



Legislative Brief

Pandemic Flu and the Fair Labor Standards Act

If your business has a shortage of workers and is looking to “volunteers” to help out, be aware that the Fair Labor Standards Act (FLSA) has stringent requirements with respect to the use of volunteers. In general, covered, nonexempt workers working for private, for-profit employers have to be paid at least the minimum wage and cannot volunteer their services. Check with DOL for the rules governing the circumstances where volunteering in the public and private, non-profit sectors may be allowed.

If you have been laid off and have not received your last paycheck, immediate payment may be required by state law (although it is not required by federal law). If your regular payday has passed without payment, contact the DOL’s <http://www.dol.gov/whd> or your state labor office.

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 Fair Labor Standards Act (FLSA) generally applies to hours actually worked. It does not require employers who are unable to provide work to non-exempt employees to pay them for hours the employees would have otherwise worked.

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

The Fair Labor Standards Act (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 of the employee’s job description?

Yes. The Fair Labor Standards Act (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-pandemic planning, you may want to consult your human resource specialists if you expect to assign employees work outside of their job description during an influenza pandemic. You may also wish to consult bargaining unit representatives if you have a union contract.

If individuals volunteer to 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 Fair Labor Standards Act (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; and,
- 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 Fair Labor Standards Act (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



Legislative Brief

Pandemic Flu and the Fair Labor Standards Act

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 strategy, based on timely information from public health authorities about pandemic 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 generally EEOC Fact Sheet on Work at Home/Telework as a Reasonable Accommodation at <http://www.eeoc.gov/facts/telework.html>

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 Fair Labor Standards Act (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 non-exempt 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.

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.

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 Fair Labor Standards Act (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.

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 (DSL line, computer, additional phone line, increased use of electricity, etc.)?

Employers may not require employees who are covered by the Fair Labor Standards Act (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.

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.



Legislative Brief

Pandemic Flu and the Fair Labor Standards Act

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 Fair Labor Standards Act (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 non-exempt 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. Non-exempt 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.

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.

An employee was laid off and did not receive his/her last paycheck. What remedies are available?

Employers are not required by federal law to give former employees their final paycheck immediately. Some states, however, may require immediate payment.

If the regular payday for the last pay period an employee worked has passed and the employee has not been paid, the employee should contact the U.S. Department of Labor's (DOL) Wage and Hour Division or the state labor department. DOL also has mechanisms in place for the recovery of back wages.

For additional information, visit our Wage and Hour Division Website: www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

If you have questions regarding these important legislative regulations, please contact your CHS representative at (952)939-0911.

Source: U.S. Department of Labor: Wage and Hour Division

This CHS Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. Images copyright © 2000-2004 Getty Images, Inc. All rights reserved.