

CORONAVIRUS:

EMPLOYER Q&A

Updated: March 13, 2020

We have been receiving a number of questions from clients on how to handle coronavirus from an HR perspective. Because it is likely that most of our clients may have similar questions, we are collecting these into the following Q&A format guide.

We will plan for this to be an ongoing and cumulative guide as more questions are identified. As you have additional questions, we invite you to please submit those to Info@BFGonline.com. We will work to keep this updated frequently and posted on our website for your easy reference.

Our next planned piece is on maintaining a clean work environment.

Nonexempt versus Exempt Employees

As a preface for these questions, it's important to note the difference between exempt (salaried) and non-exempt (hourly) employees. Because the purpose of this Q&A document is to address general handling of coronavirus situations, we will only address some basic guidelines regarding compensation.

Essentially, according to the Fair Labor Standards Act (FLSA), nonexempt employees are entitled to overtime and exempt employees are not. With few exceptions, an exempt employee must be paid at least \$35,568 per year (\$684 per week), be paid on a salary basis, and also perform exempt job duties as defined in the Act.

Compensation requirements:

- Nonexempt employees: Must be paid only for hours worked. Paid time off, if offered, is administered per company policy. No compensation is required for hours where work is not performed.
- Exempt employees: The FLSA requires exempt employees to be paid a guaranteed weekly salary that cannot be reduced based on the quality or quantity of the employee's work during that week. If improper deductions are taken, the exempt status of that employee may be jeopardized.

In the event of sickness and the employer does not provide a bona fide leave plan, that is paid sick leave or paid time off (PTO), an exempt employee who performs any work during a company-specified work week must be paid their salary for the full week. If the company does provide a PTO plan and it is exhausted, the employer may deduct in full day increments for full days off.

While there are other nuances in the FLSA, the above should serve as general guidelines.

I. Time Off

1. Can a supervisor tell an employee to leave work if they are sick?

Yes. Doing so helps to reinforce the message that employees should stay home when they are sick. Employees who show symptoms of a potentially contagious illness can be asked to leave work and stay home until they are symptom free.

Because it is allergy season, remember that a simple cough may not be a sign of coronavirus or flu; however, having fever or shortness of breath in addition to cough may point to those more serious ailments. Employers should not ask too much so as to identify a specific condition an employee may be suffering from: Per the Society for Human Resource Management (SHRM), “The Americans with Disabilities Act prohibits disability-related inquiries unless they are job-related and consistent with business necessity. But such an inquiry may be job-related and consistent with business necessity if an ill employee poses a direct threat to the health of others.”

Employers should be consistent in enforcing any policy of asking employees to go home fairly and equally across their employee base so as not to be seen as having a bias against particular employees. Have the conversation with the employee in private, and it may be best to have both the frontline manager and a representative from HR or upper management present.

2. If an employee becomes sick with the virus and has to be quarantined, how will PTO be used?

a. If the employer has a PTO plan in place, will employees be required to use that up even if it is a mandated quarantine?

Depending on the company’s PTO policy, hourly employees may choose to use PTO or take the time off without pay. Since exempt employees have a guaranteed pay, the norm is to require the use of PTO during weeks when any work has been performed as well as weeks where no work was performed.

b. Do we have to pay employees if they run out of PTO? Do we have to pay nonexempt employees? If not, can we pay them something to help them out? If an employee has no PTO, do we need to extend PTO to cover the missed hours?

No, you do not have to pay employees if they run out of PTO though you could opt to do so. For example, you could enact a specific leave policy for employees with coronavirus if you’d like. However, if you opt to offer a special leave policy, you will want to set up that it will not be in force when this specific situation is no longer an emphasis.

Nonexempt employees who do not have paid sick leave are not required to be paid for their time off of work unless there is a collective bargaining agreement in place. That said, if a nonexempt employee is quarantined during the course of business travel, they should still be paid for any time travelling home.

Be sure that employees who work remotely are paid for all time worked.

3. In the event employees will have to work from home, how can we ensure that they are being productive?

If you typically allow work from home, you may already have policies that address this topic. If not, employers can generally monitor the use of work email if there is a valid business purpose to do so. You might schedule conference calls to provide updates and/or ask the employee to send supervisors a periodic email with progress reports or other reporting that summarizes the work they completed along with the targeted deadlines for the period.

4. What should we do if an employee is unable to work from home because...?

a. the employee is too sick to perform the required duties from home

If the employee is too sick to work, allow the employee time to rest and recover. If they have PTO, allow them to use it.

b. the employee does not have the appropriate equipment needed (hardware, software, internet service, etc.)

If the employee is not equipped to work from home and you have closed your office, then the employee is not able to work until you reopen your office. You are only required to pay nonexempt, hourly employees for the time when they are performing work. If they have PTO, allow them to use it.

c. a position, such as a receptionist, requires the employee to be physically present in the workplace

Certain positions require that the employee be present in the office and cannot be performed remotely. You are only required to pay nonexempt, hourly employees for the time when they are performing work.

5. Are we required to pay an employee who refuses to come work because of concerns about contracting coronavirus?

While employees may be fearful of contracting coronavirus, employers do not need to provide another accommodation unless there is a real potential that the employee could contract the disease in performing their job. An employee may refuse to work, but per SHRM, "If the employer can establish that there is no basis for any exposure to the disease, the employee does not have to be paid during the time period the employee refuses to work."

6. What should we do if employees can come to work, but there is nothing for them to do because jobs/events are being canceled?

Nonexempt employees should be paid for all hours they are required to be on site. If you do not have any work for the employee to do, you should send them home. If you have downtime due to jobs being cancelled, you may want to explain that to your employees and adjust their assigned work hours accordingly.

7. We had an employee call into work because his wife is sick with flu-like symptoms. Should we be concerned? And what can we require of him before returning to work?

It is recommended that you allow the employee to stay home to care for her. If, by chance, his spouse does have something contagious, and he catches it, whether it be the flu or something else after he requested the time off, you would not want the

exposure from other employees catching it because you made him come to work until he showed signs, such as a fever.

Find out how long the employee expects to be out. You will be fine asking general questions, such as has her doctor indicated if what she has is contagious or not, how long she is expected to need help with her care, and so on. You can also ask the employee to give you an update for each day he will be out if he doesn't give you a definite return date. It is also fine to require him to call before the end of the day each day to give you an update for the next day. This is a reasonable request because you need time to schedule others to cover his duties. You could ask all of this through email, but it may be quicker and more effective to have a phone call and then follow up with an email to summarize everything discussed and agreed upon.

If the employee is staying home to care for a family member, be mindful of FMLA requirements; however, FMLA focuses primarily on job protections and does not require paid time off outside of the company policy.

II. Travel

1. **If an employee goes out of the country, can we mandate that the employee be tested and/or quarantined before returning to work?**

An employer may require that an employee self-quarantine if they have travelled to a country that may put them at high risk for contracting coronavirus (State Department Level 4 countries and CDC Level 2 and Level 3 countries). Employees who have traveled to countries with lower alert levels probably do not need to be quarantined unless they had a layover in a higher alert country, have been in close contact with someone who has coronavirus, or exhibit symptoms of coronavirus. Additionally, your industry may have specific protocols over and above general HR guidelines, such as the medical field.

III. Communication

1. **What can we do to help ensure business continuity?**

Talk with your employees about what you are doing to ensure safety in the workplace. As part of that communication, remind employees to stay home when they are sick, wash their hands, use a tissue when they cough or sneeze, avoid people who are sick, and regularly clean their work station. Let your employees know if you are providing hand sanitizers and disinfectant cleaners and where to find them. And encourage them to come to you to discuss any concerns they may have so you can address them.

If you are having trouble with absenteeism, you could also consider providing incentives to healthy employees who show up to work.

IV. For Businesses Working with Coronavirus Patients

1. **We work in the healthcare industry and may come into contact with coronavirus patients. Should we make any adjustments?**

Consider your processes and how they can be enhanced to reduce the likelihood of spreading disease. For example, a doctor or nurse who sees one patient with coronavirus could have the potential to infect their other patients. Take steps to

identify which patients/clients may have coronavirus and to minimize the transmission risk with these patients. We have more in-depth guidance on this topic. If needed, please contact our HR team.

V. Payroll Tax Relief

1. What is payroll tax relief?

The Trump administration has proposed a payroll tax relief measure intended to help stimulate the economy. The payroll tax is paid by both workers and employers. President Trump said in an Oval Office address Wednesday night, March 11, that he would like to allow individuals and businesses to “defer tax payments without interest or penalties,” and he urged Congress to also cut payroll taxes as part of a set of measures aimed at providing relief during the coronavirus pandemic.

This proposal must pass in Congress before being enacted, and some Congress members stated they prefer more targeted measures. The Trump administration has also discussed federal assistance to provide paid sick leave, loans for small businesses, and tax relief for specific industries. At this point, these proposals have not been finalized or enacted.

For More Information

We will continue to monitor this situation and release updates. For more information or assistance, please contact our Human Resources team at **210-775-6082**, toll-free at **1-888-757-2104**, or **HRManagement@BFGonline.com**.



[BusinessFinancialGroup.com](https://www.BusinessFinancialGroup.com)

210-495-8474 / 1-888-757-2104

Business Financial Group provides corporate services, including human resources consulting, compliance and administration support, payroll and employee benefit program development and maintenance. We also provide group retirement and personal financial planning services.

Securities and advisory services offered through Commonwealth Financial Network®, Member FINRA/SIPC, a Registered Investment Adviser. Human resources services and consulting, payroll processing services, employee program development and maintenance services, fixed insurance products and services offered by Business Financial Group are separate and unrelated to Commonwealth. Business Financial Group is located at 500 North Loop 1604 East, Suite 250, San Antonio, Texas 78232.