



## Coronavirus Employment Obligations

### FLSA

During this time, employers may be considering different strategies for paying their employees. Here are some reminders.

Hourly employees only have to be paid for hours actually worked, not for time spent away from work due to illness, business closures, or any other reason.

With respect to pay for salaried employees:

- If salaried employees are off for **an entire week** due to an employer mandate, business closure, or personal issues (such as illness or care for a child)—they do not have to be paid; but
- If salaried employees work **any part of the week**—they generally have to be paid a full salary.

An employer may encourage or require employees to telework as an infection-control or prevention strategy. If an hourly employee works from home or online, then those hours worked must be paid.

An employer may pay a higher rate or bonus for working during this time. An employer must, however, make clear what rate is being paid before the work is performed. Employers should also clearly set out bonus eligibility requirements. Any bonus and/or higher rate must be factored into an employee's overtime calculation for a particular workweek.

### OSHA

In the event that a worker is infected with COVID-19, an employer should consider their recordkeeping obligations. Any condition that occurs in the work environment that is treated, or that should have been treated, with more than first aid list is recordable. OSHA lists situations where an injury or illness occurs in the work environment and is **not** considered work-related. Among those situations is the common cold or flu. Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague, however, **are** considered work-related if the employee is infected at work. There is a possibility that a confirmed COVID-19 case among your employees could be an OSHA recordable. OSHA has, however, softened its stance on this in the past few days. A confirmed employee COVID-19 infection would only be recordable if it is work related. A case is presumed to be work-related **if and only if** an exposure in the work environment is a **discernable cause of the illness**. This will likely be difficult to establish given the present situation.

### Texas Workers' Compensation

An employee that comes down with coronavirus would generally not result in a workers' compensation claim.

An illness or injury is considered an ordinary disease of life, and therefore not compensable, when there is:

1. no causal connection between the injury and the work, and

2. the disease is not indigenous to the workplace or present at an increased degree with the employment.

An injury or disease may be compensable provided the employee shows a causal connection between the disease and the work. It is not enough, however, for the employee to show there was potential exposure to the disease due to his or her work. The employee must establish the injury was actually caused by his or her employment.

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