



FREQUENTLY ASKED QUESTIONS BY BUSINESS MANAGERS

Important Notes as You Review the FAQs below:

- ▶ The Families First Coronavirus Response Act is referred to as the “**Families First Act.**”
- ▶ The Coronavirus Aid, Relief and Economic Security Act” is referred to as the “**CARES Act.**”
- ▶ The UA has established the “UA COVID-19 Portal” on UANET.org. Please access the Portal to obtain the documents and guidance referenced in these FAQs. These will be updated as applicable.

Updated information and/or new information is highlighted in yellow for this edition 4/15/2020

PART A: JOB-RELATED QUESTIONS

- 1. My governor has issued a shelter in place directive for all but essential employees. Who is an essential employee? Does the employer decide? What if the Union or the employee disagrees?**

The order issued by your governor, or related guidance interpreting that order, will almost always define what businesses and/or workers are “essential,” such that they can continue operating in many respects like they otherwise would. While these orders tend to share many things in common, they are seldom identical. Therefore, you will need to review the order issued by your governor and any related guidance, preferably with your Local Union attorney, to determine whether a particular employee or classification of employees are essential. If questions arise about a designation of “essential,” including from your members, we encourage open dialogue with your contractors or association director.

The UA has prepared a chart showing the lockdown orders and guidance issued by state governors. You may wish to consult this chart, which is available in the UA COVID-19 Portal. We will be updating this chart periodically as new orders issue.

- 2. What should an employee do if he fears going to work because he has at-risk family members at home, or he is at-risk for COVID-19 due to an underlying health issue? Does it matter if the employee is an essential employee? Can the employee be fired?**

In most cases, a decision not to report to work based on a generalized fear of contracting COVID-19 or passing it on to a family member will not be legally protected. Therefore, an employee who refuses to report based on such a fear may be subject to termination. This would be the case regardless of whether the employee has been designated an essential employee. If this arises, you will want to find out whether the employer is treating all similarly situated employees the same way.



We encourage our signatory contractors to be flexible in evaluating a situation like that raised in this question. Rather than firing this employee, we'd hope the employer would furlough or lay him off, so that he qualifies for the expanded unemployment benefits now available under the CARES Act, which was signed into law on March 27, 2020. See the summary of the CARES Act that General President McManus emailed to Business Managers on March 27 for more information on the provisions of this new law. This summary is also included in the UA COVID-19 Portal.

In theory, the employee who is at-risk due to an underlying health condition could request a reasonable accommodation under the Americans with Disabilities Act, but it's unclear that there is any practical accommodation available, even if the employer would be required to provide one under these facts. See the recent EEOC Guidance located in the UA COVID-19 Portal. You will want to evaluate these scenarios with your Local Union attorney should they arise.

3. What should an employee do if he is on a job that has a confirmed case of COVID-19?

The employee should contact his Steward, who, in turn, should contact the Business Manager for guidance (or the designated Business Agent). If protocols for handling such situations have been agreed to by the Local Union, those protocols should be followed and communicated as appropriate to employees on the job. Otherwise, you should contact the employer to assess the situation.

The CDC currently advises that "critical infrastructure workers," a category including many UA members, should be permitted to continue work following potential exposure to COVID-19, as long as they remain asymptomatic and additional precautions are implemented to prevent spread of the disease. Procedures the CDC suggests should be implemented include: pre-screening each employee's temperature before the start of work, requiring the wearing of a face mask at all times, and maintaining 6 feet between workers whenever possible.

This CDC guidance can be found here:

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/critical-workers-implementing-safety-practices.pdf>.

You will also find it in the UA COVID-19 Portal along with similar OSHA guidance on control and prevention in the workplace: <https://www.osha.gov/SLTC/covid-19/controlprevention.html>.

This new CDC guidance is just that – guidance. Local Unions should review this and any other guidance with their contractors and contractor associations. You should work together to determine what approach is best for you and our members. Depending on the facts, this approach may include protections above and beyond what the CDC guidance suggests.

Bear in mind that, in addition to any protections that may exist in the Local Union (or applicable) collective bargaining agreement, there are federal laws, including the Occupational Safety and Health Act and the National Labor Relations Act which protect employees who refuse to work in unsafe working conditions from employer discipline. However, the protection provided by these laws depends on the facts and circumstances of each particular case. Invoking their protection requires more than a generalized fear about COVID-19. The circumstances of the confirmed case, the steps being taken to address it, the evidence of danger to the employee would all factor into the analysis. For these reasons, if a confirmed case of COVID-19 arises on a job and it appears that one or more employees may refuse to work, you should consult with your Local Union attorney regarding the legal protections that may apply.



4. What should an employee do if he tests positive for COVID-19 or has symptoms associated with COVID-19?

If an employee tests positive for COVID-19 or is exhibiting symptoms of COVID-19 (such as a fever, cough, or shortness of breath), the employee should notify his employer and take immediate steps to self-quarantine in accordance with steps to comply with the guidelines issued by the Centers for Disease Control and Prevention (“CDC”) and any applicable State authorities. That guidance is available here:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Check the Families First Act for leave that might be available to such employees.

5. If an employee is sent home because he is exhibiting symptoms of COVID-19, who must the employer inform, and when?

It is up to the employer to follow all regulations, guidance and protocols provided by appropriate federal, state and local agencies if there is a suspected case of COVID-19 on the jobsite. Note that the Americans with Disabilities Act generally requires employers to maintain confidentiality of employees’ medical information; however, this does not prevent employers from notifying public health authorities if the employer learns an employee has COVID-19.

6. Can an employer force employees to stay on a job in order to prevent a case of COVID-19 from spreading or for another similar reason?

Generally, no. Certain federal, state and local government authorities can issue orders of this nature, but private entities generally cannot. This does not mean that employers and unions couldn’t negotiate over ways to keep employees working voluntarily at quarantined sites for premium pay. Whether this is desirable or even feasible is something that should be bargained locally in consultation with your Local Union counsel.

7. Can employers refuse to hire someone who is sick with COVID-19?

Generally, yes. But check your CBA to see whether reporting or show-up pay is available when an employee was placed on the payroll during the intake phase of the employment process but then let go because of COVID-19 concerns. Note that federal, state and local governments are taking action to provide sick leave, unemployment and other benefits for those who can’t work because of COVID-19. The General President has provided memoranda to Business Managers on federal laws providing such benefits. You can find copies of these memoranda by visiting the UA COVID-19 Portal. Remember - a member’s eligibility for particular benefits may turn on facts that seem small. Therefore, careful attention to the applicable legal requirements is important and you should confer with Local Union counsel with questions.

8. What should an employee do if his State issues a “shelter in place” order but jobs in other States are still operating?

The answer depends in large part on what the State’s “shelter in place” order says. Virtually all State “shelter in place” orders that have been issued include a number of exceptions. For example, there may be an exception covering travel to another State to perform work that is deemed “essential” or otherwise authorized in that



other State. If the order doesn't expressly address the issue, but the work of the employee is deemed to be "essential" under the orders and guidance issued by both the employee's state of residence and the state in which the job is located, it is hard to imagine that travel between the States to perform such essential work would violate the order.

Ultimately, the Business Manager should review these kinds of issues with the Local Union attorney and consider providing guidance to members as appropriate.

9. Can the Local Union direct employees to stay home from a specific job because of COVID-19? Or tell them to report to work?

Whether a Local Union can direct employees to stay home from a job depends, among other things, on the provisions of the CBA and the reasons for the directive (e.g., certain OSHA violations or abnormally dangerous working conditions). The Business Manager will need to evaluate each jobsite, including consultations with the employer's safety team and Local Union attorney before considering any directives to employees to stay home. Likewise, we don't foresee Local Unions directing employees to report to work. Employees will make their own decisions about reporting to work during the COVID-19 crisis, guided by federal and State directives and guidelines, and common sense. We think the best prescription for all as we navigate these difficult issues is robust communication, transparency and accurate information – with our signatory contractors and with the employees we represent on the job.

10. May employers require employees to provide information about the employee's health or their family's health as a condition of keeping their job? Or getting a job?

Generally, the employer may ask current employees for information about their health that is specifically tailored to COVID-19. Questions about family members are problematic. Also, note that the EEOC limits the circumstances in which an employer may inquire about an applicant's health condition. In short, the rules are different for current employees than for applicants who have been referred.

The EEOC has issued, and is periodically updating, guidance on this issue:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

You will find this and other EEOC guidance in the UA COVID-19 Portal.

11. I'm getting different protocols and safety instructions from different employers. Can't there be just one set of protocols/instructions for all employers?

Employers may have different protocols because the clients and/or general contractors and project managers have their own requirements. You can certainly work with your employers and employer association to develop a common set of protocols that can be adapted as appropriate to particular jobs and clients and adopt a memorandum of understanding ("MOU") reflecting your agreement. But you shouldn't expect that there will be just one standardized COVID-19 policy on all of your jobsites.

These safety protocols might require current employees to fill out a safety questionnaire; they might include taking temperatures at the start of the day. Both are permissible. The EEOC has issued guidance on these protocols that are included in the UA COVID-19 Portal, and we encourage you to review it.



Importantly, you should be sure that individuals you refer out for jobs are given copies of the protocols prior to dispatch, so that they understand what protocols they will be required to follow as a condition of employment. It's better to let employees know in advance what the rules are for a given job so that they can evaluate – before spending time and energy getting to the job – whether they can meet the requirements.

- 12. Some jobsites are looking to stagger lunch times to reduce crowds. These may go beyond the scheduled times per the various CBAs that we work under which would, under normal circumstances, require an additional half hour of OT for missing lunch at the scheduled time. I assume the OT requirement will be waived during this crisis?**

You will need to work that out with the employer, but you are encouraged to be flexible. It is worth noting that current CDC guidance for “critical infrastructure workers” suggests that employers stagger break times, which seems like a wise idea in furtherance of social distancing.

- 13. What if a job shuts down and my members are furloughed? Is that different from a layoff?**

Generally speaking, employees who are furloughed remain on the payroll of the employer but have some or all of their work and pay suspended, while employees who are laid off are removed from the payroll and no longer receive any work or pay from the employer. Furloughed employees also are frequently given a return to work date, whereas this is frequently not the case for employees who are laid off. In addition, while furloughed employees often are not paid wages, the employer instituting the furlough may continue to provide certain fringe benefits.

CBAs in the construction industry typically do not include furloughs. Instead, employees are laid off when there is no work available. They return to the hall to sign the out-of-work list and get another referral. And, they are not guaranteed a return to the same position when work resumes. Local Unions are free to negotiate furlough rules and procedures for the COVID-19 crisis; we expect this will be handled on a local basis as each Business Manager deems appropriate.

You should also bear in mind that furloughed employees generally will not be eligible for paid sick or family leave under the recently adopted Families First Act, but they should be eligible for unemployment benefits under the laws of your State and the new federal CARES Act. The General President's memoranda on the Families First Act and the CARES Act provide additional guidance on COVID-19 paid sick leave and enhanced leave under the Family and Medical Leave Act, and on the greatly expanded unemployment compensation benefits. These memos are included in the UA COVID-19 Portal.

- 14. Senator Schumer said that the stimulus package signed into law on Friday, March 27 provided unemployment compensation insurance benefits “on steroids.” Tell me more about that.**

The CARES Act greatly improved unemployment compensation – both for those who are eligible now for unemployment compensation and those who would not otherwise be eligible now. The General President emailed the Business Managers a summary of the CARES Act on March 27, 2020, along with a summary of the greatly expanded unemployment insurance. The summary, which is included in the UA COVID-19 Portal, includes examples of how this new law works. Remember, States are required to agree to participate in this



new program so that our members can take advantage of these substantial improvements. Be sure that your State has signed up!

15. What should an employee do if he can't come to work because his child's school or daycare is closed?

The new Families First Act (and possibly State laws) makes paid sick and family leave available to employees who need to stay home in order to care for a child whose school or daycare facility has closed. The employee should follow the applicable procedures to notify the employer that he needs to go on paid leave due to the school or daycare closure. In general, employees should include the steward or other Local Union representative designated by the Business Manager on such communications. Check out the UA COVID-19 Portal for the General President's summary of the available leave for workers.

16. Are there any Federal government subsidies besides Unemployment Benefits available for our members?

Yes. The new federal Families First Act requires employers with fewer than 500 employees to provide paid sick and FMLA leave to qualifying employees. For more information on this leave, please see General President McManus's March 23, 2020 memo to Business Managers on the benefits of the Families First Act. This is available in the UA's COVID-19 Portal.

The U.S. Department of Labor ("DOL") is the governmental agency responsible for interpretation and enforcement of the Families First Act. The DOL has issued a comprehensive Q&A on its website regarding leave provided by the Families First Act: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. We have also placed this on the UA COVID-19 Portal.

More recently, the federal CARES Act was enacted into law. In addition to providing for expanded unemployment benefits through state unemployment agencies, the CARES Act requires tax rebate payments of \$1,200 to be made to single filers with an adjusted gross annual income of up to \$75,000, and rebate payments of \$2,400 to be made to joint married filers with a joint adjusted gross annual income of up to \$150,000. An additional \$500 will be paid for each child. For most Americans, no action on their part will be required in order to receive a rebate check as the IRS will use a taxpayer's 2019 tax return if filed, or their 2018 return.

The rebate payments are reduced by \$5 for each \$100 that a taxpayer's income exceeds the \$75,000/\$150,000 thresholds. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

The CARES Act includes a variety of other provisions that will directly or indirectly assist members, including but not limited to, student loan assistance and, subject to certain conditions, a right to additional time to make payments on federally-backed mortgages in event of financial hardship, funding for state childcare subsidies, and employer tax credits to retain employees. Certain defined contribution retirement funds are also permitted to amend their plans to provide for greater distributions without penalty. Check with your Fund Counsel about the impact of CARES Act on your defined contribution plan.



17. I'm a Business Manager of a Canadian Local and many of my members are working in the U.S. Are work visas still valid for the workers to return?

Our understanding is that visas for Canadians working at the Shell Cracker Plant in Local 449's jurisdiction will be honored through September 30, 2020. Bechtel is currently petitioning for an extension. You may contact Mike Mulvaney with questions at MikeM@uanet.org. Please contact Brother Mulvaney if you have similar visa questions about other jobs.

18. If a project performed under the National Maintenance Agreement is shut down, will the contractors be allowed to recall the same men back to that project?

This is something to be worked out with the contractors. If you have an NMA job that is shut down, please contact Assistant General President Mike Pleasant at MikeP@uanet.org for assistance.

PART B: INTERNAL UNION QUESTIONS

1. May a Business Manager close the Local Union office?

Yes. Under Section 103 of the UA Constitution, Business Managers have control and supervision over the daily affairs and business operations of the Local Union. The Business Manager's authority under this section includes the authority to close the office in emergency situations, including a pandemic, notwithstanding any contrary provision in the By-Laws or other rules of the Local Union.

2. May a Business Manager cancel membership meetings?

Yes. Under Section 103 of the UA Constitution, Business Managers have control and supervision over the daily affairs and business operations of the Local Union. The Business Manager's authority under this section includes the authority to cancel membership meetings in emergency situations, including a pandemic, notwithstanding any contrary provision in the By-Laws or other rules of the Local Union.

The CDC has made clear that group gatherings need to be avoided, while many state and local governments have issued orders prohibiting gatherings of a certain size. So not only do you have the right to cancel meetings for the time being, you may have a legal obligation to do so. Any questions about your legal obligations should be addressed to the Local Union attorney.

The UA has prepared—and is updating regularly—a chart showing the lockdown orders and guidance issued by state governors. This chart is available in the UA COVID-19 Portal.

3. We have nominations for our Local Union officers' election coming up soon. We have temporarily cancelled our regular membership meetings. We fear this will push into May, when we normally have nominations, and June, when our elections are required by our Bylaws to be conducted. What do we do?

On March 23, 2020, General President McManus sent Business Managers a letter regarding his decision to make exceptions to certain election provisions of the UA Constitution. His decision authorizes all Business Managers with upcoming mail ballot or manual ballot elections to postpone their elections until August 2020



and to take other related steps in light of COVID-19. You can find a copy of the General President's letter by visiting the UA COVID-19 Portal.

4. May a Business Manager who has cancelled Local Union membership meetings decide without a membership vote to allocate an annual wage increase?

Yes. On March 23, 2020, General President McManus sent Business Managers a letter addressing this topic. This letter is available in the UA's COVID-19 Portal.

5. Our Local Union is in negotiations. While we have historically negotiated a 3 year agreement, but my contractor group is requesting a 6 month or 1 year agreement in view of the volatile markets. Does the UA recommend pursuing a shorter CBA, a 3 year agreement, or a different approach altogether?

This is a Local Union decision that you will need to make based on the facts and circumstances before you. However, it would make sense to consider a short extension (e.g., 6 months), followed by another extension after that, if necessary. Generally speaking, it is best to negotiate with a clear picture of where the industry is and what kind of job opportunities will be out there. Because we don't have that information at the moment, you may be better off executing short extensions until the current emergency abates.

6. Will the UA provide dues relief for and/or give forbearance on per capita payments during this crisis?

Yes. On April 8, 2020, the General President, with the approval of the General Executive Board, directed that Local Unions cover the fixed monthly dues (i.e., window dues) of non-retired members who have not worked more than 40 hours in the previous calendar month. The relief does not apply to working assessments, which Local Unions may continue to collect on any and all hours worked. The UA will then cover the Local's per capita tax for all such members. A copy of the General President's April 8, 2020 directive is posted on the UA COVID-19 Portal.

Under the directive, dues relief is provided to members by their Local Unions while related per capita tax relief is provided to Local Unions by the UA. It's a two-step process.

First, as noted, Local Unions cover the monthly dues of members who worked 40 or fewer hours in the previous calendar month. If, for example, a member performed only 32 hours of UA work in March, his or her monthly dues for April will be covered by the Local Union. Members who performed more than 40 hours of work in the previous calendar month are not eligible. Looking at the previous calendar month will help avoid additional delay in cash sheets filings by allowing Locals to calculate their relief for a given month before they start on their cash sheets for that month. In other words, Locals don't have to wait until all hours are in for the current month to look at who is eligible and get started. If a member who is eligible for the relief has already paid his or her monthly dues to the Local Union for April (or for any other month in which the relief is provided), the Local will apply that payment to the member's future dues obligations.

As the second part of the process, the UA will cover all of the per capita tax owed by Local Unions on behalf of the members whose monthly dues are being covered by the Local Unions. Local Unions will continue to submit their cash sheets as they always do, except that all members getting the dues relief will be marked as paid. Thus, for example, if an eligible building trades member owes window dues of \$31, the Local Union will cover



the \$31 in window dues the member owes to the Local Union while the UA will cover the \$27 in capita tax that the Local owes to the UA for those members. The net revenue loss to the Local Union in this example is \$4. To receive this per capita relief, Local Unions will submit a simple Per Capita Tax Relief Form. Local Unions should enter the number of Building Trades, Metal Trades and Age 65+ members who are eligible for relief into the form. The form will then calculate the amount of relief the Local Union gets along with the amount of per capita tax they owe to the UA for the month.

The temporary relief described above is in force for the month of April 2020 and thereafter on a month-to-month basis at the direction and discretion of the General President and the General Secretary-Treasurer. If you have questions about how this will work in your Local Union, please contact General Secretary-Treasurer Kellett at PatrickK@uanet.org.

7. Is the UA considering waiving reinstatement fees during this crisis?

Yes. The General President's April 8, 2020 letter referenced in Q&A 6, above, also suspended enforcement of the provisions of Sections 157-158 of the UA Constitution which impose automatic suspension/loss of good standing and the resulting \$50.00 reinstatement fee on members owing more than 3 months' dues. In other words, a member who owes 4 months of dues will not be automatically suspended and does not owe a \$50 reinstatement fee. Like the relief described in Q&A 6 above, this relief measure will be reviewed monthly. This does not apply to members who have gone expelled for non-payment of dues.

8. What if I can't get my cash sheets in on time?

The short answer is to do the best you can. We note that the cash sheet process can be completed with little or no in-person contact. Cash sheets are submitted electronically, as text files or Excel spreadsheets. The vast majority of Local Unions make payments based on their cash sheets by ACH. Accordingly, Local Unions should take the steps necessary to have their cash sheets prepared and submitted—and their per capita payments paid—remotely.

Notwithstanding the above, if Local Unions encounter difficulties with respect to their cash sheets, the UA is prepared to be flexible. For assistance, please contact Rachael Jones, Manager of the UA Membership Department at RachaelJ@uanet.org.

9. Did the CARES Act provide any financial relief to Local Unions or Local Union training funds?

Yes. On April 2, 2020, the General President issued a memo to all Local Union Business Managers advising of the CARES Act relief that was available to Local Unions and their training funds. A copy of that memo has been posted to the UA COVID-19 Portal. Items highlighted in the General President's memo are:

a. *Paycheck Protection Program*: This program would allow your Local training fund, if it is otherwise a tax-exempt 501(c)(3) eligible organization, to obtain a forgivable loan from the Small Business Administration ("SBA") for payroll costs so long as they maintain their pre-COVID-19 workforce. Local Unions are not eligible for this program.

b. *SBA Economic Injury Disaster Loan Program*: The SBA is expanding its EIDL program by providing loans and emergency grants of up to \$10,000. This includes a Local Union and other tax-exempt non-profits



with fewer than 500 employees that are unable to meet their financial obligations or pay ordinary expenses because of the pandemic.

c. *Employee Retention Credit:* The CARES Act allows Local Unions and training funds to receive a refundable tax credit, called an “employee retention credit,” against their payroll taxes. This credit is only available, however, to employers that keep employees on the payroll during times of operational or economic hardship caused by COVID-19. There are limits on the amount of wages that qualify for the credit.

d. *Payroll Tax Deferment:* A Local Union or training fund that is not receiving other CARES Act relief may suspend payment of Social Security payroll taxes (i.e. the 6.2% tax paid by employers for old-age, survivors, and disability insurance taxes, but not the 1.45% Medicare tax) owed before January 1, 2021. Fifty percent (50%) of the payroll taxes accrued during this time must be paid by December 31, 2021 and the remaining 50% are due on December 31, 2022.

10. When it comes to the day to day operation of the local union, what positions are considered essential and non-essential?

The terms “essential” and “non-essential” are generally used in the context of an order from the governor and related guidance that certain businesses be closed. In order to determine whether the Local Union office may remain open in light of those orders and/or who on the Local Union’s payroll may work in the office, you need to consult with the orders themselves, preferably in consultation with your Local Union attorney. The UA has prepared—and is updating regularly—a chart showing the lockdown orders and guidance issued by state governors. This chart is available in the UA’s COVID-19 Portal.

If, on a more practical level, the question presented is who needs to be in the office in order to take care of the business of the Local Union, it is a question that needs to be answered by you, as Business Manager.

11. If my wife is advised to self-quarantine but is not showing any other symptoms other than a fever, is it safe for me to work at my union hall?

Ultimately, this is a decision that will require you to use your best judgment as Business Manager, balancing the needs of your members with the safety of those in the union hall. Under some of the stay-at-home orders currently in effect, “critical labor union functions” are considered an “essential” activity. Current CDC guidance suggests that individuals providing essential services could be allowed to work following possible exposure to COVID-19, as long as they remain asymptomatic and take additional precautions. If you do decide to work out of your union hall in this circumstance, you should, at the very least, take your temperature before leaving home (and stay at home if you have a fever), remain at least 6 feet from anyone in the hall, and wear a face mask.

On the other hand, if you feel that working out of the union hall poses an unacceptable health risk to others, you should stay at home. This is a time for erring on the side of caution.

12. Are the District and National Apprentice contest being cancelled?

Yes, they are being cancelled.



13. Are the Pipe Trades Conventions cancelled as well?

We expect the Pipe Trades conventions at least through May will be cancelled. We are encouraging our Pipe Trades Association leadership to proceed in accordance with applicable federal, state and local orders and guidance – and with common sense – in deciding whether to cancel conventions in June and thereafter. We encourage you to work with your local counsel on the cancellation provisions of your hotel and event contracts to avoid, or at least lessen, any financial penalties from cancellation.

14. Where can I get more information and guidance from the UA?

As mentioned above, the new UA COVID-19 Portal provides a ready reference for Business Managers on the General President’s directives, recommendations, and guidance from State and federal authorities. The information for Business Managers in the portal will be updated as necessary on an ongoing basis.