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To: AFTCT Local Affiliate Leadership  
From: Attorney Eric Chester and James Demetriades  
Re: Covid-19 FAQ  
Date: 7/27/2020

**COVID-19 And Employment Rights: FAQ**

1. ADA Accommodations

- a. Workers with pre-existing conditions that cause them to have a heightened risk of contracting the virus or a qualified disability may request an ADA accommodation.
- b. Employee must still be able to complete the essential job functions with or without an accommodation.
- c. Disability is defined as a physical or mental impairment that substantially limits a major life activity.
- d. Employer must engage in the interactive process but does not have to accommodate if they can show an undue hardship. An undue hardship means the accommodation would cause significant difficulty or expense for the employer.
- e. The Employer can, but is not required to, start the interactive process. It is best practice for the employee should start the process by requesting an accommodation in writing.
- f. Employee cannot request an ADA accommodation for the disability of a family member. Ie: It is not a valid ADA accommodation to request to work from home because a family member or roommate has a pre-existing condition or disability.
- g. Telework is a reasonable accommodation. CDC has suggested telework as a reasonable accommodation for those at high risk for Covid-19. See here for EEOC Guidance on telework. <https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation>
- h. For more information regarding ADA Claims, send members to <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> or they can contact our office.

2. Cares Act, Families First Act, FMLA +

- a. Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

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- b. Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
  - c. Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
  - d. Employee who is taking 2/3<sup>rd</sup> pay may instead choose to take PTO or other accrued time if they would like to be paid their full wage.
  - e. See <https://www.dol.gov/agencies/whd/pandemic/ffera-employee-paid-leave> for more details.
3. HIPPA and Covid 19
- a. Employer may ask employees if they are experiencing pandemic like symptoms.
  - b. Employer may mandate testing and proof of test results as a condition of continued employment.
  - c. Employer must keep all medical information about an employee be stored separately from the employee's personal file in a confidential medical file.
  - d. If an employee tests positive for Covid-19 the Employer may disclose the name of the positive employee to a public health agency but not to co-workers. The employer can inform co-workers that someone they work with tested positive, enforce communal quarantining of those co-workers, or require those co-workers to take a Covid test, but cannot reveal the name of the positive employee.
4. Unemployment and Covid-19

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- a. To be eligible for unemployment, an employee must be out of work through no fault of their own, be able and available to work, activity seeking work and meet the minimum earnings or job tenure requirements to be eligible for benefits.
- b. A worker cannot decline to work merely because they do not feel safe returning to work, unless they have a qualified disability or pre-existing condition.
- c. Certain disabilities and pre-existing conditions of employee or of members of the employee's household might make the employee eligible for unemployment should they decline to return to work. However, this is fact specific case by case test. Please consult with Ferguson, Doyle, & Chester P.C. for specific assessments.
- d. For more examples see <http://www.ctdol.state.ct.us/uiworkersspecificscenarios.pdf>