

?? COVID-19 Response: Missouri Employer Q&A

Below is a FAQ for Missouri's local chambers and employers on coronavirus relief, paid sick leave, loans and other COVID-19 concerns. This document shall not be construed as legal advice. For answers specific to your situation, you should consult an attorney. These answers are provided in consultation with the U.S. Chamber and meant to provide general guidance on various programs available to businesses during the COVID-19 response. Information is changing rapidly, so please check back often for updates at mochamber.com/coronavirus.

Question 1:

How is the employee headcount determined when applying for PPP loans? If a business has over 500 employees, but then lays off a number of them since the virus started and now has fewer than 500 employees, do they qualify for PPP?

A The presumption is that the count is made when you apply for the loan.

Question 2:

Regarding PPP, if a business changes the job functions of an employee but retains employees and payroll, is the business still eligible for loan forgiveness?

A PPP does not talk about job functions, just the amount of pay. If you reduce pay by more than 25%, the amount of forgiveness will also decrease proportionally.

Question 3:

Employee wants to stop working because of fear of contracting virus (no symptoms or diagnosis). Is employer required to pay that employee anything?

A Fear of contracting the virus is not listed as a condition meriting paid leave. There are specific OSHA standards for when an employee may refuse to work but they are unlikely to be met based just on a general fear of the virus.

Question 4:

Is an employee eligible for paid sick leave if he is running a fever, but doesn't know if he has the virus?

A If an employee has been told to stay home because of a state or local isolation order, or if the employee has been told by a health care professional to isolate then they may be eligible for leave. If they are exhibiting symptoms, they are eligible for leave to seek a medical diagnosis. The time they spend getting that diagnosis is eligible for paid sick leave. But staying home because you have a fever does not qualify, you must seek a diagnosis or have been told by a health care professional to isolate.

Question 5:

Are contract employees eligible for unemployment under CARES Act?

A Yes. Under the Pandemic Unemployment provisions, independent contractors are eligible pending further guidance from the Federal Department of Labor and implementation from Missouri Department of Labor. For the latest information visit <https://labor.mo.gov/coronavirus>

Question 6:

Are sole proprietors eligible for unemployment under CARES Act?

- A Yes. They would be eligible under the new Pandemic Unemployment program pending further guidance from the Federal Department of Labor and implementation from Missouri Department of Labor. For the latest information visit <https://labor.mo.gov/coronavirus>

Question 7:

Are there grants for businesses that are providing services, like chambers, to help with the recovery process?

- A The Department of Labor has announced grants to help with coronavirus recovery efforts. State workforce agencies will make the determination as to what entities are eligible. See the DOL press release [here](#).

Question 8:

Can you clarify a business's ability to utilize PPP and/or EIDL at the same time?

- A You can get both. But the proceeds cannot be used for the same purpose.

Question 9:

Can you clarify the mechanics of paid sick leave and FMLA? Does employer pay out leave first and then get reimbursed by federal government later? How does a business apply for/get the reimbursement?

- A An employer is obligated to pay amounts specified in the Phase II bill for paid sick and family leave. They will receive a refundable tax credit for amounts spent to provide this leave. The Treasury Department has advised that employers can retain funds they would have used to pay payroll taxes to meet these costs. At the end of the quarter, Treasury will offset payroll taxes owed by the amount spent on paid leave and if additional funds are due to the employer, such funds will be reimbursed. Treasury will not count tax payments as late if they were withheld from the Treasury in anticipation of getting a tax credit.

Question 10:

If a local stay at home order is in place AND you close your business, but continue to pay your employees, will those employees be eligible for Families First Coronavirus Response Act (FFCRA) sick leave?

- A This is actually a nuanced and complicated question. DOL just released a rule covering the paid sick and paid family leave programs. It states that with regard to a broad stay at home order issued by a state or local government, an employee is only eligible if the order is the "but for" reason they cannot work. If an employer has no work for an employee to do, whether because of a broad stay at home order or a general decline in business, the employee would not be eligible for leave because although ultimately the reason there is no work can be traced to the order, the order itself is not what is keeping the employee from working. What is keeping the employee from working is that the employer has no work for them to do.

Thus, if you have no work for employees to do for whatever reason, but choose to keep them on payroll, the assumption is that they are not eligible for paid leave because of the stay at home order. It is only if the business is open and has work to perform, but the stay at home order prevents the employee from performing that work, that they would be eligible for paid leave.