

Updated 4/27/20

COVID-19 Pandemic - Resources for Vermont Employers and Employees

The Vermont Office of the Attorney General understands that both employers and employees alike have questions about how the novel coronavirus will affect their workforce and their workplace during these unprecedented times.

Vermont's workforce is subject to state and federal laws regarding a broad range of employment issues, ranging from payment of wages, unemployment insurance, family leave, and job discrimination. By law, various government agencies are granted authority to enforce one or more of these laws.

The Vermont Attorney General's Civil Rights Unit (CRU) enforces many of Vermont's employment discrimination laws, including Vermont's Fair Employment Practices Act (VFEPA), for private sector and local government workplaces. The Vermont Human Rights Commission (HRC) enforces those same laws as they apply to State of Vermont employees.

Other entities, such as the Vermont Department of Labor (VTDOL), enforce Vermont workplace laws relating to wages, earned sick time, unemployment insurance, workers, compensation, and workplace safety.

This document addresses some frequently asked questions (FAQs) for employers and employees related to the coronavirus outbreak by providing links to the appropriate resources.

Please understand that guidance relating to COVID-19 changes almost daily, as will some of the documents referenced herein. Please go directly to the source - Centers for Disease Control, VTDOL, etc. – for the most up to date and complete guidance.

Q: How does the new, “Stay Home, Stay Safe” executive order affect my job?

It depends upon the type of job you have. Over time, the rules have changed for different occupations.

On March 24, 2020, Governor Scott issued an executive order addendum, called ‘[Stay Home, Stay Safe](#)’ requiring Vermonters to remain at home except for essential reasons for personal and public health and safety. Among other things, the Stay Home / Stay Safe order calls for most businesses to suspend in-person operations. Thus, your employer may be changing the nature of your job by requiring you to telework or carry out customer transactions by curbside pickup or delivery.

Rule for Essential Employers. The order exempts a number of employers that carry out vital health, safety, and infrastructure needs, including health care, groceries, pharmacies, hardware stores, media, and law enforcement. For a full list set forth in the March 24 order, click [here](#). Exempted employers must still follow the hygiene and social distancing requirements issued by the [Vermont Department of Health \(VDH\)](#) and federal [Centers for Disease Control \(CDC\)](#).

On April 17 and April 24, 2020, the Governor issued [two addendums](#) to this order that laid out specific information regarding safety and health requirements for such employers, including maintaining social distancing, not reporting to work when sick, employee access to hand cleaning supplies, and wearing a mask at all times (more information on this below).

“Phase One Restart” Rule for Certain Non-Essential Employers. On April 17, 2020, the Governor issued an addendum to the executive order allowing a small range of certain non-essential professions with virtually no direct customer contact — such as outdoor construction, realtors, or town clerks — to resume operations with “micro crews” of up to two people. This number was increased to crews of up to five as of April 24, 2020.

“Phase Two Restart.” The Governor’s April 24 addendum allowed a second group of non-essential professions to begin working again, including outdoor retail operations, such as garden supply stores and greenhouses, as well as offered clarifying information regarding curbside library operations and [farmer’s markets](#).

Both Phase One and Phase Two operations are subject to the same health and safety standards described above (*e.g.*, distancing, masks, hand cleaning).

The [Agency of Commerce and Community Development \(ACCD\)](#) and the [VDH](#) have provided guidance for those subject to the Phase One and Phase Two operations at the Governor’s direction.

Commercial entities, non-profits, employers and others with questions about acceptable continuation of business operations should also review the March 25 [guidance](#) issued by the Agency of Commerce and Community Development (ACCD). They may also seek additional information from ACCD via this online [form](#).

Q. What Should I do if I think a business is not operating in accordance with Governor Scott's Executive Order and phased restart requirements?

A. Employees or members of the public with complaints or concerns regarding businesses that may not be operating in compliance with the Governor's Executive Order may file a complaint at the [Department of Public Safety's Executive Order Reporting Tool](#).

Q. If my employer is operating and I am required to report to a workplace, will I be required to wear any special protective gear?

A. There's a good chance the answer is yes. The type of gear required depends on the kind of job you have.

Governor Scott's April 17, 2020 addendum to the "Stay Home Stay Safe" executive order mandates specific health and safety requirements, consistent with Vermont Department of Health and CDC guidelines. These include requiring all employees wear non-medical face masks over their nose and mouth when in the presence of others. This order does not require that employees in non-medical industries wear medical grade masks, such as N95 masks. The addendum also requires employees to maintain strict social distancing measures and have easy and frequent access to handwashing supplies.

This order does not require customers or patrons of businesses to wear facemasks, though it encourages members of the public to wear face masks when interacting with others outside of the home.

Q: I need to close my business temporarily due to an order from the Governor or due to health and safety concerns. Do I have to keep paying my employees?

The recent COVID-19-related executive orders issued in Vermont do not change the wage and hour laws applicable to Vermont employers. Suspending operation for COVID-19-related reasons generally would be treated the same way as any other temporary suspension or reduction in operations, such as seasonal changes in demand, inclement weather, remodeling, or relocation. Out-of-work employees may be able to access any paid time off available to them, including benefits under the [federal Families First Coronavirus Response Act \(FFCRA\)](#) (more details below) or Vermont's [earned sick time](#) law, enforced by the VTDOL. VTDOL also enforces Vermont's wage and hour laws and should be the primary point of contact for questions regarding paying employees.

VTDOL's Wage & Hour Program can be reached at:

Wage and Hour Program
63 Pearl Street
Burlington, VT 05401-4331
Telephone: 802-951-4083

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FAX: 802-863-7655

Labor.WageHour@vermont.gov

VTDOH has also set up a resource page for information about pay for employees during the pandemic. That page can be accessed [here](#).

Many employees not able to work or laid off due to the COVID-19 outbreak may be eligible for unemployment benefits. As of March 14, 2020, Governor Scott has mandated certain temporary changes to unemployment insurance eligibility requirements related to COVID-19. A memorandum regarding those changes can be found [here](#).

The U.S. Department of Labor (USDOL), which enforces federal wage and hour laws, has provided additional resources for employers related to COVID-19 [here](#).

Q: One of my employees has notified me that they traveled to Europe last week. They reported that they do not currently have any COVID-19 symptoms and would like to return to work in order to continue to earn money. Can I prevent them from returning to the workplace?

The answer to this question has three parts.

First, you need to be sure that your workplace can remain open. The Governor's March 24, 2020 Stay Home, Stay Safe [executive order](#) requires many businesses to avoid operations that involve personal contact. Thus, check first to see how that order affects the type of business you operate. It could be that none or few of your employees may be permitted to return or remain at work.

Second, if your workplace can remain open, then yes, you *may* prevent an employee newly-returning from Europe from returning to the workplace — consistent with public health guidelines.

[In its recently-updated guidance related to pandemics](#), the federal Equal Employment Opportunity Commission (EEOC) has explained that employers may follow Centers for Disease Control (CDC) guidelines regarding post-travel quarantine without violating disability laws, and are not required to wait until an employee displays symptoms to require them to stay home.

Third, you should notify your employee that they should comply with the advice from the Vermont Department of Health (VTDOH) and the CDC travel guidelines requiring travelers returning to the U.S. from numerous countries abroad to self-isolate for 14 days and to self-monitor for symptoms, even if asymptomatic. In addition, VTDOH advises travelers returning from passenger cruises and a broad range of countries, including Canada, South America, Europe, Australia, United Kingdom, Ireland, China, Iran, or South Korea to call it at 802-863-7240. Further VTDOH guidance may be found [here](#).

Employers and employees alike should review VTDOH and CDC updates and guidance daily, as the list of affected countries and other guidance is updated frequently.

Q: What if an employee is unable to work their normal schedule due to having to attend to childcare obligations while schools are closed? What are my rights as an employee and obligations as an employer concerning a flexible work arrangement and paid or unpaid leave time?

Remote work is encouraged, where appropriate. [Vermont's flexible work arrangements law](#) requires all Vermont employers to discuss and consider in good faith requested flexible work arrangements with their employees.

On March 18, 2020, President Trump signed the “Families First Coronavirus Response Act” (FFCRA) (H.R. 6201), requiring certain employers to provide leave, at times paid, for absences from work related to the COVID-19 pandemic.

The Act:

1. expands the existing federal Family and Medical Leave Act (FMLA) to allow employees to care for their children if school is closed due to a public health emergency; and
2. provides certain paid sick leave for employees who are quarantined, have been advised by a healthcare provider to stay home due to concerns related to COVID-19, are seeking a medical diagnosis related to COVID-19, or are caring for an individual with COVID-19-related medical needs.

The Act went into effect on April 2, 2020. [Additional guidance from the USDOL](#) is now available, including guidance regarding exemptions for small businesses. Questions regarding this new law should be directed to the [USDOL](#).

Separate and apart from any new rights under the FFCRA, if an employee cannot perform any work remotely either on a part-time or full-time basis, whether the employer is obligated to pay the employee depends upon a variety of factors, such as whether the employee is paid hourly or on a salaried basis, or whether the terms of such leave are governed by contract or workplace policies. The USDOL has provided guidance on some of these factors as they relate to COVID-19 [here](#).

Generally, hourly employees (*e.g.*, those subject to overtime laws) are paid only for hours of work performed. As for salaried employees exempt from the overtime laws, USDOL advises that they “generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.” (The USDOL discusses those exceptions in its COVID-19 guidance [here](#).)

In addition, employees may also have access to paid leave benefits (vacation, personal, or compensatory time), depending on the benefits provided by their employer, as well as benefits governed by Vermont's [earned sick time law](#). Employees may also have up to 12 weeks of job-protected, unpaid leave available for self-care or care for a family member under [Vermont's](#)

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[Parental and Family Leave \(VPFLA\)](#), as well as an additional 24 hours of time under VPFLA's [short-term leave law](#) for handling school-related needs and doctor's appointments.

The CDC recommends that employers "[ensure that \[their\] sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.](#)"

Q: I have a low-grade fever, but my primary care physician is unable to get me tested for COVID-19 at this time. Must I continue to attend work?

The answer to this question has two parts.

First, you should make sure your employer is authorized to continue in-person operations or required to operate remotely. The Governor's March 24, 2020 Stay Home / Stay Safe executive order requires your employer to suspend all in-person operations. Your employer should know this information, but you can check for yourself [here](#).

Second, if your employer *is* authorized to maintain in-person business operations, you should stay home — consistent with current public health guidelines. The current [VTDOH](#) and [CDC](#) recommendation is that employees displaying symptoms of COVID-19 (including fever, dry cough, or shortness of breath) should stay home even absent a diagnosis. As above, these employees may have access to various paid leave benefits.

[The EEOC has stated](#) that employers may require employees displaying symptoms of COVID-19 to stay home until a doctor has cleared them to return to work and the employee has provided a note from a health care provider.

The EEOC has also published an extensive online guidance, "[Coronavirus and COVID-19,](#)" for employers and workers that includes fact sheets and a 40-minute video addressing common workplace questions.

Q: I tested positive for coronavirus and have to remain home under doctor's orders. My employer has let me know they don't believe they can continue to employ me due to health and safety concerns. Is this legal?

It may not be legal, depending upon the circumstances of your employment. For example, employees being treated for serious health conditions such as COVID-19 may be entitled to job-protected leave under federal or state leave laws, such as [Vermont's Parental and Family Leave Act \(VPFLA\)](#). That law provides employees with a serious health condition up to 12 weeks of job-protected leave each year. Such leave may also be used to care for a seriously ill family member.

In addition, discharging an employee known or believed to have (or have recovered from) COVID-19 may constitute a form of disability discrimination. Again, the answer depends upon the individual circumstances of your employment.

That said, the EEOC has observed a recent guidance, [“What You Should Know About the ADA, the Rehabilitation Act, and COVID-19”](#) that federal disability protections laws, such as the Americans with Disabilities Act (ADA) do allow employers (1) to prevent workers from returning to the workplace while they are sick and (2) to require them to provide a return to work certification from their physician prior to returning to the workplace.¹

Contact the Attorney General’s Office Civil Rights Unit or the Human Rights Commission for additional information.

Q: I know that the ADA has strict rules about medical questions and exams. But given the circumstances, may I ask our employees in the workplace whether they have COVID-19 symptoms? Also, can take their temperature to check for signs of fever?

Under the current state of the pandemic, the answer is yes, according to the EEOC, which enforces the ADA. In its [COVID -19 guidance](#), the EEOC observed:

“During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat.”

The EEOC has also stated that employers may check employees’ temperature due to the current state of pandemic and community spread of COVID-19. However, “employers should be aware that some people with COVID-19 do not have a fever.”

However, the EEOC also warned, “employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.” Keep in mind checking employees’ temperatures is considered a medical examination, and information gathered from these checks must be treated as medical information.

Q: I have been experiencing harassment at work, either from customers, co-workers or my managers and supervisors because of a fear that I have the coronavirus. What can I do?

Employees have the right to a workplace that is free from discrimination and your employer has an obligation to ensure that you are not harassed at work even when that harassment may be based on fear. If you believe you have been subjected to workplace harassment on the basis of race, national origin or disability, etc. you may file a complaint with the Attorney General’s Office or the Human Rights Commission.

The CRU (or HRC if you are a state employee) can provide further information once they learn the details of your situation.

- Contact the CRU at ago.civilrights@vermont.gov or call (802) 828-3657.

¹ Employers may be subject to different rules from other sources, such as union contracts, personnel policies, or individual contracts. Although the CRU and HRC cannot give individual legal advice, they can help you identify what rules may apply to your own situation.

- Contact the HRC at human.rights@vermont.gov or call (802) 248-2480 or 800-416-2010 (in-state only).

ADDITIONAL RESOURCES

- [Vermont Department of Labor COVID-19 FAQs](#)
- [U.S. Department of Labor COVID-19 Questions and Answers](#)
- [U.S. Department of Labor COVID-19 and the American Workplace](#)
- [Federal Occupational Health and Safety Administration \(OSHA\) Guidance on COVID-19](#)
- [Vermont Department of Health: Novel Coronavirus](#)
- [EEOC: Coronavirus and COVID-19](#)
- [EEOC: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [EEOC: What You Should Know About the ADA, the Rehabilitation Act, and COVID-19](#)
- [USDOL Wage & Hour Division: COVID-19 or Other Public Health Emergencies](#)
- [COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act Questions and Answers](#)
- [CDC: Interim Guidance for Businesses and Employers](#)
- [Vermont Department of Human Resources: Information Resources for COVID-19 \(novel coronavirus\) for State Employees and Managers](#)

Disclaimer

The information presented in this document is not legal advice. This information is presented for general information purposes only. If you have a specific legal question you should contact an attorney. The information presented is provided in good faith as a public service.

We believe the information to be accurate. However, laws and information change from time to time and are subject to interpretation. Accordingly, we make no representation or warranty as to the completeness or accuracy of the information presented. You should make your own determination as to its suitability for your purpose prior to use. Additionally, policy makers may implement even more changes to federal and state laws affecting employers and employees as a direct result of the current public health crisis in an effort to respond quickly to the COVID-19 pandemic. You should refer to the Vermont Department of Labor for future updates if and when they occur.

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