

# HR COMPLIANCE BULLETIN

## DOL FAQs: COVID-19 and the Fair Labor Standards Act

In light of the spread of COVID-19 in the United States, the Department of Labor (DOL) has published answers to frequently asked questions on how employers can stay in compliance with the federal Fair Labor Standards Act (FLSA), which regulates wage and hour conditions for employees.

When responding to pandemics or other public health emergencies, employers must be aware of the effects these events can have on wages and hours worked under the FLSA. The guidance offered by these answers provides information on common issues employers may face, and will be particularly useful for those who are considering teleworking as a prevention strategy, or those dealing with personnel shortages.

### Action Steps

- Employers should review this information for insight on how the DOL views compliance with wage payment requirements, remote work accommodations, home office safety and using volunteer or temporary workers.
- Employers should continue to monitor COVID-19 developments locally, nationally and internationally.
- Employers should consider proactively educating their workforce on how to identify, prevent and respond to potential coronavirus exposure in the workplace.

Provided to you by **Cowden Associates, Inc.**

### COVID-19

- ✘ [Reported symptoms](#) include mild to severe respiratory illness with fever, cough and difficulty breathing.
- ✘ The virus can [spread from person to person](#). Someone who is actively sick with COVID-19 can spread the illness to others.
- ✘ There is currently no vaccine to prevent COVID-19. The best way to prevent illness is to avoid being exposed to the virus.
- ✘ Individuals at higher risk include older adults and people with underlying medical conditions like heart disease, diabetes and lung disease.

### Official Resources

- [Centers for Disease Control and Prevention \(CDC\)](#)
- [Occupational Safety and Health Administration \(OSHA\)](#)
- [Government Response to Coronavirus](#)

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***How many hours is an employer obligated to pay an hourly paid employee who works a partial week because the employer's business closed?***

The FLSA generally applies to hours actually worked. It does not require employers who are unable to provide work to nonexempt employees to pay them for hours the employees would have otherwise worked.

***If an employer directs salaried, exempt employees to take vacation (or leave bank deductions) or leave without pay during office closures due to influenza, pandemic, or other public health emergency, does this impact the employee's exempt status?***

Exempt, salaried employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. The FLSA does not require employer-provided vacation time. Where an employer offers a bona fide benefits plan or vacation time to its employees, there is no prohibition on an employer requiring that such accrued leave or vacation time be taken on a specific day(s). Further, this will not affect the employee's salary basis of payment so long as the employee still receives in payment an amount equal to the employee's guaranteed salary. However, an employee will not be considered paid "on a salary basis" if deductions from the predetermined compensation are made for absences occasioned by the office closure during a week in which the employee performs any work. Exempt salaried employees are not required to be paid their salary in weeks in which they perform no work.

Therefore, a private employer may direct exempt staff to take vacation or debit their leave bank account in the case of an office closure, whether for a full or partial day, provided the employees receive in payment an amount equal to their guaranteed salary. In the same scenario, an exempt employee who has no accrued benefits in the leave bank account, or has limited accrued leave and the reduction would result in a negative balance in the leave bank account, still must receive the employee's guaranteed salary for any absence(s) occasioned by the office closure in order to remain exempt. For more information, see [WHD Opinion Letter FLSA2005-41](#).

***What are an employer's obligations to an employee who is under government-imposed quarantine?***

The DOL encourages employers to be accommodating and flexible with workers impacted by government-imposed quarantines. Employers may offer alternative work arrangements, such as teleworking, and additional paid time off to such employees.

***How many hours per day or per week can an employee work?***

The [FLSA](#) does not limit the number of hours per day or per week that employees aged 16 years and older can be required to work.

***Can an employee be required to perform work outside the employee's job description?***

Yes. The FLSA does not limit the types of work employees age 18 and older may be required to perform. However, there are [restrictions on what work employees under the age of 18](#) can do. This is true whether or not the work asked of the employee is listed in the employee's job description.

As part of your pre-influenza, pandemic, or other public health emergency planning, you may want to consult your human resource specialists if you expect to assign employees work outside their job description during a pandemic or other public health emergency. You may also wish to consult bargaining unit representatives if you have a union contract.



## ***If individuals volunteer for a public agency, are they entitled to compensation?***

Individuals who volunteer their services to a public agency (such as a state, parish, city or county government) in an emergency capacity are not considered employees due compensation under the FLSA if they:

- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation (the volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services);
- Offer their services freely and without coercion, direct or implied; and
- Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

## ***If individuals volunteer to a private, not-for-profit organization, are they entitled to compensation?***

Individuals who volunteer their services in an emergency relief capacity to private not-for-profit organizations for civic, religious or humanitarian objectives, without contemplation or receipt of compensation, are not considered employees due compensation under the FLSA. However, employees of such organizations may not volunteer to perform on an uncompensated basis the same services they are employed to perform.

Where employers are requested to furnish their services, including their employees', in emergency circumstances under Federal, state or local general police powers, the employer's employees will be considered employees of the government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the FLSA.

## ***May an employer encourage or require employees to telework (i.e., work from an alternative location such as home) as an infection control strategy?***

Yes. An employer may encourage or require employees to telework as an infection-control or prevention strategy, including based on timely information from public health authorities about pandemics, public health emergencies, or other similar conditions. Telework also may be a reasonable accommodation.

Of course, employers must not single out employees either to telework or to continue reporting to the workplace on a basis prohibited by any of the EEO laws. (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

## ***Do employers have to pay employees their same hourly rate or salary if they work at home?***

If telework is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, then you must pay the same hourly rate or salary.

If this is not the case and you do not have a union contract or other employment contracts, under the FLSA employers generally have to pay employees only for the hours they actually work, whether at home or at the employer's office. However, the FLSA requires employers to pay nonexempt workers at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees generally must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.

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If the [Service Contract Act](#) (SCA) or state or local laws regulating the payment of wages also apply, nothing in the FLSA or its regulations or interpretations overrides or nullifies any higher standards provided by such other laws or authority. (See the U.S. Department of Labor, [Wage and Hour Division](#) for additional information on the SCA or call 1-866-487-9243.)

***In the event an organization bars employees from working from their current place of business and requires them to work at home, will employers have to pay those employees who are unable to work from home?***

Under the FLSA, employers generally only have to pay employees for the hours they actually work, whether at home or at the employer's office. However, employers must pay at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked in excess of 40 in a workweek. Salaried exempt employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

When not all employees can work from home, we encourage you to consider additional options to promote social distancing, such as staggered work shifts.

***Are businesses and other employers required to cover any additional costs that employees may incur if they work from home (internet access, computer, additional phone line, increased use of electricity, etc.)?***

Employers may not require employees who are covered by the FLSA to pay or reimburse the employer for such items that are business expenses of the employer if doing so reduces the employee's earnings below the required minimum wage or overtime compensation. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

Employers may not require employees to pay or reimburse the employer for such items if telework is being provided to a qualified individual with a disability as a reasonable accommodation under the [Americans with Disabilities Act](#). (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

***Do OSHA's regulations and standards apply to the home office? Are there any other Federal laws employers need to worry about if employees work from home?***

The Department of Labor's Occupational Safety and Health Administration (OSHA) does not have any regulations regarding telework in home offices. The agency issued a directive in February 2000 stating that the agency will not conduct inspections of employees' home offices, will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees. If OSHA receives a complaint about a home office, the complainant will be advised of OSHA's policy. If an employee makes a specific request, OSHA may informally let employers know of complaints about home office conditions, but will not follow-up with the employer or employee.

Employers who are required to keep records of work-related injuries and illnesses will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.

The FLSA and its implementing regulations do not prevent employers from implementing telework or other flexible work arrangements allowing employees to work from home. Employers would still be required to maintain an accurate record of hours worked for all employees, including those participating in telework or other flexible work arrangements; and to



pay no less than the minimum wage for all hours worked and to pay at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek to nonexempt employees.

Employers are encouraged to work with their employees to establish hours of work for employees who telework and a mechanism for recording each teleworking employee's hours of work. Nonexempt employees must receive the required minimum wage and overtime pay free and clear. This means that when a covered employee is required to provide the tools and equipment (e.g., computer, internet connection, facsimile machine, etc.) needed for telework, the cost of providing the tools and equipment may not reduce the employee's pay below that required by the FLSA. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

Under the [Americans with Disabilities Act](#), telework could be a reasonable accommodation the employer would need to provide to a qualified individual with a disability, barring any undue hardship. However, an employer may instead offer alternative accommodations as long as they would be effective. (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

***In the event an employer brings on temporary employees from a staffing agency to supplement its workforce due to staffing shortages, is the employer liable if the temporary employees are not paid in accordance with the wage requirements of the FLSA?***

Under the FLSA, an employee may be employed by one or more individuals or entities. If one or more of these employers are deemed joint employers, they may both be responsible—and jointly and severally liable—for the employee's required minimum wage and overtime pay.

The U.S. Department of Labor recently updated and revised its regulations providing guidance regarding joint employer status under the FLSA. The final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another individual or entity. The effective date of the final rule is **March 16, 2020**. For more information please visit: <https://www.dol.gov/agencies/whd/flsa/2020-joint-employment>.

Source: [U.S. Department of Labor, Wage and Hour Division](#)