they have reasonable cause to believe is a violation of a state or federal law, rule, or regulation. Specific federal, state, and local protections against retaliation include:
 - i. The federal Occupational Safety and Health Act of 1970 protects private sector employees who raise safety and health concerns with their employer or a government agency. Employees who believe they have been retaliated against may file a [complaint](#) with the federal Occupational Safety and Health Agency (OSHA). (Note employees generally only have 30 days to file a complaint.)
 - ii. The Illinois Occupational Safety and Health Act of 2015 protects state and local government employees who raise safety and health concerns with their employer or a government agency. Public employees who believe they have been retaliated against may file a [complaint](#) with the Illinois Occupational Safety and Health Agency (IL OSHA).
 - iii. The Illinois Whistleblower Protection Act, 740 ILCS 174, prohibits retaliation against an employee for disclosing information they believe violates a state or federal law, rule, or regulation.
 - iv. The city of Chicago prohibits retaliation, including termination, against employees who work within the city for obeying a stay-at-home, quarantine, or self-isolation order. M.C.C.1-24. Chicago-based employees may [file a complaint](#) with the city's Office of Labor Standards if they believe they have been retaliated against in violation of this ordinance.
- b. Section 7 of the National Labor Relations Act (NLRA) protects employees' ability to engage in "protected concerted activity for mutual aid or protection" in both union and non-union settings. Such protected concerted activity generally includes employees talking to one another about working conditions or workplace safety, or engaging in actions, such as petitions or walkouts, to try to improve safety conditions.

2. Non-discrimination

- a. All workplace safety policies, including required face coverings, must be applied and enforced equally for all employees in the workplace, except for those employees who have informed the employer they have a medical reason or disability that prevents them from wearing a face covering. Further guidance concerning the use of face coverings is available [here](#).
- b. Employers may not require employees to disclose if they are at higher risk for COVID-19 or have a health condition. However, if possible, they must try to make reasonable accommodations for an employee who requests an accommodation. Further guidance regarding the Americans with Disabilities Act and the COVID-19 pandemic is available [here](#).
- c. If an employee tests positive for COVID-19, their employer should inform other employees in the workplace who may have been exposed. The employer may not disclose the name of individual employee(s) who test positive.

- d. Employers may require an employee to take a COVID-19 test or submit a medical verification clearing them to return to work after they have tested positive for COVID-19, been sick, or experiencing COVID-19 related symptoms.
- e. Per [guidance](#) from the Equal Employment Opportunity Commission (EEOC), employers *may not* require a COVID-19 antibody test before allowing employees to return to work.

C. Best Practices to Promote Workplace Health and Safety

The following measures are not legal requirements, but steps employers are encouraged to consider promoting a healthy work environment and to limit the spread of COVID-19.

1. Employee Scheduling

- a. If it is not feasible for employees to work from home, employers should consider what arrangements can be made to limit the number of workers¹ who are together in the workplace at any one time. For example, employers should consider staggering shifts or designating groups of workers to consistently work on particular days and times.
- b. To promote scheduling consistency, employers may give employees the opportunity to provide input on their preferred schedule.

2. Workplace Safety Plans

- a. Employers may develop a workplace safety plan as a way of identifying and addressing risks.
- b. Workers are an integral part of an effective workplace safety plan as they are often in the best position to identify hazards in a particular area or job. To encourage worker input and feedback on safety and health matters, employers should consider designating one or more employees to be points of contact for employees with health or safety concerns or, in larger workplaces, creating a workplace safety and health committee made up of worker representatives from a variety of roles within the business
- c. In workplaces where employees are represented by a union, union representatives also can participate in workplace safety planning.

3. Illness Prevention

- a. Employers will want to ensure workers who perform work on-site, including temporary employees and independent contractors, receive workplace safety training that includes training on COVID-19 symptoms and how to self-assess for symptoms.
- b. Worker safety training and the corresponding written materials should be available in a language spoken by employees and accessible to employees with a range of education levels.
- c. In order to promote their use, employers should make face coverings and other protective equipment available at no charge to employees.
- d. Employees should be instructed to stay home when sick and to follow the guidance of public health authorities if they have been exposed to someone with COVID-19.

¹ For purposes of this guidance document, the term “workers” should be understood to include not only an employer’s employees, but also any temporary laborers as defined by the Illinois Day and Temporary Labor Services Act, 820 ILCS 175/5, independent contractors, or other individuals that perform work at the work site.

- e. Employers should not implement or keep in place any bonus or incentive payments for work attendance that could encourage employees to work while sick.
- f. Employers should clearly explain paid leave policies and make workers aware they may be eligible for benefits if they are sick or symptomatic.

FREQUENTLY ASKED QUESTIONS FOR EMPLOYERS AND EMPLOYEES

Questions Related to Health and Safety in the Workplace

1. Can an employer require an employee to go home if the employee is exhibiting COVID-19 symptoms?

Yes. Employees who exhibit symptoms of COVID-19 can be asked to leave the workplace and stay at home until they are free of symptoms.

2. Can an employer require employees to wear masks at work?

Yes. An employer can require employees to use protective gear, including masks or face coverings. Workers who have a medical condition or disability that prevents them from safely wearing a face covering may seek a reasonable accommodation from these requirements. More information on the use of face coverings is available [here](#).

3. Can employers implement temperature screenings?

Yes. The EEOC has issued guidance stating that due to the acknowledgment of COVID-19 community spread by the Centers for Disease Control and Prevention (CDC) and state/local public health authorities, employers may take employees' temperatures. As with other medical information, employers must maintain the confidentiality of employee temperatures and any other symptoms.

4. If an employee has been quarantined at home, may their employer require a doctor's note or a COVID-19 test before they return to work?

Yes. Employers are responsible for maintaining a safe and healthy workplace and there is nothing in Illinois or federal law that prohibits an employer from requiring a doctor's note or COVID-19 test before an employee returns to work. Health care providers must make COVID-19 diagnostic testing available [for free](#) to individuals regardless of insurance or immigration status. Employers should recognize health care providers may be extremely busy and not able to provide the requested documentation in a timely manner.

5. How much information can an employer request from an employee who calls in sick?

Employers have an obligation to ensure a healthy workplace. During the COVID-19 pandemic, employers may ask employees if they are experiencing symptoms of COVID-19, including fever, chills, cough, and shortness of breath. However, employers are required to ensure the confidentiality of any medical information provided by an employee.

6. Are employees who have COVID-19 or are experiencing COVID-19 symptoms entitled to paid time off? What about employees who are recommended to self-quarantine by a

doctor or employer due to potential exposure? What about employees who need to take time off to care for a family member for reasons related to COVID-19?

Employees in all of these situations may be entitled to paid time off under their employer's existing leave program as well as under the federal Families First Coronavirus Response Act ("FFCRA"), public law 116-127. The Office of the Illinois Attorney General has issued more detailed [guidance](#) on the FFCRA and paid sick leave.

7. What should an employer do if an employee reports COVID-19 symptoms or tests positive for COVID-19?

If an employee reports having any COVID-19 related symptoms, the employer should encourage the employee to contact their health care provider. If two or more employees report having COVID-19 related symptoms or test positive for COVID-19, the employer should notify their local health department within 24 hours of being informed of the presence of COVID-19 symptoms or positive test results. The employer also should notify employees who have been or may have been exposed, although they must keep the name of the employee confidential.

Employers should never require employees or other workers at the workplace to report to work while experiencing COVID-19 symptoms.

8. What should an employee do if they test positive for COVID-19?

An employee who tests positive should make their employer aware of the positive test. Employees should not come to work, nor should their employer require them to come to work if they have had a positive test or are experiencing COVID-19 symptoms.

9. Can an employee refuse to go to work if they feel at risk for contracting COVID-19?

There is currently no state or federal law that provides job protection to a healthy employee who refuses to work out of fear of contracting COVID-19. However, employees may be entitled to use vacation or other paid time off in accordance with their employer's established leave program. Under the federal Occupation Safety and Health Act of 1970, employees who believe they are in imminent danger may refuse to work if [certain conditions](#) are met.

Employees [at higher risk](#), live with individuals at higher medical risk, or are pregnant can request a reasonable accommodation. It is the employer's responsibility to then consider accommodations, such as allowing the employee to work from home, moving their workstation to a less crowded area, or re-examining job duties to minimize interaction with other coworkers or members of the public. The Americans with Disabilities Act, 42 U.S.C. § 12112, prohibits employers from requiring employees to disclose if they have a medical condition or are at higher risk, so employees must volunteer this information in order to seek an accommodation.

10. Can an employer require employees or workers at a job site to sign a non-disclosure agreement or other contract agreeing not to disclose information about health and safety in the workplace?

No. Such an agreement or contract would violate public policy, as expressed in public health and occupational safety laws, and would not be enforceable against the employee.

11. Can an employee be fired or retaliated against for raising safety concerns at work or making a complaint regarding workplace safety to a government agency?

No. Various provisions of federal and state law prohibit retaliation against employees for raising safety and health concerns. Employees who believe they have been retaliated against may want to consider consulting with an attorney.

12. What can an employee do if they are concerned about multiple COVID-19 positive tests or symptomatic employees in the workplace?

Employees can contact their local health department or IDPH at 1-800-889-3931 or by emailing DPH.SICK@ILLINOIS.GOV.

13. Do health and safety laws and rules protect immigrant workers?

Yes. Health and safety laws apply to all employees, regardless of immigration status.

Additional resources and frequently asked questions about COVID-19 and public health are available [here](#) or at <https://www.dph.illinois.gov/covid19>. Additional guidance includes:

Industry Specific Guidance:

- ***Migrant labor camp guidance:*** <https://www.dph.illinois.gov/covid19/community-guidance/migrant-labor-camp-guidance>
- ***Meat and Food Processing guidance:*** <http://dph.illinois.gov/covid19/community-guidance/guidance-food-and-meat-processing-facilities>

Sick Leave Guidance:

- https://illinoisattorneygeneral.gov/rights/WRB/Paid_Sick_Leave_FAQ.pdf
- <https://www.cookcountyil.gov/service/earned-sick-leave-ordinance-0>

Questions Related to Wage and Benefit Issues

14. Can an employee be laid off or fired because of the economic impact of COVID-19 on an employer's business?

Yes. Generally an employer can lay off or terminate an employee for economic reasons. Exceptions to this general rule are (i) employees who are guaranteed employment for a certain period of time under an employment contract, or (ii) employees performing work under a collective bargaining agreement that provides for procedures around employee layoffs and terminations.

15. Are laid off or terminated employees entitled to earned wages? Vacation pay?

Yes. The Illinois Wage Payment and Collection Act requires that, after separation from employment, employees must be paid all final compensation, including bonus payments,

vacation pay, wages and commissions on their next regularly scheduled payday. 820 ILCS 115/5. More information on unpaid wages and the wage claim process is available [here](#).

16. Are undocumented employees entitled to earned but unpaid wages?

All workers are entitled to their promised wages for all hours of work performed, regardless of immigration status.

17. Are employees on unpaid leave entitled to health insurance?

If an employee is receiving health insurance through their employer, the employer must continue that coverage during the leave period.

18. How can an employee who has been laid off access health insurance?

Laid off employees who previously had employer-provided health insurance may continue their coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Additionally, employees can choose to [enroll](#) in coverage provided through the Affordable Care Act.

Additional frequently asked questions about COVID-19 and wages, benefits, and lay-offs are available [here](#). For further information or to contact the Illinois Department of Labor visit: <https://www2.illinois.gov/idol/Pages/contact.aspx>

Questions Related to Unemployment Insurance

19. Can an employee collect unemployment insurance if they are temporarily laid off due to COVID-19 related work closures?

An individual temporarily laid off in this situation can qualify for benefits if the individual is available for and actively seeking work. The individual qualifies as actively seeking work as long as they are prepared to return to their job as soon the employer reopens.

20. Can an employee collect unemployment insurance if they refuse to return to work because of concerns about COVID-19?

Individuals who refuse an offer of suitable work are disqualified from receiving unemployment insurance unless there is good cause for the refusal. The determination of whether work is suitable and whether there is good cause for refusing it is made on a case-by-case basis through the Illinois Department of Employment Security's hearing and adjudication process.

21. Can individuals get unemployment insurance at the same time as paid leave?

Under certain circumstances. Individuals currently receiving paid leave are not eligible for unemployment insurance. In applying for benefits, a claimant must report any paid leave to which they are entitled.

22. Can workers who are temporary employees through a temporary staffing agency receive unemployment insurance?

Yes. Temporary employees hired through a temporary staffing agency can be eligible for unemployment insurance.

23. How long does unemployment insurance last?

Eligible employees can receive up to 26 weeks' worth of regular state unemployment insurance and, depending on the unemployment rate, Extended Benefits may be available for an additional 13 or 20 weeks. Federal Pandemic Emergency Unemployment Compensation (PEUC) is a temporary program that provides up to 13 additional weeks of benefits to individuals who have exhausted all rights to regular unemployment insurance compensation with respect to a benefit year that ended on or after July 1, 2019. Pandemic Unemployment Assistance is available for up to 39 weeks for individuals whose unemployment is attributable to COVID-19 and who are not eligible for other unemployment benefits.

24. What assistance is available for freelancers, self-employed individuals, and independent contractors who have lost work as a result of the COVID-19 pandemic?

Pandemic Unemployment Assistance (PUA) was created to help self-employed individuals, freelancers, and independent contractors who lose work as a result of specific reasons set forth in federal law attributable to the COVID-19 pandemic and are not eligible for regular unemployment insurance. A precondition for PUA approval is that someone is not eligible for any other unemployment programs. Applying for and being denied benefits under the regular unemployment insurance program is the first step to establishing eligibility under PUA.

25. I receive a Form 1099 for the job(s) I do as an independent contractor. Am I eligible for PUA?

If you are a worker who received a Form 1099 and are not certain if you are eligible for PUA, you should file a claim for regular unemployment benefits for two reasons. First, not all individuals classified as "1099 employees" are actually "independent contractors" as defined by the Unemployment Insurance Act. Some of these individuals should have been classified as employees and therefore would be eligible for unemployment insurance. An employer's failure to contribute to the unemployment system will not impact an individual claimant's eligibility for benefits. Second, the PUA program has been established for individuals who are unemployed for specific reasons attributable to COVID-19 and not covered by the state's regular unemployment insurance program. To establish eligibility under the new program, the claimant will have to demonstrate they are not eligible under the regular program. Applying for and being denied benefits under the regular program is the first step in establishing eligibility under the new temporary program.

26. How long will Pandemic Unemployment Assistance last? Will my PUA claim be backdated?

PUA payments are available for claimants who lost work due to specific COVID-19 related reasons provided for in the federal law beginning the week of February 2, 2020. PUA payments end on December 26, 2020. IDES will backdate claims to the first week of unemployment due to the COVID-19-related reason.

27. I am undocumented and lost my job because of COVID-19. Am I eligible for unemployment benefits?

In general, individuals not authorized to work in the United States are not eligible for regular unemployment benefits or benefits under the PUA. Among other things, they are not considered “able and available to work” under unemployment insurance law.

28. I have a Green Card and was recently laid-off due to COVID-19. Am I eligible for unemployment benefits?

Individuals with Green Cards issued by the federal government are generally “able and available to work” and may be eligible for unemployment benefits.

Additional frequently asked questions about COVID-19 and unemployment insurance are available [here](#). For further information or to contact the Illinois Department of Employment Security visit: https://www2.illinois.gov/ides/aboutides/Pages/Contact_IDES.aspx.

Please note that this document does not change the requirements to be eligible for unemployment benefits.