

1. Under Section (l)(5)(iii)(A), “Medical removal protection benefits”, can you clarify whether an employer must continue 401K benefits for an employee who has been removed from work due to Covid or Covid like symptoms?

RESPONSE: OSHA is still checking on this question

2. Under the same section as above, how are an employee’s wages to be calculated for someone who works only part-time and for someone who only works on a causal basis, for example 1-2 days per month or pay period? In the second situation, an employee may not have any wages for a one or two weeks/month.

RESPONSE: The ETS generally requires employers with more than 10 employees on the effective date of the standard (June 21, 2021) to pay removed employees the same regular pay and benefits they would have received had they not been absent from work (29 CFR 1910.502(l)(5)). For a part time employee who has been removed from work in accordance with the standard, employers may calculate pay due the employee under paragraph (l)(5) based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee’s schedule varies (e.g., PRN), employers could satisfy the requirements of paragraph (l)(5) of the standard by using a six-month average to calculate the average daily pay for the employee. Reliance on a six-month average would be consistent with IRS guidance on variable work schedules regarding allowable tax credit reimbursement under the America Rescue Plan Act. See #32 at <https://www.irs.gov/newsroom/tax-credits-for-paid-leave-under-the-american-rescue-plan-act-of-2021-determining-the-amount-of-the-tax-credit-for-qualified-sick-leave-wages>

3. Again under the same section, is the employer required to pay each employee removed from work for Covid or Covid like symptoms weekly wages up to \$1400/week during their period of removal? This does not mean someone working and regularly receiving \$600 per week then receives \$1400/week while off for Covid, correct?

RESPONSE: That is correct, they get their normal pay with a pay cap of \$1400 per week

4. Under the employer’s current sick leave policy, employees out on sick leave do not accrue sick leave or PTO during the absence. Is there any issue with following this same policy when an employee is receiving Covid pay under the ETS, i.e. the employee is not earning sick leave or PTO time while off work?

RESPONSE: There is no issue with this. If your company’s policy is that employees only accrue sick leave or PTO for actual work performed then this would not violate the standard.

5. This time it relates to vaccination paid leave under 1910.502(m) below. If an employee requires time off due to side effects from the vaccine, must the employer pay it under the ETS? Can the paid time off fall under their employee sick leave/PTO policy?

RESPONSE: Side effects of the vaccination are covered by medical leave under the standard. Paragraph (m) requires employers to support COVID-19 vaccination for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) for employees to receive the vaccine and to recover from vaccination side effects. The ETS does not require employers to mandate vaccination for

their employees, nor does it preclude employers from doing so. And the standard does not address employer liability for vaccine side effects.

6. Who is the employer? Is that determined by EIN, payroll and quarterly tax forms? I have an employer with multiple entities who would like clarification.

RESPONSE: There is not a single answer for determining employer/employee relationships. In determining whether an employer/employee relationship exists OSHA looks at a number of factors including:

- Who controls the work of the employee;
- Sets the schedule;
- Pays the employee;
- Determines how the work is performed;
- Provides supervision to the employee;
- Who provides the tools and equipment to perform the work;
- Who controls the location of the work;
- Who provides protective equipment;
- Who assigns additional work;
- Who does the hiring and firing;
- Who determines if additional people are needed;
- Is the work the regular business of the employer;
- Who pays employees benefits;
- Who pays for workers compensation;
- Who provides job related training.

7. I was wondering if you could clarify the \$1,400 payment. I know we can require employees to exhaust their paid time off. Can we require unvaccinated to use paid time off and vaccinated we would just pay the up to 1,400 and not use the PTO or does it have to be same for vaccinated and unvaccinated employees?

RESPONSE: Unvaccinated and vaccinated employees must be treated equally

8. For non standard PT hour employees and PRN. Do we just do a lookback period and determine average hours to be paid to them for the up to \$1,400 when out for covid? Can we make our own lookback period? For example, for calculations of holiday pay we look at the last four weeks of hours worked to determine holiday pay. Can we do that?

RESPONSE: See response #2

9. The ETS for Healthcare speaks of salary, rather than hourly pay. Is this a correct distinction? Until we receive clarification on wages from OSHA, should we focus on salaried workers?

RESPONSE: Salaried and hourly workers are both covered by the standard

10. If someone is symptomatic and awaiting results or are unvaccinated, exposed and awaiting results, does OSHA believe we need to pay for the employee's time off under the medical removal

benefit as they wait for the final test results? Or would the paid benefit be triggered only by a confirmed COVID test?

RESPONSE: If the employee is symptomatic then they must be removed from the work place and paid covid benefits. If an employee was exposed to a covid positive individual but they are not experiencing any symptoms and they have not received a positive covid test result, then the employee does not need to be removed from work.

11. If there is a problem with the Medical Removal Protection Benefit such as an employee and employer not agreeing on the proper amount of pay, will OSHA handle the inspection or citation, or will it be handled by Wage and Hour?

RESPONSE: OSHA would handle the inspection. Wage and hour cannot enforce OSHA regulations.

13. For a person who is symptomatic, suspected or confirmed covid – but there is no “work-relatedness”, does the employee qualify for the Medical Removal Protection Benefit?

RESPONSE: Yes. The employee qualifies for Medical Removal Protection Benefits regardless of work relatedness. The employee must be experiencing symptoms, have a positive covid test, or be suspected of having covid by a licensed health care professional.