

# What to do when an Employee is Positive for COVID-19

Iowa Restaurant Association  
Guidance for Employers

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# Guidance to Restaurants and Bars

As the second largest private sector employer in the state, many of Iowa's restaurants, bars and other hospitality establishments will inevitably face a day when one or more employees test positive for COVID-19. This presentation was created as **guidance** for employers. It should not be construed as expert legal, medical or human resource advice, but rather as a tool for employers needing to take quick action. Additional information can be found at the Iowa Restaurant Association website including links to the CDC, OSHA, EEOC, IDPH, and DIA.



# First Things First:

## Express Sympathy, Show Concern

- While this seems obvious--if an employee tells you he or she has tested positive for COVID-19, you will want to take immediate action.
- Remember to show concern about the person in front of you.
- Clearly communicate that they can count on you to be supportive.
- Assure them that you will provide them with the assistance they are legally entitled to.

- CDC Guidance discourages employers from requiring sick employees to provide a COVID-19 test result or a healthcare provider's note to validate their illness, qualify for sick leave, or to return to work.
- The sentiment behind this is to not overwhelm healthcare resources.
- You may request documentation from a doctor that they are not fit for work with a number of days assigned. You may ask an employee to sign up for a free COVID-19 test at a Test Iowa site. Regardless, give the employee the time off to be able to do this and self-quarantine until they receive the result.

What Proof  
Can an  
Employer Ask  
For?

From the [CDC Website](#)

- *Under the American's with Disabilities Act, employers are permitted to require a doctor's note from employees to verify that they are healthy and able to return to work. However, as a practical matter, be aware that healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner. Most people with COVID-19 have mild illness and can recover at home without medical care and can follow CDC recommendations to determine when to [discontinue home isolation](#) and return to work.*

What Proof  
Can an  
Employer Ask  
For?

**The short answer is “Yes” but with caveats.**

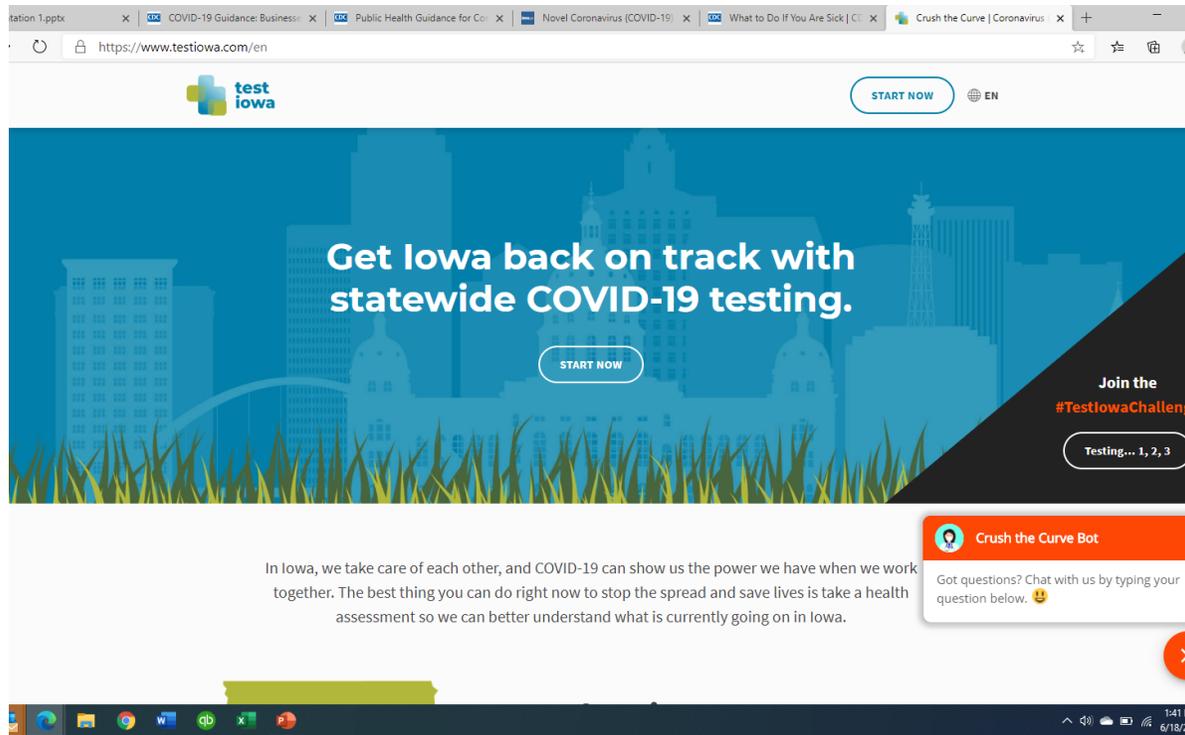
- The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” ([See A.6. in EEOC Guidance.](#)) The EEOC is stating that an employer may choose to mandate or administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. The approach envisioned by the EEOC is to do the testing on-site, similar to a temperature check. The employee clocks in and, then, gets tested and waits for the result, while getting paid for that time period. ([See A.6. in EEOC Guidance.](#))
- Iowans can voluntarily receive free COVID-19 testing through the [Test Iowa](#) program. However, Iowa definitely wants testing for several groups including symptomatic and asymptomatic close contacts (defined as spending more than 15 minutes within 6 feet) of persons who test positive for COVID-19 infection as outlined in [COVID-19 Testing Considerations for Iowa Businesses.](#)

Can I require  
employees to  
get COVID-19  
Test?

**Yes, but make it easy on employees.**

- Conduct testing onsite.
- Pay for time spent going to get test through Test Iowa.
- Arrange testing for staff through their health providers

Can I require employees to get COVID-19 Test?



Direct the  
employee to  
Testiowa.com

# How long should a COVID-19 Positive Employee Isolate?

If someone has tested positive, you should send them home to [isolate](#) themselves.

[CDC Guidance](#) says

- If they have [no symptoms](#) and it has been 10 days since they have tested positive, they may discontinue isolation.
- If they have [symptoms](#), isolation is not complete until they have passed 3 days without a fever, [symptoms](#) have improved and it has been 10 days since symptoms first appeared.

If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace. Employers should not, however, disclose to co-workers the identity of the quarantined employee because confidentiality requirements under federal law, such as the Americans with Disabilities Act (ADA).

What Can I  
Tell Other  
Employees?

# Contact Trace Your Team

Prolonged exposure is considered to have happened when an individual who has been in close contact (less than 6 feet) for more than 15 minutes to a person who has symptoms of COVID-19 or has tested positive but not had any symptoms.



Review shift schedules and based on duties, determine exposure risk.



Confer with the team member who tested positive to ask for list of people he/she believes he/she has had prolonged exposure to in the workplace in the past 10 days.

# Determine which (if any) additional employees should self-quarantine

- Quarantine is used to keep someone who might have been *exposed* to COVID-19 away from others. Quarantine helps prevent spread of disease that can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms.
- Isolation is used to separate people infected with the virus (those who are *sick* with COVID-19 and those with no symptoms) from people who are not infected.

# COVID-19: Quarantine vs. Isolation

**QUARANTINE** keeps someone who was in close contact with someone who has COVID-19 away from others.



**If you had close contact with a person who has COVID-19**



- Stay home until 14 days after your last contact.



- Check your temperature twice a day and watch for symptoms of COVID-19.



- If possible, stay away from people who are at higher-risk for getting very sick from COVID-19.



**ISOLATION** keeps someone who is sick or tested positive for COVID-19 without symptoms away from others, even in their own home.



**If you are sick and think or know you have COVID-19**



- Stay home until after
  - 3 days with no fever and
  - Symptoms improved and
  - 10 days since symptoms first appeared



**If you tested positive for COVID-19 but do not have symptoms**



- Stay home until after
  - 10 days have passed since your positive test.



If you live with others, stay in a specific "sick room" or area and away from other people or animals, including pets. Use a separate bathroom, if available.

# Do I need to close my restaurant to disinfect after an employee has tested positive for COVID-19?

No. However, it is imperative to clean and disinfect all areas. All chemicals that will kill the Norovirus will also kill COVID-19.

**6 Steps for Safe & Effective Disinfectant Use**

**Step 1: Check that your product is EPA-approved**  
Find the EPA registration number on the product. Then, check to see if it is on EPA's list of approved disinfectants at: [epa.gov/istn](https://www.epa.gov/istn)

**Step 2: Read the directions**  
Follow the product's directions. Check "use sites" and "surface types" to see where you can use the product. Read the "precautionary statements."

**Step 3: Pre-clean the surface**  
Make sure to wash the surface with soap and water if the directions mention pre-cleaning or if the surface is visibly dirty.

**Step 4: Follow the contact time**  
You can find the contact time in the directions. The surface should remain wet the whole time to ensure the product is effective.

**Step 5: Wear gloves and wash your hands**  
For disposable gloves, discard them after each cleaning. For reusable gloves, dedicate a pair to disinfecting COVID-19. Wash your hands after removing the gloves.

**Step 6: Lock it up**  
Keep lids tightly closed and store out of reach of children.

[coronavirus.gov](https://www.coronavirus.gov)

Workers who have had limited exposure and remain asymptomatic may continue to work but employers should implement proactive screening practices. [Suggestions include:](#)

Prior to and during their work shift:

- **Pre-Screen:** Measure the employee's temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the restaurant.
- **Regular Monitoring:** Even if the employee doesn't have a temperature or symptoms, they should self-monitor.
- **Wear a Mask:** While this is not a mandate, it is recommended that an employee that suspects potential exposure should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue facemasks or can approve employees' supplied cloth face coverings.
- **Social Distance:** The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
- **Disinfect and Clean work spaces:** Clean and disinfect all common areas including, bathrooms and shared electronic equipment routinely.

Can My  
Other  
Employees  
Continue to  
Work?

# Do I Need to Notify the Public of a COVID-19 Positive Employee?

While it is not required to notify the public of a COVID-19 employee, if through your contact tracing protocol you determine an employee has been within 6 feet of a customer for more than 15 minutes, it is recommended that customer be notified. A broad public notice, is an individual business decision.

While Businesses are encouraged to communicate closely with their local public health departments to determine appropriate action and notifications if COVID-19 is identified in the workplace, as well as ensure they are receiving timely and accurate information regarding COVID-19 activity in their community, they are not required to.

Do I Need to Notify the Public Health Department of a COVID-19 Positive Employee?

# Do I Need Close My Establishment for Cleaning/Disinfecting?

While it is not required to close your establishment for cleaning and disinfecting after an employee has tested positive for COVID 19, following is the guidance from the CDC.

- **Close off areas** used by the person who is sick (again, you do not necessarily need to close operations, if you can close off affected areas)
- **Wait 24 hours** before you clean or disinfect. If 24 hours is not feasible, wait as long as possible— this minimizes exposure.
- **Open outside doors and windows** to increase air circulation in the area.
- Clean and disinfect **all areas used by the person who is sick**, such as offices, bathrooms, common areas, shared electronic equipment like tablets, touch screens, keyboards, remote controls, and ATM machines.

# Additional Disinfecting/Reopen Information

## Vacuum the space if needed.

Use **vacuum equipped with high-efficiency particular air (HEPA) filter**, if available.

- Do not vacuum a room or space that has people in it. Wait until the room or space is empty to vacuum, such as at night, for common spaces, or during the day for private rooms.
- Consider temporarily turning off room fans and the central HVAC system that services the room or space, so that particles that escape from vacuuming will not circulate throughout the facility.

Once area has been **appropriately disinfected**, it **can be opened for use**.

**Workers without close contact** with the person who is sick can return to work immediately after disinfection.

If **more than 7 days** since the person who is sick visited or used the facility, additional cleaning and disinfection is not necessary.

Continue routine cleaning and disinfection. This includes everyday practices that businesses and communities normally use to maintain a healthy environment.

# Does my business have to pay sick time?

The Short Answer is **Yes** with some hardship exemptions.

Emergency Paid Sick Leave Act: Businesses with *less than 500 employees* are required to offer full-time employees 10 days (80 hours) and part-time employees a two-week hourly average of paid sick leave, on top of any other existing paid leave program, to quarantine or seek a diagnosis or preventive care for COVID-19. If the employee is absent to care for a sick family member, a child unable to attend school, they are compensated at two-thirds of the rate they would otherwise receive. The law limits an employer's requirement of paid leave to \$511 per day (\$5,110 total) where leave is taken for an employee's own illness/quarantine and \$200 per day (\$2,000 total) where leave is taken for care for others or school closures.

- Employers will receive a 100% tax credit for all wages that are paid.
- Unlike the emergency FMLA requirements, an employee is immediately eligible for this leave (there is no 30-day-on-payroll requirement).
- **Regulatory Authority or Exemption:** The U.S. Secretary of Labor has authority to exempt a small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
- The benefit expires on December 31, 2020.

# Who qualifies for the COVID-19 Emergency Paid Sick Leave (EPSL)?

Covered employers are required to provide EPSL to full-time employees up to 80 hours, and part-time employees up to the number of hours they work on average over a two-week period. There are no eligibility requirements, meaning the employee is eligible immediately upon hire. There are very specific reasons for EPSL, detailed below.

- Employee is subject to a quarantine or isolation order related to COVID-19;
- Employee has been advised to self-quarantine by a health care provider because of COVID-19;
- Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- Employee is caring for an individual, which includes “an employee’s immediate family member, a person who regularly resides in the employee’s home, or similar person with whom the employee has a relationship that creates the expectation that the employee would care for the person if he/she is advised to quarantine or self-isolate.” The key is there must be an existing relationship with the person; and
- Employee is caring for a son or daughter whose school or place of child care is closed or whose child care provider is unavailable due to COVID-19.
- For reasons 1-3 above, EPSL must be paid at 100% of employee’s regular rate of pay, capped at \$511 per day and \$5,110 total.
- For reasons 4-5, EPSL must be paid at 2/3 employee’s regular rate of pay, capped at \$2,000 per day and \$2000 total.

Does my  
business have  
to give family  
leave?

The Short Answer is **Yes** with some hardship exemptions.

Businesses with *less than 500 employees* will be required to offer Emergency Family Medical Leave Act (FMLA) leave benefits to all employees.

- Employers will receive a 100% tax credit for all wages that are paid.
- Eligible employees must have been on the employer's payroll for 30 calendar days.
- **Regulatory Authority or Exemption:** The U.S. Secretary of Labor has authority to exempt a small business with fewer than 50 employees from this section "when the imposition of such requirements would jeopardize the viability of a business as a going concern."
- The benefit expires on December 31, 2020.

# Who qualifies for paid emergency family leave?

Covered employers are required to provide EFMLE to eligible employees. As with traditional FMLA, this leave is job-protected. This leave can be utilized only for:

- 1) an employee's coronavirus quarantine or treatment or
  - 2) care for a child due to school closings or childcare disruption.
- For EFMLE, the employee must have been employed by the employer for at least 30 calendar days. An employee is entitled to take up to 12 weeks of leave.
  - The first two weeks (10 days) of this leave are unpaid, though the employee may substitute paid sick leave under the EPSL or paid leave under the employer's preexisting policies for these two weeks of unpaid leave.
  - The following period of up to 10 weeks must be paid at 2/3 the employee's regular rate of pay, capped at \$200 per day, or \$10,000 total

# What records must I keep for Federal Reimbursement?

- To qualify for the tax credits administered by the IRS, the Department states that employers are required to maintain for four years the following items:
  - Documentation to show how the employer determined how much EPSL or EFMLE was paid to employees (including records of actual work performed, telework, and paid leave credits);
  - Documentation to show how the employer determined the amount of qualified health plan expenses that were allocated to wages; and
  - Copies of any completed IRS Forms 7200 (Advance Payment of Employer Credits Due to COVID-19) that the employer submitted to the IRS, and
  - Completed IRS Forms 941 (Employer's Quarterly Federal Tax Return) that the employer submitted to the IRS (or, if applicable, records provided to a third party payer to meet an employer's employment tax obligations/entitlement to the credits claimed on IRS Form 941).
  - Employers must maintain records regarding an employee's request for leave (detailed above) for four years, regardless of whether the employer grants or denies the employee's request for leave.
- Additionally, an employer may request from the employee "such additional material as needed for the Employer to support a request for tax credits."

# How do I apply for Federal Reimbursement of Paid Leave?

Use Form 7200 to request an advance payment of the tax credits for qualified sick and qualified family leave wages and the employee retention credit that you will claim on the following forms

**Form 7200** Advance Payment of Employer Credits Due to COVID-19 OMB No. 1545-0029  
March 2020 Department of the Treasury Internal Revenue Service  
Go to [www.irs.gov/Form7200](https://www.irs.gov/Form7200) for instructions and the latest information.

Name (not your trade name) \_\_\_\_\_ Employer identification number (EIN) \_\_\_\_\_  
Trade name (if any) \_\_\_\_\_ Applicable calendar quarter (check one)  
Number, street, and apt. or suite no. if a P.O. box, see instructions. (a)  April, May, June (b)  July, August, September (c)  October, November, December  
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)  
Foreign country name \_\_\_\_\_ Foreign province/county \_\_\_\_\_ Foreign postal code \_\_\_\_\_  
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name. \_\_\_\_\_ Third-party payer's EIN (if applicable) \_\_\_\_\_

**Tip:** File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

**Part I Tell Us About Your Employment Tax Return**  
A Check the box to indicate which employment tax return form you file (or will file for 2020):  
(1)  941, 941-PR, or 941-SS (2)  943 or 943-PR (3)  944 or 944(S) (4)  CT-1  
B Is this a new business started on or after January 1, 2020? \_\_\_\_\_  Yes  No  
If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.  
C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions. \_\_\_\_\_  
D Enter the total number of employees you have. See instructions. \_\_\_\_\_

**Part II Enter Your Credits and Advance Requested**  
1 Total employee retention credit for the quarter. See instructions. \_\_\_\_\_ 1  
2 Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions. \_\_\_\_\_ 2  
3 Total qualified family leave wages eligible for the credit and paid this quarter. See instructions. \_\_\_\_\_ 3  
4 Add lines 1, 2, and 3. \_\_\_\_\_ 4  
5 Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter. \_\_\_\_\_ 5  
6 Total advanced credits requested on previous filings of this form for this quarter. \_\_\_\_\_ 6  
7 Add lines 5 and 6. \_\_\_\_\_ 7  
8 Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form. \_\_\_\_\_ 8

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.  Yes. Complete below.  No

**Third-Party Designee**  
Designee's name \_\_\_\_\_ and phone number \_\_\_\_\_  
Select a 5-digit personal identification number (PIN) to use when talking to the IRS: \_\_\_\_\_

**Sign Here**  
Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.  
Your signature \_\_\_\_\_ Date \_\_\_\_\_ Printed title \_\_\_\_\_

**Paid Preparer Use Only**  
Printed name \_\_\_\_\_ Best daytime phone \_\_\_\_\_  
Print/type preparer's name \_\_\_\_\_ Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_ Preparer's title \_\_\_\_\_ Check  if self-employed  
Firm's name \_\_\_\_\_ Firm's EIN \_\_\_\_\_  
Firm's address \_\_\_\_\_ Phone no. \_\_\_\_\_

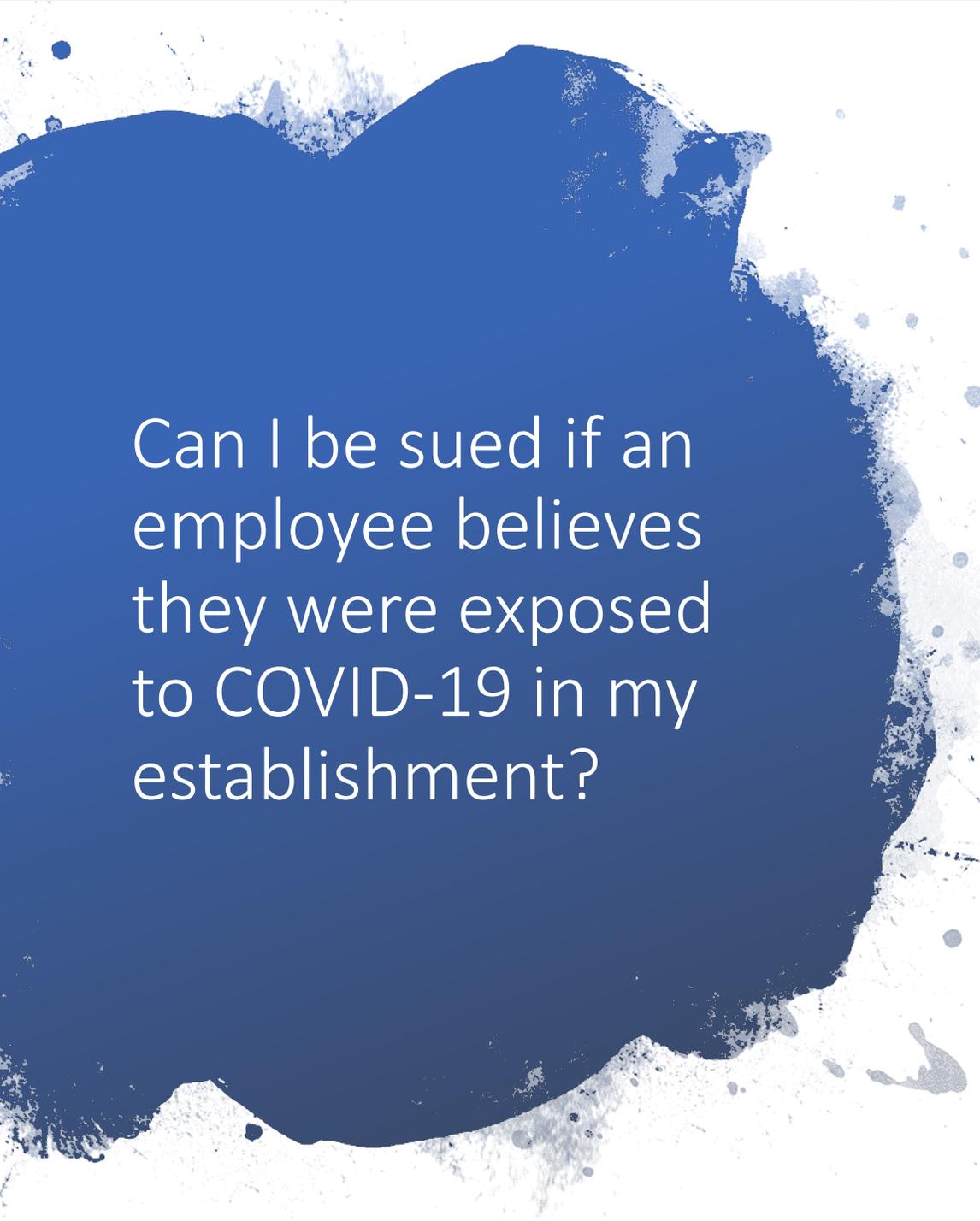
**How To File** Fax your completed form to 855-248-0552.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 56390D Form 7200 (3-2020)



Can I require a “fit to work” note before allowing an employee to return?

A restaurant may require employees to provide notes from healthcare providers confirming they can return to work. While they may not require disclosure of medical information, they can require notes confirming employees can return to work without violating the ADA (because the request is not disability related.)



Can I be sued if an employee believes they were exposed to COVID-19 in my establishment?

The Iowa Legislature this session passed [SF 2338](#), which provides employers with **COVID-19 Liability Protection (Tort Reform)**. This legislation will help protect small business from frivolous COVID-19 related lawsuits. The legislation:

- Requires that individuals bringing suit meet minimum medical conditions, in this case hospitalization or death. It also must be proved that the defendant in the case acted in a way that was **intended to cause harm or acted with malice.**
- Provides protections from liability lawsuits to persons in control of a facility unless that person **recklessly disregards risks or acts with malice.**
- Provides protection from lawsuits if the business was **in compliance** with federal or state regulations, orders or guidance.
- Provides protection from lawsuits to health care providers as their industry transformed to respond to COVID-19.
- Is retroactive to cover the entire period of the presence, to the best of our knowledge, of the coronavirus COVID-19 in Iowa.

Available  
at  
Restaurantiowa.com

## Hospitality Employer Checklist: COVID-19 Positive Employee

As the second largest private sector employer in the state, many of Iowa's restaurants, bars and other hospitality establishments will inevitably face a day when one or more employee tests positive for COVID-19. The following checklist was created to provide general guidance for employers. It should not be construed as expert legal, medical or human resource advice, but rather as a resource for employers needing to take quick action. Additional information can be found at the Iowa Restaurant Association website including links to the CDC, OSHA, EEOC, IDPH, and DIA.

- Express empathy and send employee immediately home to self-isolate
- Ask for medical documentation of positive COVID-19 test or note stating the person cannot work
- Contact trace within your operation to determine potential exposure
  - Ask the employee which coworkers he/she has been in "close contact" with in the prior 2 weeks (definition within 6 feet for more than 15 minutes)
  - Check shift schedules
- Inform other employees of their potential exposure (Important- you may not say who is COVID-19 positive, but you should tell employees they have potentially been exposed)
- Determine which (if any) additional employees should self-quarantine and send them home
- Execute the CDC Cleaning/Disinfection recommendations. (Cleaners that kill for norovirus, also work for COVID-19)
- Proactively health screen all employees before each shift (document this- temperature checks and/or symptom checks)
- While it is NOT required to have an employee get tested, make it as easy as possible for them to do so
  - Conduct testing onsite
  - Pay for time spent going to get test through TestIowa
  - Arrange testing for the employee through their healthcare provider
- Determine if you want to notify public (not required)
- Determine if you want to temporarily close your business for cleaning (not required)
- Review your current leave policies to provide any applicable benefit
- Review the Federal EPSL program and determine if the employee meets qualification
- If you have 50 to 500 employees (not FTEs, actual humans), you must pay 80 hours of sick pay to full and part-time employees, this is reimbursed via tax credit by the federal governments' FFRCA (applies through 12/31/20)
- If you employ 49 or fewer people you may still pay sick time and receive the tax credit or you may seek a hardship exemption from these federal requirements
- Immediately document benefits and leave periods to receive reimbursement for paid leave through FFRCA
- Ask for a "fitness for duty/return to work" clearance prior to employee return



Available  
at  
RestaurantIowa.com

## Hospitality Employee Health Screening Form

Business: \_\_\_\_\_

Date: \_\_\_\_\_

Person completing form: \_\_\_\_\_

Shift : \_\_\_\_\_

Screen each employee for these symptoms before they start their shift. Circle an answer (y=yes, n=no) for each symptom for each employee. If an employee reports any of the symptoms:

1. Send employee home immediately.
2. Increase cleaning in your establishment and promote social distancing (staff at least 6 feet apart from one another).
3. Exclude employee until they are fever-free (without medication) for 72 hours and 10 days have passed since their first symptom.  
Employer: Retain this form for three months in a secure place.

Employee Name	Before starting shift								Notes (Please indicate if Employee Was Sent Home)
	Fever	Temp. (if Taken)	Shortness of breath	Sore Throat	Cough	Chills	Head/Muscle Aches	Nausea, Diarrhea, Vomiting	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	
	Y N		Y N	Y N	Y N	Y N	Y N	Y N	



Available  
at  
Restaurantiowa.com



PUBLIC AFFAIRS  
COVID-19  
INFO SERIES



## U.S. DEPARTMENT OF LABOR IMPLEMENTING REGULATIONS FAMILIES FIRST CORONAVIRUS RESPONSE ACT

### BACKGROUND

The recently enacted "Families First Coronavirus Response Act" (FFCRA) went into effect on April 1, 2020 and will expire on December 31, 2020. The Act created two temporary leave programs – Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion (EFMLE) – that require private sector employers with less than 500 employees to provide leave to employees impacted by COVID-19.

Under the Act, covered employers qualify for 100% (full costs of both leave programs) reimbursement through refundable tax credits administered by the U.S. Department of the Treasury.

### ADDITIONAL RESOURCES

[U.S. Department of Labor's FFCRA Temporary Regulations](#)

[U.S. Department of Labor's FFCRA Resources](#)

[IRS Guidance on FFCRA](#)

[Littler Mendelson legal compliance document](#)

### CONTACT

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Policy and Legal Advocacy  
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The U.S. Department of Labor through its Wage and Hour Division is responsible for implementing and enforcing the new leave mandates. The Department issued implementing regulations on April 1, 2020, which detail employer and employee obligations, as well as an exemption available to qualifying small employers with fewer than 50 employees. Below are key aspects of the Department's regulations.

### EFFECTIVE DATE

• FFCRA leave requirements are effective April 1, 2020; and expire on December 31, 2020. There is no retroactivity, meaning an employer did not have to comply until April 1, 2020.

### DEFINITIONS

#### • Full-time.

The Department makes clear that "full-time" employees for EPSL purposes are those who normally are scheduled 40 or more hours per week.

#### • Part-time.

The Department states that an employee who is not full-time is part-time and that employee receives leave hours equivalent to the number of hours the employee works on average over a two-week period.

#### • Child.

The Department defines a child, for both EPSL and EFMLE, as a son or daughter under 18 years of age, as well as a son or daughter 18 years or older with a mental or physical disability who is incapable of self-care due to the disability.

### EMPLOYER COVERAGE

#### • "500 or fewer" Employees

If the employer has fewer than 500 employees, the employer is required to provide paid leave under both programs. The Department clarified that the 500 threshold is a "live count" dependent on the total number of employees employed within the United States at the time an employee would take leave. In making this determination, employers should count full-time employees, part-time employees, employees on leave, and temporary employees and day laborers (including those from a temporary placement agency) and employees who are jointly employed with another employer. Employers do not have to count independent contractors, employees who have been laid off or furloughed and have not subsequently been reemployed. This "live count" will require an employer who is close to the 500 number to monitor closely the number of employees. For example, if total employee numbers drop below 500, the law will apply; but if the employee numbers increase to 500 or more, the law will not apply.

#### • Joint Employers

If two entities are joint employers under the Department's Fair Labor Standards Act (FLSA), they both must count all their common employees. Note: The Department amended its joint employer test under the FLSA on March 16, 2020.

#### • Corporations

A corporation (including various divisions) is generally considered a single employer and must count all its employees. If a corporation has an ownership interest in another corporation, the two corporations will be considered separate unless they are joint employers under the Department's Fair Labor Standards Act.