



A Union of Professionals

COVID-19 Resources:

Essential Personnel FAQ for **Individual Employees**

MARCH 30, 2020

I have been deemed an essential employee; what legal protections do I have?

Essential employees working during the health crisis are still protected by most federal and state employment laws the same as prior to the health crisis. These protections include a prohibition against unlawful discrimination; the right to overtime, breaks and minimum wage; family and medical leave; and the right to a safe and healthy workplace.

Generally, an essential employee will still be protected by the applicable provisions of a collective bargaining agreement in effect prior to the crisis, although employees should check with their union to determine if new procedures and policies have been put into place in response to the crisis.

Are there any additional protections that come with being deemed essential?

Generally, there are no protections that automatically attach to being designated essential personnel. However, some collective bargaining agreements or local laws may provide for hazard pay or special health and safety protections for essential personnel. Some states are ensuring that child care is available for essential personnel.

For example, in Vermont, the governor issued an executive order (bit.ly/VT-order) providing for child care for essential service providers, and Vermont Emergency Management is keeping an evolving list (bit.ly/VT-emergency-childcare) of who is considered an essential service provider and entitled to child care under the order. Both Vermont and Minnesota have included grocery workers as essential service providers for purposes of being eligible for child care services during the crisis.

Find these resources and more at www.aft.org/coronavirus

The **American Federation of Teachers** is a union of 1.7 million professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

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Can I refuse to work if I feel unsafe?

In general, essential employees given an assignment that they feel is unsafe should take the following steps:

1. If you believe you are being asked to do something unsafe, refer to the Centers for Disease Control and Prevention's safety guidelines with your manager and explain why you think it is not safe.
2. If possible, propose reasonable safe (or at least safer) alternatives.
3. Request appropriate personal protective equipment or other Occupational Safety and Health Administration-recommended safety precautions.
4. If you have a condition that you believe would be exacerbated by having to take care of COVID-19 patients, make that known to the employer and request or propose a reasonable accommodation under the Americans with Disabilities Act (ADA). Get a doctor's note supporting your request if possible.
5. If you face discipline, contact your union representative immediately.

Please contact your local union for guidance on specific situations.

Private sector workers, and public sector workers in 28 states, are protected by the Occupational Safety and Health Act ([bit.ly/oshastateplans](https://www.osha-slc.gov)). OSHA regulations allow employees to refuse to work where there is the possibility of serious injury or death arising from hazardous conditions at the workplace and the employee asked the employer to correct the condition.

Under the National Labor Relations Act, individual employees in the private sector can withhold their labor if the reason they refuse to work is "in good faith because of abnormally dangerous

conditions." However, licensed workers, like nurses, should be aware that refusing to work could put their license at risk.

Public sector workers in a few states also have a right to strike but those rights vary based on the state (this resource by the Center for Economic and Policy Research has a chart with information about the right to strike for public sector workers in each state: bit.ly/CEPR-public-sector-collective-bargaining) and are also potentially limited by no-strike clauses in collective bargaining agreements. Additionally, many public sector labor laws, even those that do provide protection for strikes by public sector workers, ban strikes by essential, emergency or public safety personnel.

Workers who have disabilities under the ADA or similar state laws that would make them particularly vulnerable to COVID-19 may be able to ask for an accommodation, including taking paid or unpaid leave or having less direct contact with the public or those who are sick.

Can I take leave if I am exhibiting coronavirus symptoms or a family member is exhibiting symptoms?

Yes. The Families First Coronavirus Response Act (FFCRA) includes provisions that allow **some workers** up to two work weeks of job-protected, immediately available paid sick days for coronavirus-related health and caregiving reasons, and up to three months of job-protected paid family and medical leave in cases where additional time is required. The time may be used for quarantine, diagnosis or care of oneself or a family member, or to care for a child whose school or usual source of care is closed.

Employers covered by the FFCRA include those employed by private sector businesses with 500 or

fewer employees and public sector employers. Some employers with fewer than 50 employees will be able to obtain exemptions. The leave provided under the FFCRA is available to employees of a covered employer who has at least 30 days of employment. For more details on the FFCRA, see this summary (bit.ly/NPWF-FFCRA) by the National Partnership for Women and Families.

Many workers may also be able to take advantage of leave under the Family and Medical Leave Act (FMLA) (bit.ly/DOL-FMLA) or state and local leave laws (bit.ly/state-local-leave).

Can my employer ask me about my symptoms or force me to undergo a medical examination before coming to work?

Normally, an employer cannot force an employee to undergo a medical examination or ask about symptoms prior to working without running afoul of the Americans with Disabilities Act. However, the Equal Employment Opportunity Commission has issued guidance for employers regarding pandemic preparedness in the workplace and compliance with the ADA (bit.ly/EEOCpandemic) as well as more specific coronavirus guidance that does allow employers to do so during a pandemic (bit.ly/CV-ADA). Because the Centers for Disease Control and Prevention as well as many state health authorities have acknowledged this current situation as a pandemic, employers are now allowed to do things like take an employee's body temperature. During this pandemic, employers are also permitted to ask employees if they are experiencing symptoms, but that information must be kept confidential in compliance with the ADA and other applicable laws. An employer cannot ask about any underlying health conditions that place an

employee in a high-risk category. An employer can also send an employee home if the individual becomes sick at work or if employees exhibit symptoms.