

COVID-19 FAQ – What Employers Need to Plan For

The Kansas Chamber of Commerce with assistance from Eric Barth of Hinkle Law Firm LLC

For questions on these responses, or other employment questions related to COVID-19, you may contact the Kansas Chamber of Commerce or Eric Barth directly at 316-267-2000.

Executive Orders

What is the definition of "gatherings"? Is it like parties, parades, meetings, etc.? Is it safe to assume work is not a "gathering"?

According to the CDC: "Large events and mass gatherings can contribute to the spread of COVID-19 in the United States via travelers who attend these events and introduce the virus to new communities. Examples of large events and mass gatherings include conferences, festivals, parades, concerts, sporting events, weddings, and other types of assemblies. These events can be planned not only by organizations and communities but also by individuals." <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>

The CDC does not consider a "workplace" to be a mass gathering, although it has issued interim guidance for businesses and employers which include recommendations for planning and responding to the COVID-19 virus in the workplace. These recommendations include encouraging sick employees to stay home, separating sick employees, and emphasizing respiratory etiquette and hand hygiene. Employers should consider limiting in-person meetings and encouraging phone and videoconferencing instead.

Is Kansas debating mandatory production shutdowns and if so will there be waivers for what is considered "essential production?" Additionally, do local governments have the authority to mandate shutdowns?

Governor Laura Kelly has stated she does not want to order mandatory shutdown of Kansas businesses. In Executive Order 20-04 that temporarily bans gatherings of more than ten, she specifically lists manufacturing, processing, distribution and production facilities in Kansas. You can read the EO at <https://governor.kansas.gov/wp-content/uploads/2020/03/EO-20-14-Executed.pdf>.

Counties cite K.S.A. 65-119, which gives local officials the authority to prohibit public gatherings. They also cite 65-129b, which allows local health officers to order that a group of individuals remain in one place. Neither of those explicitly give local official the authority to close restaurants, although arguably, that authority is implied in both statutes.

Which businesses can stay open?

Hospitals and health care facilities; infrastructure jobs in food production, distribution and sale; building management and maintenance; insurance companies; cybersecurity operations; construction; charitable and social services organizations; hardware stores; shipping and logistics companies; and hotels are all

among those considered essential. You can review your county's "Stay At Home" order at www.KansasChamber.org/KSCountyOrders.

What's closed?

Generally, restaurants can only serve takeout, and bars can do curbside alcohol pickup. Bars and nightclubs, entertainment venues, gyms and fitness studios are closed. You can review your county's "Stay At Home" order at www.KansasChamber.org/KSCountyOrders.

Is the order mandatory?

Yes. It is a misdemeanor crime to disobey the order.

Employee Related Questions

Currently, you do not have to pay employees if they need to be home with their children whose school has been canceled. Does this change considering the Governor Laura Kelly's order to close schools?

Generally, an employer does not have to pay an employee who is not working. An exempt employee under the Fair Labor Standards Act (FLSA) who is paid on a salary basis, however, must be paid for the entire workweek if they perform at least some work in the employee's designated seven-day workweek. Employees should be allowed to use their Paid Time Off (PTO) or vacation time as they would under normal circumstances.

The new provisions in the recently adopted Families First Coronavirus Response Act, which mandates two weeks of paid sick leave in certain circumstances and paid FMLA leave in other circumstances, might come into play. The effective date of the new law is April 1, 2020. To learn more about this specific Act, Hinkle Law Firm has published this [alert](#).

Who qualifies for unemployment benefits?

Workers who were laid off temporarily or because of a loss of production in the wake of coronavirus are eligible. State work requirements are not required if the business's recall date is within eight weeks of the temporary layoff. Employers can participate in a mass claim filing if necessary. Workers who are off work right now but still receive benefits such as paid sick leave, vacation pay or family medical leave pay are not eligible for unemployment benefits.

As things change, if an employee has to be quarantined, do we use the employee's sick leave first? Is the employer responsible for their normal 40-hour paycheck? Or do they need to file unemployment for those 14 days? Also, do we require a doctor's note for that 14-day quarantine?

If an employee has to be quarantined because of exposure to or diagnosis of having COVID-19, the employer should send the sick employee home. An hourly employee does not have to be paid for any hours that they do not work. An exempt employee under the Fair Labor Standards Act (FLSA) who is paid on a salary basis, however, must be paid for the entire workweek if they perform at least some

work in the employee's designated seven-day workweek. Employees should be allowed to use their Paid Time Off (PTO) or vacation time as they would under normal circumstances.

The new provisions in the recently adopted Families First Coronavirus Response Act, which mandates two weeks of paid sick leave in certain circumstances and paid FMLA leave in other circumstances, might come into play. The effective date of the new law is April 1, 2020.

If we have to shut our doors and we can no longer have our employees here in the plant, are we responsible for paying all of our employees?? We currently have 43 employees. If we do pay our employees while the doors are shut, will we be reimbursed by the government?

The Kansas Department of Labor offers several tools to assist employers and employees. KDOL provides employers the option to assist their employees with filing an application for Unemployment Benefits during a layoff. This process allows the employer the ability to submit the application for unemployment insurance benefits for employees that are impacted by a plant shutdown, temporary layoff, permanent layoff or seasonal layoff. You can read more about state's layoff spreadsheet at <https://www.kansasemployer.gov/uitax/Tax/LayoffSelect.aspx>.

You should consult legal counsel with specific questions concerning furloughing employees and what obligations you would have to pay employees in the event you shut your business down.

Is there a good website that I should refer to on these types of questions? From what I read this might be a state by state situation and I wasn't sure if Kansas had a website to refer to.

The Kansas Department of Labor has set up the website www.GetKansasBenefits.gov with Kansas-specific information. There you can find links to various unemployment forms, video tutorials and FAQs.

Will an employer's unemployment taxes increase if employees receive unemployment benefits?

Possibly. Unemployment benefits are proportionately charged to each employer based on weeks worked and wages earned. Benefits given to workers and chargeable to the employer are used to calculate future tax rates and could result in an increase in unemployment taxes.

Is an employee who decides to self-quarantine eligible for unemployment benefits?

Maybe. If the employer required the person to stay home but did not offer telework, then the person may be able to get unemployment benefits. He or she would not be eligible if the company offers telework. The Kansas Department of Labor will handle these types of claims on a case-by-case basis.