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 (VFEP), 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?

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.

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.

Commercial entities, non-profits, employers and others with questions about acceptable continuation of business operations should 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.

Those working for an employer not subject to the order must still continue to follow the hygiene and social distancing requirements issued by the Vermont Department of Health and federal Centers for Disease Control.

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 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
FAX: 802-863-7655
Labor.WageHour@vermont.gov

VTDOL has also set up a resource page for information about pay for employees during the pandemic. That page can be accessed here.
Some 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 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.

If your business is one of those permitted by the order to continue office, rather than remote operations, then your next step is to notify your employee that they should comply with the advice from the Vermont Department of Health (VTDOH) and the federal Centers for Disease Control (CDC): 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 follow VTDOH and CDC updates and guidance daily, as the list of affected countries and other guidance is updated frequently.

In its guidance related to pandemics, the federal Equal Employment Opportunity Commission (EEOC) has explained that employers may follow 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.

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.
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 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 first question is whether 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.

Even if your employer is permitted to continue in-person business operations, all workplaces must follow public health standards. 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.

**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 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 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.
- 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
- Federal Occupational Health and Safety Administration (OSHA) Guidance on Preparing the Workplace for a Pandemic
- Vermont Department of Health: Novel Coronavirus
- EEOC: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

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.
• **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.

The Vermont Attorney General’s Office is not responsible for damages of any nature resulting from the use of or reliance upon the information provided. We are not responsible for the contents of any websites referenced. We provide these links as an information service only. We make no warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose. We do not assume legal liability or responsibility for the accuracy, completeness, or usefulness of any information.