



Ebola Virus Disease Labor & Employment Guidance

Frequently Asked Questions

Q: Is an employee with an Ebola infection entitled to leave under the Family Medical Leave Act?

A: Generally, an employee who needs time off from work because he or she is sick, or must care for a family member who is sick, will qualify for Family Medical Leave Act (FMLA) leave if the circumstances of the illness meet the definition of a “serious health condition” as described in the statute and regulations. The FMLA defines a “serious health condition” as an injury or impairment that involves either inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider. Given the severity of the symptoms of an Ebola infection, including fever, vomiting, and impaired kidney and liver function, and the requirement of inpatient care for treatment, an Ebola infection qualifies as a “serious health condition.” For this reason, an employee who needs time off from work to treat his or her own Ebola infection, or that of a family member, is entitled to leave under the FMLA.

See Also

- [List of Resources on the Ebola Virus Disease](#)
- [Sample Ebola Response Policy](#)

Q: Is an employer required to pay an employee for the time they are out of work to care for themselves or for a family member with an Ebola infection?

A: There is no requirement under federal law that an employer pay an employee for the time they are out of work due to their own Ebola infection or to care for a family member with an Ebola infection. Generally, an employer should follow its sick pay, paid time off, disability benefit plan (if applicable), or any other applicable policies when deciding how to account for an employee’s time off work due to an Ebola infection. Depending on the employer’s policies, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave (i.e., paid leave will run concurrently with the FMLA leave). If the employer does not require the use of accrued paid leave, the employee may nonetheless elect to use such accrued leave in lieu of unpaid leave. If neither the employee nor the employer choose to substitute paid leave for unpaid FMLA leave, the employee remains entitled to all of the paid leave earned or accrued under the employer’s plan. See 29 C.F.R. § 825.207. State and local law should be reviewed to see whether they impose any requirements for paid leave.

Q: What legal responsibility do employers have to allow employees time off from work to care for family members or sick children that have been sent home from school or day care?

A: Under federal law, an employee may be entitled to FMLA leave to care for a sick child or other family member that is suffering from a “serious health condition” as defined by the statute. As discussed above, an Ebola infection will qualify as a serious health condition. Note that under the FMLA, “family member” includes an employee’s parent, spouse, or child. The FMLA defines “parent” to include an employee’s biological, adoptive, step or foster parent, or an individual who stands *in loco parentis*¹ to an employee. Note that parents-in-law are not included in this definition. The FMLA’s definition of spouse includes a husband or wife as defined or recognized under state laws for purpose of marriage

¹ A parent who stood *in loco parentis* to an employee means a person who had the day-to-day responsibilities to care for and financially support the employee when he or she was a child.



Ebola Virus Disease Labor & Employment Guidance

in the state where the employee resides.² Lastly, the FMLA defines “child” as a biological, adopted, foster or step child, legal ward, or a child of a person standing *in loco parentis*³, who is either under age 18, or 18 or older and “incapable of self-care because of mental or physical disability.”

Aside from potential FMLA leave, employers currently are not required by federal law to provide leave to employees caring for dependents that have been sent home from school or day care. Some states, however, may have laws requiring employers to allow employees time off to care for sick children. For example, under the Minnesota Parenting Leave Act, an employer with 21 or more employees is required to allow an employee to use personal sick leave benefits provided by the employer for absences due to illness of an employee’s child for such reasonable periods as the employee’s attendance with the child may be necessary, on the same terms that the employee has sick leave benefits available for his or her own illness. Note that “personal sick leave benefits” means time accrued and available to an employee to be used as a result of absence from work due to personal illness or injury, but does not include short-term or long-term disability or other salary continuation benefits. See Minnesota Statute § 181.9413.

Q: Is an employer required to allow an employee to stay home from work to avoid getting an Ebola infection?

A: Under the Occupational Safety and Health Act (“OSHA”), an employee may refuse to work due to safety concerns at the workplace, as long as those concerns are reasonable.

Q: Can an employer require an employee not to take vacation or other personal travel time to Ebola-affected areas?

A: An employer can certainly encourage employees to plan their vacations and personal travel time with close attention to their health and safety, but cannot dictate where an employee chooses to go in his or her personal time, or discipline an employee for not following the employer’s recommendations. To keep up to date on the affected areas, visit the Centers for Disease Control and Prevention website at <http://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/distribution-map.html>.

Q: Can an employer require employees to notify the employer if they plan to travel to an Ebola-affected area?

A: While the Equal Employment Opportunity Commission (EEOC) has not addressed this issue specifically with the Ebola outbreak in mind, the EEOC has explicitly stated that in the event of a pandemic, an employer may ask whether employees are returning from locations with increased risk if the Centers for Disease Control and Prevention (CDC) or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have symptoms, even if the travel was personal. However, at this time, the Ebola outbreak has not been characterized as a pandemic.

² Note that the Department of Labor has published a Notice of Proposed Rulemaking to revise this definition in light of recent Supreme Court jurisprudence. Employers should be mindful of the potential upcoming changes when implementing FMLA policies.

³ An employee standing *in loco parentis* is a person who has the day-to-day responsibilities to care for and financially support the child.



Ebola Virus Disease Labor & Employment Guidance

Q: Can an employer require an employee returning from an affected country or region stay home for the incubation period of the virus?

A: Generally, employers should follow the guidance of the CDC, which at this point recommends that anyone who has traveled to an affected area monitor their symptoms for the incubation period, which is currently estimated to be 21 days. The best solution for mitigating any risk of Ebola infection from an employee returning from an Ebola-affected area is to request the employee work from home or take a paid leave of absence for the incubation period directly following the travel time and before they return to the workplace. While the EEOC has not addressed the Ebola outbreak directly, it has specifically stated that an employer may require an employee to work remotely or from home as a strategy to control a pandemic infection. See http://www.eeoc.gov/facts/pandemic_flu.html.

Employers are encouraged to make information regarding Ebola available to employees. In particular, it would be prudent to provide a list of the symptoms and affected areas, and a guidance on how to monitor themselves upon return from an affected area. To obtain this information, refer to the *List of Resources on the Ebola Virus Disease and Pandemic Preparedness*.

In the event an employee has specifically disclosed that he or she had close contact with an Ebola patient, more aggressive action is warranted. Under OSHA, employers have a general responsibility to provide a safe workplace and thus need to take appropriate steps to ensure that all practicable protective measures are taken to minimize risk.

Q: Can an employer require employees to wear protective gear such as masks or gloves or take other measures to control the spread of infection?

A: The EEOC has specifically stated that an employer may require employees to wear personal protective equipment during a pandemic. See http://www.eeoc.gov/facts/pandemic_flu.html. In addition, the EEOC has specifically stated that infection control practices such as requiring hand washing, use of tissues, etc. does not implicate the Americans With Disabilities Act (ADA). Employers should be prepared to accommodate any employees with disabilities in accomplishing an employer's infection-control goals (e.g., using non-latex gloves for employees with latex-related allergies). See http://www.eeoc.gov/facts/pandemic_flu.html.

Q: Can an employer require employees to have medical exams or present medical certification related to whether they are infected with the Ebola virus before allowing them in the workplace or as a measure to verify cases of Ebola infection?

A: Requests for medical certifications may implicate both the ADA and the FMLA. If an employee's own health condition qualifies for FMLA leave, and the employer grants leave under the FMLA, the employer may require medical certification before an employee may return to work. However, medical certifications in such circumstances should be required pursuant to an employer's leave policy, and employers should apply the requirement consistently to all similarly-affected employees.

Under the ADA, an employer's right to make disability-related inquiries or require medical examinations varies depending on whether it is in connection with an offer of employment or during actual employment. An employer is prohibited from making any disability-related inquiries or requiring medical examinations before making an offer of employment, but may inquire as to whether the candidate can perform job-related functions. An employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, after a



Ebola Virus Disease Labor & Employment Guidance

conditional offer of employment has been made, as long as the employer is doing so for all similar employees in the same job. During actual employment, an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity. Due to the low risk of transmission of the Ebola virus, it is unlikely that requiring a medical examination of current employees would be considered a business necessity. Note that generally, measuring an employee's body temperature is considered a medical examination under the ADA.

Q: If the employer has unionized employees, does that affect how an employer should handle issues related to the Ebola virus disease?

A: Yes. If there are employees in the workplace covered by a collective bargaining agreement (CBA), an employer should evaluate provisions governing sick leave or time off policies. If the CBA does govern sick leave or time off policies, such provisions should be followed (in addition to any applicable regulations under the FMLA or ADA, or other law) when considering how to handle time off from work for any employees. In addition, some CBAs also may have provisions governing whether labor may be subcontracted. This could affect whether an employer whose workforce has been so diminished due to the Ebola virus disease can hire temporary workers or other non-unionized labor as a substitute.

Q: What other laws should an employer keep in mind with respect to the Ebola virus disease?

A: Employers need to beware of potential discrimination or retaliation issues under Title VII and state antidiscrimination laws. Employers should ensure that managers and supervisors do not discriminate or retaliate against employees who are of African descent in light of the Ebola epidemic taking place in West Africa. For example, employers should ensure that employees who have ties to West Africa are not unlawfully questioned with respect to their exposure or their family members' exposure to the Ebola virus.