



## We Are In This Together

Currently, government and public health experts are issuing warnings worldwide of the spread of coronavirus (COVID-19). Regardless of employment regulations, this pandemic will present extraordinary circumstances that will result in major impacts on how you operate your business during this period of uncertainty. Strict adherence to leave policies helps to minimize exposure to risk in normal operating circumstances, but when a pandemic strikes, flexibility and consideration go a long way in maintaining good employees.

If you do choose to make exceptions, be mindful to not engage in discrimination - ensure that such exceptions are based on legitimate, non-discriminatory reasons and are consistently applied across the workforce. It is our hope that, by highlighting several key points, we can assist your business in preparing to deal with this pandemic.

## Paying Employees

According to Federal Wage and Hour regulations, under normal circumstances, an employer may not deduct from an **exempt** employee's salary for any week that they perform any work. Unless there is a state requirement to the contrary, an employer can have a policy that requires **exempt** employees to use accrued vacation or personal time if they are unable to report to work.

For **non-exempt** employees, there is no requirement to pay employees for time lost due to a reduction in hours worked. Employers are only required to pay **non-exempt** employees for time actually worked. Although it is not a regulation, some employers may choose to pay **non-exempt** employees for some or all lost time during the pandemic.

Many larger employers such as Microsoft, Walt Disney World and Darden Restaurants have announced that they will continue to pay their employees during closures due to the pandemic in support of the financial impact on employees and their families. For other employers, payment may be a good idea, but the budget doesn't allow it. Either way, it is up to the employer so long as they apply any pay policy change consistently.

## Policy Updates

Be sure that any new policy is clearly communicated to all staff. If employers offer a remote work arrangement, we encourage companies to address accurate timekeeping practices, establishing workspace safety guidelines (which could include Workers' Compensation), and enforcement of cybersecurity practices to protect confidential company information. All official company records, files, and documents must be protected from unauthorized disclosure or damage and returned safely to the primary workplace.

A written checklist with remote work guidelines should be implemented with the employee and include a signed acknowledgement.

## Unemployment Compensation

Unemployment compensation is paid when employees are out of work for reasons other than their own misconduct and some states require a one-week waiting period (some states may make a special exception in the event of a disaster or pandemic).

Another consideration is how to navigate unemployment if accrued vacation time is being paid. Generally, unemployment benefits are reduced by any earned income payable (to the extent it exceeds the federal hourly minimum wage rate). Although many states do not specifically list vacation pay in the definition of earned income, this would likely be considered “derived from work” and would be used to reduce unemployment benefits.

## Leave of Absence

FMLA, Military Leave, and company specific Unpaid Leave Policies are all things to consider during this pandemic. If an employee suffers a physical or mental illness or injury that meets the definition of a “serious health condition” and renders them unable to perform their job. FMLA could also apply if the employee is required to care for a spouse, child or parent with a serious health condition who is affected by the coronavirus.

Employees serving in the National Guard may also require additional leave to assist in emergency efforts. These employees assisting with relief efforts may separately qualify for protected time off. Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), employees may take a leave of absence for service in the uniformed services. The USERRA covers employees engaged in the National Guard, given that the President of the United States calls the National Guard into action. Service in the National Guard for a unit activated by a state governor, rather than the president, and work for the Federal Emergency Management Agency generally would not be considered part of the uniformed services under USERRA.

It is also prudent to be prepared to handle requests for accommodation. The Americans with Disabilities Act (applicable to employers with 20+ employees) and related state and local antidiscrimination laws require employers to provide reasonable accommodations to qualified employees with disabilities.

## In Conclusion

While specific guidance for employers on how to navigate the spread of this virus seems to be constantly updating, be encouraged that employers have a lot of autonomy in decisions that they are able to make (i.e. allowing/requiring employees to stay home) so long as they apply any new policies evenhandedly.

### Sample Memo

[Company name] is taking proactive steps to address a number of business concerns in light of the coronavirus.

First and foremost, we want to maintain a safe workplace and encourage and/or adopt practices protecting the health of employees, customers, visitors or others. We also want to ensure the continuity of business operations during this pandemic.

We ask all employees to cooperate in taking steps to reduce the transmission of communicable diseases in the workplace.

Employees are reminded of the following:

- Stay home when you are sick.
- Wash your hands frequently with warm, soapy water for at least 20 seconds.
- Cover your mouth with tissues whenever you sneeze, and discard used tissues in the trash.
- Avoid people who are sick with respiratory symptoms.
- Clean frequently touched surfaces.

[Company name] will consider, on a case-by-case basis, requests from employees to work from home during this time. Please contact [Company representative] if you have any questions or concerns.

Please contact us with any of your HR needs

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