

MEMO

To: Pastors and Principals, Diocese of Marquette

From: Tim Thomas, Director of Administration and Finance, Diocese of Marquette

Date: March 26, 2020

RE: Layoff and Work Reduction Guidance following “Stay Home” Executive Order 2020-21

The effects of coronavirus around Michigan have caused many employers to close operations, and either reduce staff hours or lay off staff. The parishes and schools of the Diocese of Marquette are facing the same difficult decisions. This memo gives guidance on how to take these steps in accordance with the law.

1. **Step 1: Can you remain open/operating?** Under the governor’s [Order](#), only operations “necessary to sustain or protect life” are allowed to continue regular operations. Churches and schools do not fit this description under the Order. If you do not have the amount of work necessary to maintain your regular workforce, and/or economic conditions do not allow you to remain fully staffed, see #4 below.
2. **Step 2: Determine and designate “necessary” personnel.** Since we are NOT considered “necessary to sustain or protect life” under the Order, we must minimize in-person operations. Send all workers home except those you need “to conduct minimum basic operations”, and designate to your workers verbally by March 31, or thereafter in writing (email is permitted), those you consider “necessary” and whom you will require to be present at work in person. Draft a letter authorizing these individuals to do so and require these employees to have it with them when they are at the office or travelling to the office and back.
 - a. Section 4.b of the Order states: “workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.”
3. **Step 3: Determine who will be laid off, and who will work regular hours or reduced time.**
 - a. To determine who is laid off, who works in the building, who works from home, and how many hours they will work, be sure to use legitimate business reasons and not discriminate (e.g., don’t use age or “family breadwinner” status),
 - b. Remember the Fair Labor Standards Act: Non-exempt employees must keep track of hours worked and be paid for all hours worked. They need not be paid for hours not worked. Exempt employees must be paid salary for any week in which they did “some” work. For more, see the U.S. Dept. of Labor Wage & Hour

page devoted to FLSA questions and the coronavirus:

<https://www.dol.gov/agencies/whd/flsa/pandemic>

- c. For full-time employees whose work has been cut back, consider offering use of accrued paid time off (sick time, vacation time, personal time) for employees to use to make up the difference in their paychecks.
4. **Step 4: For those laid off: accomplish the layoff no later than Tuesday, March 31, 2020.**
- a. Note: The time deadline is necessary, because under the Families First Coronavirus Response Act (FFCRA) recently passed by the federal government, virtually all employers will be required to provide paid leave to employees beginning April 1, 2020.
 - b. The steps to accomplish the layoff are as follows:
 - i. Speak with the employee if you can by telephone to tell them, as receiving such news can be emotional and compassion is important. Inform the employee you will email or mail them a letter and unemployment notice as soon as possible.
 - ii. Prepare and email or mail the letter, and include the following information. **See attached Sample Letter 1** for a template.
 1. Give the date when the layoff will be effective. If you can, give them a date when you expect the layoff to end, ideally within 120 days of the date of layoff.
 2. Explain the procedure you will use to potentially call the employee back to work, if circumstances allow.
 3. Ask the employee to keep their contact information current with you so you have a way to contact them.
 4. Be careful not to make promises you may not be able to keep.
 5. Give the reason for the layoff. If truthful, state: “The reason for this layoff is because of an executive order from Governor Whitmer requiring us to close or limit our operations.” This brings your business under Exec. Order 2020-10, which means the state will not charge your employer account for unemployment benefits through April 14, 2020.
 6. Give employees an “unemployment compensation notice” (UIA 1711). Direct them to the Unemployment Insurance Agency – State of Michigan (UIA) website at www.michigan.gov/leo. They should scroll down the page to find “Fact Sheet 160 – Claiming Unemployment Benefits in Michigan”, that’s a PDF of general info. Then they should scroll further down the page and sign up for Michigan Web Account Manager (MIWAM), which is UIA’s web-based system for making unemployment claims, click on the “For Workers” button.
 7. Explain when their last paycheck for hours worked will be issued. Michigan law requires a final paycheck at layoff or termination to

be processed in the employer's next regular payroll following the layoff or termination date.

8. Explain the status of their benefits during layoff. Generally, all benefits will end during the layoff, including health coverage. Inform them exactly when health coverage will end (e.g., end of the calendar month?) so they know to arrange alternative coverage.
9. If employer's policies call for a lump-sum payout of unused vacation days, provide that payout with the employee's final paycheck and tell them this is coming.

5. Step 5: For those employees who will continue working, whether regular hours or a reduced time schedule, inform them of your expectations.

- a. Note: All employees who are employed by a church or school on or after April 1, 2020, regardless of the number of hours they are working, are eligible for paid leave under the Families First Coronavirus Response Act (FFCRA) recently passed by the federal government. The paid leave is a cost to the employer, and is in addition to (not instead of) any other types of paid leave already offered by the employer. This means for employees you continue to employ after April 1, you will need to figure the cost of these additional leave benefits. More regarding the FFCRA below.
- b. For employees who will continue working regular hours: provide an email or letter that describes how many hours per week you expect them to work, whether they will work from home or in the building or some combination, and remind them to keep track of hours worked (especially for hourly non-exempt employees). Also, provide a copy of your new FFCRA policy and claim form, and the required poster from the U.S. Department of Labor. **See attached FFCRA policy and claim form, and attached poster.**
- c. For employees who will work a reduced time schedule: provide an email or letter that includes all the same information as in above paragraph 5.b. **See attached Sample Letter 2** for a template. In addition, the letter must inform the employee:
 - i. Whether his or her benefits will be reduced or eliminated due to their reduced work schedule, particularly health coverage. Inform them exactly when health coverage will end (e.g., end of the calendar month?) so they know to arrange alternative coverage.
 1. Note: typically 20 hours/week is the minimum required for MCC health coverage. A reduced work schedule below 20 hours/week will end health coverage.
 - ii. That he or she may be eligible for unemployment benefits due to the reduced schedule (status is called "lack of work"). Give employees an "unemployment compensation notice" (UIA 1711). Direct them to the UIA website at www.michigan.gov/leo to sign up for MIWAM, which is

UIA's web-based system for making unemployment claims, click on the "For Workers" button.

6. About the Families First Coronavirus Response Act (FFCRA), (enacted 3/18/2020 and applies to those employed as of 4/1/2020, but does not apply to those laid off prior to 4/1/2020)

- a. All employees who have been employed by your church or school for at least 30 days are eligible for paid emergency leave or expanded family and medical leave for specified reasons related to COVID-19 under the FFCRA. This leave is in addition to any existing paid vacation or sick leave.
- b. The FFCRA provides for two types of leave:
 - i. Emergency Paid Sick Leave: an employer must provide up to 80 hours¹ of emergency sick leave at the employee's regular rate of pay, if the employee is unable to work (or work from home) because of any one of the following six reasons:
 1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (Note: not an Executive Order, but an individual order from a local public health authority);
 2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
 3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 4. Employee is caring for an individual subject to an order described in (1) or self-quarantined under (2);
 5. Employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
 6. Employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services.

Paid leave for reasons (1), (2), or (3) is capped at up to \$511 per day and \$5,110 in the aggregate per employee. Paid leave for reasons (4), (5), or (6) is capped at up to \$200 per day and \$2,000 in the aggregate. Note that while this Emergency Paid Sick Leave must be made available to each employee, it is possible the leave will never be used if none of these situations arise for the employee. All such leave expires 12/31/2020, and does not have cash value or carry over to the next year if unused.
 - ii. Family and Medical Leave: an employer must provide a combination of unpaid leave and paid leave if the employee is unable to work (or work

¹ Less than 80 hours if the employee is part-time. For a part-time employee, the number of hours available is equal to the average number of hours that the employee works over a typical two-week period. For more information, see <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

from home) because of a need to care for an individual subject to quarantine, or care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. The details:

1. The unpaid leave: The first 10 days of the leave are not paid, but the employee may substitute any existing paid vacation or sick leave.
 2. The paid leave: If the employee needs more leave for the same reason, the employee may take an additional 10 weeks of leave, and must be paid for it at two-thirds the employee's regular rate of pay, capped at \$200 per day or \$10,000 in the aggregate per employee.
 3. This is an expansion of the federal Family and Medical Leave Act (FMLA), which normally does not apply to your church or school, but under this FFCRA, it does, between 4/1/2020 and 12/31/2020. Two very important parts of the FMLA, which will apply to this type of leave under the FFCRA are: (1) health insurance must continue during the leave the same as if the employee were still working, and (2) the leave is job-protected, which means the employee must receive the same or equivalent job when he or she returns to work from the leave—some exceptions apply if economic conditions have otherwise eliminated the job.
- c. Note, the FFCRA provides payroll tax credits for all employers who pay FFCRA leave. See the IRS website here: <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- d. For more information about the FFCRA, go to the U.S. Department of Labor's Wage and Hour website here: <https://www.dol.gov/agencies/whd/pandemic>

Sample Letter 1 - Layoff

March 31, 2020

Dear **[Employee Name]**:

I regret to inform you that beginning today, you are placed on temporary layoff status. We had to take this step due to the Governor's Executive Order 2020-21, which limits our operations.

I will revisit our financial and operational situation within the next 120 days. I hope to have more information to provide to you by April 17, 2020, and I will contact you by that date.

When we are back in regular operational status, I will contact you by **[email? Phone? Fill in how you plan to contact the employee]** using the information I have on file for you. If your contact information changes during the layoff period, please contact me so we have it.

Enclosed with this letter is an Unemployment Compensation Notice (Form UIA 1711), which has our employer information already filled in. To file for unemployment, you should visit the Michigan Unemployment Insurance Agency (UIA) online at www.michigan.gov/leo. Sign up for MiWAM, which is UIA's web-based system for making unemployment claims, and click on the "For Workers" button. The website also has links to fact sheets that answer questions about unemployment.

Your final paycheck during the layoff will be issued on **[fill in date of next payroll run]**.

Your benefits are ended during the layoff, including any health insurance coverage. Any premiums for your health coverage have been paid through **[insert end date of coverage – end of calendar month?]** If possible, you should arrange for individual coverage during the period of this layoff to avoid a gap in coverage.

We hope to be back in operation soon. Please stay in touch and keep safe during this difficult time.

Sincerely,

Sample Letter 2 – Reduced work hours

[Insert date], 2020

Dear [Employee Name]:

As I have previously noted, your position with [insert name of parish or school] is necessary to conduct “minimum basic operations” under the Governor’s Executive Order 2020-21, which otherwise limits our operations.

Our limited operations also make it necessary to reduce your normal work hours during this time to [insert #] hours per week, effective [insert beginning date], 2020. In order to take precautions to prevent the spread of COVID-19, I would ask you to please work from home as much as possible, except to the extent that your duties require you to come into the building. Please be sure to keep track of your work hours and provide me with your timesheet regularly.

I will revisit our financial and operational situation within the next 120 days. I hope to have more information to provide to you by April 17, 2020, and I will contact you by that date.

Your benefits will unfortunately be affected by the reduction in work hours. Your current health coverage will stay in place through [insert end date of coverage – end of calendar month?]. However, beginning on [insert beginning date], 2020, due to the reduction in work hours, your health coverage will be [eliminated? require higher premiums? Insert applicable information]. [Insert next sentence if health coverage is eliminated: If possible, you should arrange for alternate coverage during the period of this layoff to avoid a gap in coverage.]

During this time, I wish to inform you of some additional benefits available to you due to the COVID-19 measures taken by the state and federal governments.

First, you may be entitled to supplement your limited work hours with unemployment benefits from the state of Michigan, due to “lack of work”. Enclosed with this letter is an Unemployment Compensation Notice (Form UIA 1711), which has our employer information already filled in. To file for unemployment, you should visit the Michigan Unemployment Insurance Agency (UIA) online at www.michigan.gov/leo. Sign up for MiWAM, which is UIA’s web-based system for making unemployment claims, and click on the “For Workers” button. The website also has links to fact sheets that answer questions about unemployment.

Second, the federal government passed an emergency act called the Families First Coronavirus Response Act (FFCRA). If you become unable to work (in the building or from home) for any of the reasons stated in the FFCRA, you may be eligible for paid emergency leave or expanded family and medical leave. Enclosed are three documents related to this: FFCRA policy, FFCRA claim form, and FFCRA poster.

We hope to be operating normally soon. Thank you for your assistance during this difficult time.

Sincerely,