

WAGE AND HOUR ADMINISTRATION FREQUENTLY ASKED QUESTIONS REGARDING COVID-19

These are frequently asked questions presented to the Wage and Hour Administration; we hope the answers we provide will help in this time of need during this Coronavirus pandemic. Please be aware that these answers apply only to Alaska wage and hour laws; other State and federal agencies may have differing enforcement policies.

An employee asks:

- 1. My company is temporarily closing the business, and my employer is not allowing me to work from home. Does my employer have to pay me for this time off?**

Alaska wage and hour laws require that an overtime-eligible, hourly, or any other non-exempt employee must be paid for all hours actually worked. The *Alaska Wage and Hour Act* does not require employers to pay non-exempt employees for hours they did not work. Salary-exempt employees are discussed in Question 7.

- 2. If I am temporarily laid off, when should I receive my paycheck?**

If you are temporarily laid off, your employer can pay your wages earned on the next regularly scheduled payday. However, if you are terminated by your employer, you must receive your full wages within 3 working days after the day of termination.

- 3. If I am laid off due to my employer's place of business being closed, can I collect unemployment benefits?**

We cannot address questions related to unemployment benefits. For that information, employers and employees should go to <https://labor.alaska.gov/unemployment/> for a helpful FAQ on unemployment benefits and Covid-19. To get more definitive answers, call the Unemployment Insurance Call Center at 907-269-4700.

- 4. What if I have available hours in my leave bank or Paid Time Off (PTO) bank, can I choose to accept payment for these hours as my income? Can I choose to leave it for some future time and take leave without pay for all or part of the time that the employer has closed the business?**

Because the payment of sick leave, accrued vacation, or any other type of PTO is not a requirement of Alaska wage and hour laws, the department does not mandate the payment of these benefits. The employer's written policy establishes the rules for disbursing accrued leave. Further, unless the written policy states otherwise, the employee can certainly leave

the accrued leave in place until a future date. However, if the employer has no written policy, generally speaking, the department takes the position that the accrued leave has been earned by the employee, and therefore it belongs to the employee.

Employers and employees considering the use of PTO should consult their local unemployment office for information on how the existence or use of PTO may affect their unemployment filing.

An employer asks:

5. We have temporarily laid employees off. Can I let my employees work from home?

Yes. However, the law requires the employer to keep an accurate record of all daily and weekly hours worked by the employee and to pay them for those hours worked. If the employer knows or has reason to believe that the work is being performed, the employer must count the time as hours worked and pay the employee accordingly.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. An employer cannot sit back and accept the benefits of an employee's work without properly compensating for it. The employer's announcement that work is **not** to be performed is not enough. Management has the power and the responsibility to enforce the rule and must make every effort to do so.

6. Is it lawful for an employer to reduce the wages or the number of hours an hourly employee is to work?

The position of the department is that the employer controls the workplace and sets the work hours for all employees, and can adjust them as the needs of the company change.

The rate of pay and the time and place of payment can all be modified by the employer provided written notice is given to the employee no later than on the payday before the change becomes effective. Changes cannot be retroactive, and the employee's rate of pay cannot drop below the current Alaska minimum wage of \$10.19 per hour.

7. Am I required to pay my salaried employee their full wages if I cut back the operating hours of the business?

An exempt employee who is paid on a salary basis must be paid their weekly salary for the full week in which they perform any work. There are exceptions for personal days off or days off due to sickness. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence. Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a

bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. Otherwise, deductions cannot be made from the fixed and recurring weekly salary of an exempt employee for absences occasioned by the employer, or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available. However, exempt employees need not be paid for any workweek in which they perform no work.

8. What happens if I can't make payroll?

In general, an employer must pay employees their full wages earned, including any applicable overtime that was worked on the regularly-scheduled payday. Failure to do so constitutes a violation of the law and in some cases may result in penalties and/or damages for nonpayment.

9. If an employee appears ill, can I send them home? Am I required to pay them for that time they don't work?

The employer controls the workplace and can direct the work to be performed - - or not to be performed - - at the workplace. A non-exempt employee must be paid for any and all hours actually worked within a given pay period.

10. Should I invoke FMLA if my employee gets sick?

The *Family Medical Leave Act (FMLA)* is a federal law - - not a State law. While many *FMLA* requirements are the same as those of the *Alaska Family Leave Act (AFLA)*, in the event of a pandemic, there are significant variations. The following helpful website made available by the US Department of Labor may answer your questions and can direct you to additional resources. The website can be found at:

<https://www.dol.gov/agencies/whd/fmla/pandemic>.

11. Can I ask my employee to bring me a doctor's note?

A doctor's note can be made a condition of employment as stipulated by the written policy of the company. Therefore, if you would normally require a doctor's note to verify an illness, that practice could continue. The requirement can be changed by a written amendment to your previously written policy.

You can find additional information published by the Equal Employment Opportunity Commission regarding this topic at

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.

12. Can I make the employees responsible for having their own personal protective equipment (PPE's)?

Regarding the purchase of uniforms and safety equipment, an employer may not require an employee to purchase a uniform or equipment if the uniform or equipment is required by the federal, state, or local safety or health codes, or if the nature of the employer's business requires the use of either.

13. For those employees who are currently on Flexible Work Hour Plans, can we temporarily lift those plans?

Yes. Employers are free to schedule employees as needed in the course of their business. In weeks where the employer cannot provide the hours that are provided for in the flex plan, the employer can choose not to use this exemption from overtime in that week. This means that the employer would revert back to the *Alaska Wage and Hour Act* and pay employees 1.5 times their regular rate of pay (overtime) for hours worked over eight hours in a day and over 40 straight-time hours in a workweek.

14. What more should I know about the use and temporary suspension of employees on flex plans?

The flex plans allow for a 20 percent deviation. If an employer cannot provide the hours in one week as required by the plan, but will not have more deviations within a 5-week period, you as the employer could simply keep employees on the flex plan. However, if deviations will occur more than 20 percent of the weeks, a suspension or elimination of the flex plan by the employer would be appropriate.

A SPECIAL NOTE: Communication is key. The root cause of many of the employee complaints that come into our offices is miscommunication. If employees are aware of what is occurring and what to anticipate, much of the confusion is eliminated, and relevant questions can then be asked before the implementation of new policies or practices. Our services are always available to employees and employers who need a better understanding of Alaska's wage and hour labor laws.

Should you have additional questions, please contact the Alaska Department of Labor, Wage and Hour Administration at 907-269-4900.