Texas Workforce Commission

The Texas Workforce Commission has been working with federal, state and local government officials to ensure that employers have resources to cope through the economic crisis brought on as a result of Coronavirus (COVID-19). The TWC is committed to providing services and guidance for business owners who have questions about navigating their operations during this time.

The TWC has set up an e-mailing list centered around COVID-19 developments. As the situation rapidly changes, it is important to be aware of the most recent updates. Sign up HERE.

Frequently Asked Questions For Employers

Q: Can TWC assist if the pandemic forces a mass layoff?
A: Yes – TWC’s Rapid Response Unit can help employers and affected employees access unemployment claim and reemployment services in a very streamlined and efficient manner. For information, see the TWC website at https://twc.texas.gov/businesses/rapid-response.

Q: What other alternatives exist to avoid mass layoffs?
A: TWC administers the Shared Work Program, which allows partial unemployment benefits for similarly-situated employees whose hours are reduced by a standard amount between 10 and 40 percent – information about that program is https://twc.texas.gov/businesses/shared-work.

Q: What is the difference between a furlough and a layoff?
A: A furlough is a temporary layoff from work in which employees usually get to return to their jobs after a period of time. Furloughs are mandatory and workers are ordered not to do anything work-related while they are on furlough. Layoffs occur when an employer permanently dismisses an employee from their job. If a person who was laid off were to return to their original job, they would have to be rehired.

Q: What benefits do furloughed employees retain?
A: In general, although people are not paid during furlough, they do keep employment benefits, such as health and life insurance. Furloughed employees also retain the right to seek new employment.
Texas Workforce Commission

Q: Is an employer allowed to send an employee home if they are showing signs of illness, such as coughing, sneezing, or report that they have aches or chills?
A: Yes, in keeping with an employer’s general duty under OSHA to maintain a safe and healthy workplace for employees, employees who appear to be sick may be asked to go home, but do so as politely and discreetly as possible. However, the employer should be consistent and treat all employees who exhibit risky symptoms the same.

Q: What if we know that an employee has been exposed to Covid-19, but they are showing no symptoms?
A: Generally, there is no Texas or federal law that would prohibit a company from telling employees to stay home if they have had a higher-than-normal degree of exposure to individuals actually infected with the disease. As noted above, be consistent and do not base self-isolation orders on factors such as race or national origin. There have been scattered reports of ethnic discrimination, particularly against people who look like they might have come from Asia. The EEOC is already warning employers that singling employees out based on ethnic or national origin concerns could trigger a discrimination charge.

Q: Would the employer have to pay sick leave to that employee?
A: Yes, if the company offers such paid leave. Paid leave policies should be followed - failure to pay for leave owed under a written paid leave policy is a violation of the Texas Payday Law. A federal bill to require up to 80 hours of paid sick leave for full-time employees, H.R. 6201, has passed Congress and has been signed by the President as of March 18, 2020. The text of that bill is online at: https://www.congress.gov/bill/116th-congress/house-/6201/text/enr.

Q: What can an employer ask for if an employee tells us she is ready to return to work after using sick leave of paid time off?
A: A question that might come up is whether it is permissible for an employer to require a doctor’s release / fitness for duty certificate or something similar if an employee is returning from an absence caused by something that looks or acts like Covid-19. It would be good to keep in mind that many employees may have financial problems relating to inability to pay to see a doctor, so employers should take that into account, and also that at least under current conditions, medical documentation should be requested only if a person is known to have been exposed to a communicable disease (not just coronavirus, but also things that are just as infectious, such as colds, flu, and other viral pests). Moreover, medical offices are almost overwhelmed, so issuing documentation will not be high on their priority lists, and tests for Covid-19 are not yet widely available. Finally, requests for medical documentation should be done consistently and fairly for all similarly-situated employees.
Texas Workforce Commission

Q: Could they file unemployment claims and draw unemployment benefits if they are told to go home for medical reasons?
A: No, if they are receiving paid leave benefits. While on paid medical leave, they would not be considered "unemployed" under TWC laws and would not be able to claim unemployment insurance (UI) benefits. Once the paid leave runs out, they could file unemployment claims.

Q: What if they are not getting paid leave?
A: If they are on unpaid leave, they could be considered unemployed if they are out long enough to satisfy the test for either partial or total unemployment (for those definitions, see our book *Especially for Texas Employers* online at https://twc.texas.gov/news/efte/ui_law_eligibility_issues.html#defin_of_unemployment).

Q: Does an employee get unemployment benefits even if they are too sick to work?
A: Any claimant who is able to file a claim for UI benefits must meet the eligibility requirements in order to actually draw benefits. Most notably, the claimant must be medically able to work. The usual eligibility requirement to search for work has been waived by TWC for the immediate future as part of the pandemic relief effort.

Q: Is there any way an employer can avoid the cost of unemployment benefits?
A: An employer may be eligible for protection from chargebacks from UI benefits if the evidence shows that the work separation was for medical reasons. However, if the reason for the work separation was merely a cautionary period of time off to minimize potential exposure of others to someone who might be infected, but might not be, chargeback protection would most likely not be extended to the employer. To minimize the chance of unemployment claims being filed, the employer can encourage employees to work from home if the job is such that remote work is possible. Proper recording of work time is necessary, and the employer would need to work with the employees to set up a timekeeping system that functions well and takes all time worked into account.

Q: What other information is on the TWC website about workplace illness issues?

FAQ About Employee Retention Credit

Q: What is the Employee Retention Credit?
Texas Workforce Commission

A: The CARES Act provides a 1-year credit against the employer’s 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to COVID-19, but that continues to pay its employees during the shut-down. Employers that utilize the Employee Retention Credit cannot also utilize the Paycheck Protection Program.

Q: How do I determine if my business is eligible for the Employee Retention Credit?

A: A business is eligible for the credit in one of two ways: 1) The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19; or 2) The business remained open, but during any quarter in 2020, gross receipts were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it’s recovered sufficiently that its receipts exceed 80% of what they were for the same quarter in the previous year.

Q: Are employer payroll tax and self-employment tax eligible for delay of payment?

A: Yes, the CARES Act allows employers to defer their share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%). Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from the date of enactment through the end of 2020 until the end of 2021 (25%) and 2022 (25%).

Q: Are there tax benefits for changes to net operating loss rules due to COVID-19?

A: Yes, losses from 2018, 2019 and 2020, will be permitted to be carried back for up to five years. Also, losses carried to 2019 and 2020 will be permitted to offset 100% of taxable income (up from 80%).

Submitting A Mass Claim Request

If you have not laid any staff off yet, or your business is not affected by the COVID-19 pandemic and you need to layoff employees, log on to Employer Benefits Services (EBS) and submit your Mass Claim Request online. EBS online is fast, easy, secure, and available 24/7. To submit a mass claim request: https://www.twc.texas.gov/businesses/employer-benefits-services

To complete your Mass Claim Request, you will need:
Texas Workforce Commission

- Your company’s name, address, telephone number, fax number, and the contact information for an authorized representative with signature authority
- Your TWC Tax Account Number
- The names, home addresses, and Social Security numbers of all the employees who will be laid off.

**Employer Advantages of a Mass Claim**

- Can submit the layoff information before the layoff, which ensures a smooth transition for both employer and worker
- Can establish claims more efficiently than workers who submit their own unemployment benefits claims
- Can submit the worker's final week of earnings, helping to ensure proper payment
- Can submit information on severance pay or wages in lieu of notice of layoff, reducing subsequent contact by TWC
- Are not inundated with a written notice of application for each individual who applies for unemployment benefits
- Automatically become a party of interest to each claim filed