



# LEGAL AID JUSTICE CENTER

March 25, 2020:

*This document is a general summary of the law in Virginia as we currently understand it to be as of this date. Because of the coronavirus pandemic, many laws are in a state of change, and what is the law today may not be the law tomorrow. And every worker's situation is different. For this reason, you should not rely on this FAQ in deciding what you should do—it is general information, not legal advice. You may wish to consult with a lawyer about your particular situation.*

For the most current information, check the following link for updates:  
[www.justice4all.org/Coronavirus-Immigrant-Workers-FAQ](http://www.justice4all.org/Coronavirus-Immigrant-Workers-FAQ)

**The Virginia Justice Project for Farm and Immigrant Workers  
Legal Aid Justice Center  
1-800-269-4717  
(Toll-free in the USA)  
001-800-892-1751  
(Toll-free from Mexico)  
Text and WhatsApp 434-242-1494**

## **Coronavirus— Frequently Asked Questions for Virginia Immigrant Workers**

- 1. My employer closed my workplace temporarily because of the coronavirus and is forcing employees to take unpaid leave. What can I do?**

If you are documented: You may file a claim for Unemployment Insurance benefits with the Virginia Employment Commission (VEC). To receive benefits, you must meet certain minimum requirements, including having sufficient past earnings and an immigration status that allows you to work.

If VEC approves your claim, you will receive a weekly benefit payment that is dependent on your past earnings. The maximum benefit amount is \$378 per week for up to 26 weeks.

For more information about Unemployment Insurance benefits and to file a claim, please visit <http://www.vec.virginia.gov/node/11699>. Look for "Select Language" in top right corner; click on it to select "Spanish." You can also call the VEC at 1-866-832- 2363 (from 8:15 am a 4:30 pm Monday to Friday).

If you are on an H-2A visa: You do not qualify for Unemployment Insurance benefits.

If you are on an H-2B visa: The law in Virginia is unclear about whether H-2B workers can file for Unemployment Insurance. If you are a worker on an H-2B visa and you lose your job or have your hours reduced, please call our office at 434-242-1494 to discuss potential options under the law.

If you are undocumented: Unfortunately, you cannot receive Unemployment Insurance benefits.

**2. What if I become sick at work with symptoms relating to coronavirus? Can my employer send me home?**

Yes. The CDC recommends that employees who become sick with coronavirus symptoms (such as fever, cough, shortness of breath) should be separated from other employees and sent home immediately.

**3. Can I lose my job if I miss work because I'm sick with coronavirus or need to take care of someone else who is sick with coronavirus?**

It depends. In Virginia, your employer can legally fire you for being sick, or for taking care of someone else who is sick, **unless:**

- a. you are protected by the **Families First Coronavirus Response Act**
- b. you are protected by the **Family and Medical Leave Act (FMLA)** or
- c. you and your employer have a **contract** that protects you from being fired for health-related reasons

***Families First Coronavirus Response Act (FFCRA)***

In response to the coronavirus pandemic, the federal government recently passed the Families First Coronavirus Response Act, a law to protect workers.

Starting April 2, if your employer has fewer than 500 employees, you may have access to **2 weeks of Paid Sick Days** as well as **10 weeks of Expanded Family/Medical Leave** in certain circumstances. However, if your employer has fewer than 50 employees, your employer can ask the government for permission not to give you these benefits. So check with your employer before taking paid leave in reliance on this law.

Here is a summary of the benefits you may receive if you are covered by the FFCRA:

**Paid Sick Days**

- If you are unable to work because (1) you are quarantined pursuant to a federal, state or local government order, or on the advice of a health care provider or (2) you are having COVID-19 symptoms and are seeking a medical diagnosis: you may receive up to two weeks (80 hours) of paid sick leave at your regular rate of pay.
- If you are unable to work because you have a genuine need to (1) take care of someone else who is subject to quarantine pursuant to a federal, state, or local government order, or on the advice of a health care provider or (2) care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19: you may receive up to two weeks (80 hours) of paid sick leave at two-thirds your regular rate of pay.

### **Paid Expanded Family and Medical Leave**

- If you have worked for your employer for at least 30 calendar days and are unable to work because you have a genuine need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19, you may receive up to an additional 10 weeks of paid expanded family and medical leave at two-thirds your regular rate of pay.

### ***Family and Medical Leave Act (FMLA)***

If your employer is covered under the Family Medical Leave Act (FMLA), they may be required to provide you with **up to 12 weeks unpaid leave**. You likely qualify for this leave if **all** of the following statements apply to you:

- (a) You work for an employer who employs at least 50 employees within 75 miles of your worksite;
  - (b) You have worked there for at least a year,
  - (c) You worked there at least 1250 hours last year, **AND**
  - (d) You need to take leave because **you have a serious health condition**, or because you need to take care of a **spouse, child, or parent** who has a serious health condition.
- COVID-19, the disease caused by the coronavirus, does not necessarily present a “serious” condition under the FMLA, and the U.S. Department of Labor has not issued guidance on this issue. Please check back here for updated information.
  - The FMLA only protects workers who are caring for a **spouse, child, or parent**. Workers who miss work to care for an unmarried domestic partner, a parent-in-law, a sibling, for example, are not protected by the FMLA.
  - You can also contact the U.S. Department of Labor’s Wage & Hour division for more information about the FMLA, in English and Spanish, by calling (866) 487-

9243. (You will hear a message in English, followed by a message in Spanish.)

**4. Can my employer not pay me if I am sent home early from work or told not to come in for a scheduled shift?**

Yes. Unless your work contract says otherwise, or another state or federal law applies, a Virginia employer is only required to pay an employee for work actually performed.

The federal government is working on policies to help support sick and medical leave for all individuals affected by the coronavirus. Please check back here for updated information.

**5. My employer has cut my hours back due to the coronavirus. What can I do?**

If your weekly earnings fall below what would be your weekly unemployment insurance benefit, you may file a claim for partial Unemployment Insurance (UI) benefits with the Virginia Employment Commission (VEC). For more information about Unemployment Insurance benefits, how to file a claim, and limitations, see Question #1.

**6. I have coronavirus and am not currently able to work because of my illness. What can I do to receive income while I'm not working?**

First talk to your supervisor about whether you have accrued paid sick or medical leave.

If you have to take unpaid time off, you may qualify for Unemployment Insurance benefits with the Virginia Employment Commission (VEC). For more information about Unemployment Insurance benefits, see question #1.

You may also qualify for paid sick leave or paid family and medical leave under the Families First Coronavirus Response Act or the Family and Medical Leave Act. See Question #3 for more information.

**7. What if I am undocumented? How can I get income if I cannot work?**

Unfortunately, undocumented workers cannot get Unemployment Insurance. Only individuals with legal authorization to work in the U.S. are eligible for Unemployment Insurance (for example, asylees, refugees, DACA recipients, individuals with temporary protected status, lawful permanent residents (even if their green card has expired), and individuals who have been issued an Employment Authorization Document while their application for legal immigration status is pending).

See questions above for more information.

**8. My employer closed temporarily and I did not receive my last paycheck. How do I get paid?**

For assistance with a claim for unpaid wages, call the Legal Aid Justice Center at 434-242-1494, or please visit the Virginia Department of Labor's website at <https://www.doli.virginia.gov/labor-law/payment-of-wage-spanish/>

**9. I'm covered by a shelter-in-place or stay-at-home order from my county or the state, but my employer is still requiring me to come to work. What happens if I don't go to work? Can they fire me and what can I do for income?**

- You may qualify for paid sick leave or paid family and medical leave under the Families First Coronavirus Response Act or the Family and Medical Leave Act. See Question #3 for more information.
- If your employer fires you for not coming to work in defiance of a government directive, you may have a claim for wrongful termination in violation of public policy.
- If you are terminated and are documented, you can apply for Unemployment Insurance benefits. See Question #1 for more information about Unemployment Insurance.
- If you quit and are documented, you may still be eligible to receive Unemployment Insurance if you can establish both that you had “good cause” to leave your work, which can include a reasonable, good faith fear for your safety, and that you took reasonable steps to resolve the problem before leaving your work, like requesting leave or paid sick days.

**10. My child's day care or school is closed because of the coronavirus threat. Can I take time off to care for my child?**

First talk to your employer about telework options, flexible schedules, and specific leave policies.

You may also qualify for paid family leave under the Families First Coronavirus Response Act. (Since your child is “healthy”, you probably do not qualify for unpaid leave under the Family and Medical Leave Act.) See Question #3 for more details.

Unemployment benefits might also be available for this situation. Contact the Virginia Employment Commission for more information about unemployment benefits.

**11. I have a disability; is my employer required to provide me with reasonable accommodations related to the Coronavirus?**

If you have a disability such as a compromised immune system, your employer may be required to provide you with a reasonable accommodation such as telecommuting.

Having common cold or seasonal flu symptoms is not likely a disability. However, complications from coronavirus, such as pneumonia, might be a disability. If you have complications, you and your employer should explore changes that allow you to continue your job or take time off from work.

**12. Because of coronavirus, my employer made assumptions about me or treated me differently than coworkers because I am from another country. What can I do?**

An employer who treats you worse than other workers because of your race, national origin, or ethnic background is violating the law. This includes employer actions that single you out because of negative stereotypes.

**13. My employer thinks that I have coronavirus and treated me differently because of that. What can I do?**

Your employer should not make assumptions about your illness or health condition. You may be able to bring a claim that your employer “regarded” you as having a disability under discrimination laws.

**14. Can my employer ask me if I have a health condition (like a compromised immune system) that would be affected by coronavirus?**

No. Your answer to that question is likely to disclose a disability. Therefore, the employer’s question is against the law.

**15. If I have coronavirus, what can my employer tell others about my condition?**

Your employer is required to keep all medical information about you private and confidential.

*The Virginia Justice Project for Farm and Immigrant Workers is a program of the Legal Aid Justice Center, a non-profit organization. We represent both documented and undocumented workers. This is advertising material, but our legal services are free. Nicholas Marritz and Jason Yarashes are the attorneys responsible for the content of this document. 1000 Preston Ave., Suite A, Charlottesville, VA 22903 [www.justice4all.org](http://www.justice4all.org)*