



Employer FAQs During COVID-19

FINANCIAL

Is my dental office eligible for the loan that Governor Hutchinson announced?

Yes. Your dental office should qualify for the Quick Action Closing Fund loan, which was activated by the governor's office on March 18. The program makes available \$4 million available to assist midsize companies and non-profits. Click on the link for more information:

<https://www.arkansasedc.com/covid19>

What about federal options, such as the Families First Coronavirus Response Act?

Yes, watch for the availability of loans from the HR 6201, "The Families First Coronavirus Response Act." This is the second emergency legislation package in response to the pandemic. The ADA emphasized the three issues of most interest to dental practices: emergency paid sick leave; emergency expansion of family and medical leave; and tax credits. It is awaiting approval by the Department of Labor, but loans should be available soon afterwards. Read the story here:

<http://arkansasdentistry.org/wp-content/uploads/2020/03/Senate-Passes-HR6201-03192020.pdf>

What about Small Business Administration (SBA) loans?

At this time, Arkansas is not an included state for the SBA Disaster Assistance Loans for Small Businesses Impacted by Coronavirus. ASDA is monitoring this situation and will provide updated information as it becomes available. HOWEVER, Suzanne Terrazas of the SBA suggests that AR will soon be added to the approved list, and further recommends that dentists start the application process here:

<https://disasterloan.sba.gov/ela/Account/Login?ReturnUrl=%2Fela%2FLoanApplication%2FStarApplication>

I own my practice. Am I eligible for unemployment?

Possibly so. Many of the restrictions have been relaxed during the pandemic. You and your employees can begin the application process at <https://www.ezarc.adws.arkansas.gov/>. Although the website has been known to crash, you may call the AR Division of Workforce Services at 855-225-4440 or 501-682-2121.

Would another option be to get a loan from my financial institution?

Yes, working with a banking partner with whom you already have an established relationship is an excellent option to consider. Often, this may be a more efficient option that allows relative quick access to needed capital. Some financial institutions are waiving penalties and fees for things like emergency CD withdrawals, so it's best to reach out and inquire about what would be best for your situation.

Because interest rates are low, would a credit card be something to consider?

Low-interest or even zero-interest credit cards may be available and could be a good choice during this unpredictable season. You also may want to consider making minimum payments or even restructuring existing lines of credit to take advantage of the lower interest rate environment.

Are there options if my practice needs to skip payments?

The best recommendation is for you to contact vendors and financial partners directly — and proactively — to make requests. Since skipping a payment without making prior arrangements can have a negative impact on your credit, it's encouraged that you reach out in advance of missing any payments. You could potentially negotiate terms that include requesting a pause on payments, making interest-only payments or pausing automatic payments.

Do you have suggestions for other ways my practice can access funds during this time of uncertainty?

We suggest continuing to manage your receivables and collect them from patients and insurance companies even during the pandemic to bring in payments for services that have been rendered

HUMAN RESOURCES:

What options do employers have if they decide to close?

Employers can place the practice employees on a paid leave and receive tax credits, temporarily lay off employees of the practice so that they can seek unemployment benefits, reduce employee hours, or permanently terminate employees.

What are the paid leave and tax credit proposals in the Families First Coronavirus Response Act? (subject to change)

The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide employees with 80 hours of paid sick leave at the employee's regular rate. If the employee is using the paid sick leave to care for a child whose school or daycare has closed due to coronavirus or to care for a family member who is self-isolating, then the employee is entitled to 2/3 of the employee's regular rate.

Employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in accordance with the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day for each individual (\$200 per day if the leave is to care for a family member or child) for up to 10 days per employee in each calendar quarter. An allowance has been added for credit for certain health plan expenses.

The Act also includes a provision giving the Secretary of Labor the power to exempt employers with fewer than 50 employees. The ADA has submitted a letter to the Secretary of Labor requesting that dental practices with fewer than 50 employees be granted the exemption.

If an employee is terminated, can an employer choose to pay a severance?

Yes. But be cautious and make sure that the amount of severance paid is not (or will not be interpreted) as discriminatory. For example, employers could calculate severance amounts based on tenure.

What does the unemployment process look like in Arkansas?

In Arkansas, there is a one week waiting period before employees are eligible to receive unemployment benefits. There may be some additional delays as the system is weighed down with requests. However, there are provisions in the new proposed Act that gives additional grant funds to state unemployment offices and there are incentives if the state offices increase access to unemployment and waive waiting periods. This could limit wait times, but is not guaranteed.

What are employers continuing obligations if an employee is temporarily terminated?

An additional consideration if you chose the layoff option is there could be issues with healthcare insurance coverage continuation for your employees. Many third-party insurers require that employees work at least once every 30 days to maintain "eligibility". If there is a longer-term layoff, employees may have to use COBRA continuation benefits to maintain healthcare coverage.

If the office is closed, does the employer have to pay the employees?

This depends on whether the employee is exempt or non-exempt.

An employer is required to pay an exempt employee their entire salary for a workweek during which the employee performs any work during the week, including work completed remotely, or if the employee only works a partial week.

An employer is only required to pay non-exempt employees for hours actually worked.

If a shutdown initially starts as unpaid, then can the employer change later and furlough or lay off employees?

Yes.

What should an employer do if an employee exhibits symptoms?

During a pandemic, AwDA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

What is the Families First Coronavirus Response Act?

Under the Act, there are three provisions relating to employees being forced to miss work because of the COVID-9 outbreak: (1) an emergency expansion of the FMLA, (2) a new federal paid sick leave law; and (3) expanded unemployment insurance benefits.

(1) FMLA Leave Expansion

FMLA is temporarily expanded to cover ALL employers with fewer than 500 employees. Previously, FMLA only covered employers with 50 or more employees.

FMLA eligibility requirements are also temporarily lowered so that employees who have worked for an employer for at least 30 days prior to the leave request are eligible to receive paid FMLA leave.

(2) Reasons for Emergency FMLA Leave

Any individual employed for at least 30 days may take up to 12 weeks of job-protected leave to allow the employee to:

- (1) To care for the employee's child if the child's school or place of care has been closed due to a public emergency.

(3) Paid FMLA Leave

The first 10 days of Emergency FMLA leave may be unpaid, but an employee may elect to substitute any accrued paid time off to cover any or all of the period. After the 10-day period, the

employer must pay full-time employees at 2/3 the employee's regular rate for the number of hours the employee would otherwise be normally scheduled. Part-time employees are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA leave.

There is a maximum payment of \$200 per day and \$10,000 aggregate for each employee for FMLA qualifying public health emergency leave.

Tax Credit

Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. An allowance has been added for credit for certain health plan expenses

- Qualified health plan expenses means amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

Emergency Paid Sick Leave Act

This separate Act requires employers with fewer than 500 employees to provide employees with 80 hours of paid sick leave at the employee's regular rate. If the employee is using the paid sick leave to care for a child whose school or daycare has closed due to coronavirus or to care for a family member who is self-isolating, then the employee is entitled to 2/3 of the employee's regular rate.

Reasons for Paid Sick Leave

Employees can take sick leave to:

1. The employee is subject to a federal, state, or local quarantine or isolation order;
2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a quarantine/self-quarantine as described above;
5. The employee is caring for a son or daughter of such employee if the school or place of care is closed;
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

This program will be administered by the Social Security Administration and the requirements expire on December 31, 2020.

Sick time shall not exceed \$511 per day and \$5,110 in the aggregate for each employee with symptoms and seeking treatment or required to quarantine (1-3 on the list above); or \$200 per day and \$2,000 in the aggregate for employees who are caring for others with COVID-19 or children whose schools are closed (4-6 in the list above).

The Section requiring employers with existing policies to add the emergency paid sick leave to existing policies was removed; however, the language allowing employees to use paid sick leave first before accrued PTO remains. Therefore, employers may not require employees to use accrued PTO prior to using emergency paid sick leave.

Still have questions? Feel free to contact ASDA attorney Jenny Teeter of Gill

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