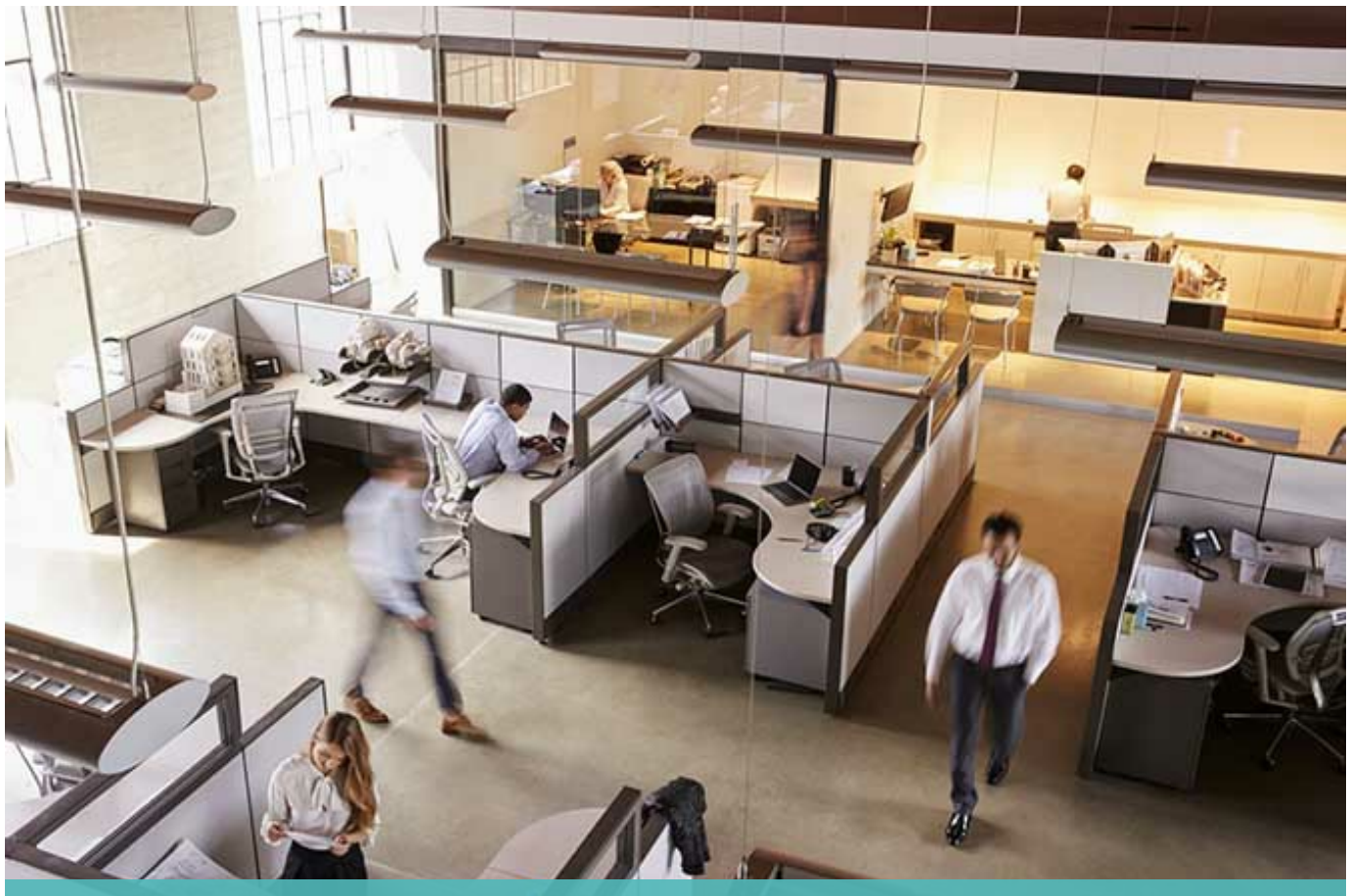


Employment Law Q&A: Coronavirus wage and hour questions



Ryan Neumeyer | Tuesday, March 3, 2020

With the anticipated spread of the coronavirus, employers are looking for ways to continue operations and at the same time limit their employees' risk of exposure to the virus. Employers may direct some employees to work from home, while other employees may be furloughed, asked to work a reduced schedule, or may be sick. Below are some questions employers may have regarding the Fair Labor Standards Act (FLSA) if such situations arise.

Do exempt employees, such as supervisors, have to be paid for time off due to illness or personal issues related to the virus?

The general rule is that exempt employees must receive their regular salary for any week in which they perform work. However, an employer with a bona fide sick pay plan (in other words a sick pay policy) can substitute paid sick time for regular salary compensation for exempt employees who are out sick. When an exempt employee has not yet qualified for PTO or sick time, an employer can deduct for full day absences due to sickness. The same applies if the employee has already used up their sick benefits for the year.

What about compensation for exempt employees who work from home?

Exempt employees who are working from home must be paid their full salaries for the week. Exempt employees do not need to be paid their full salaries for the week if they take full days off for personal reasons. Exempt employees who stay home and who are not working can use paid time off/sick leave. If an employee runs out of paid time off/sick leave then the leave would be unpaid. Generally, deductions must be in full day increments. This means that if a sick exempt employee works from home even for a

Employment Law Q&A: Coronavirus wage and hour questions

short time, the employee must be paid his or her salary for working that day. The exception to the full day pay requirement is when an exempt employee is using FMLA leave time. If an exempt employee is absent for part of a work day and the absence counts as FMLA leave, the employer can deduct from the exempt employee's salary in the specified time increments.

If hours are reduced, do non-exempt employees have to be paid for their regular schedule?

No, the FLSA sets no minimum amount of work for non-exempt (hourly) employees. Some state and local laws may have minimum hours or show up pay. In addition, collective bargaining agreements for union employers may require the same.

Do exempt employees have to be paid during a shut down or a furlough?

Exempt employees must be paid their full salary for any work week that they work any part of the week. If the exempt employee, however, does not work any part of the week, then the employer does not need to pay the exempt employee any salary for the week. .

Do non-exempt employees have to be paid for time off?

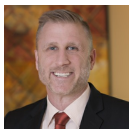
Non-exempt employees who call in sick and who do not work from home may use their paid time off/sick leave for the time they are out. If they do not have any accrued time, and they cannot borrow time, the employer does not need to pay them.

Can non-exempt employees work from home?

Non-exempt employees who are working from home must be paid and track their time so that they can be paid properly for all time worked. If non-exempt employees are partially sick and use sick leave and work from home, the hours of sick leave or paid time off do not have to be counted towards the 40-hour work week to determine overtime pay.

Complying with the FLSA in the various sick leave and remote work situations that employers may be contemplating to deal with the coronavirus can be complicated.

Employers with questions or concerns can contact the attorney listed below or any member of [McDonald Hopkins' labor and employment team](#).



Ryan Neumeyer