



**Q: We have an employee returning from an area with a significant number of confirmed cases of COVID-19. Can we require them to take a leave of absence or work from home for the number of days currently recommended by the CDC?**

**A:** No federal laws prohibit an employer from requiring an employee to remain away from the workplace as a precaution. Under the Occupational Safety and Health Administration's (OSHA) general duty clause, employers are obligated to protect their workforce from known hazards. This obligation may include taking appropriate precautions to contain the spread of communicable diseases, such as Coronavirus (COVID-19). However, employers should ensure they do not discriminate against an employee with an actual or assumed medical condition—or a violation of the Americans with Disabilities Act (ADA) may result.

There may also be pay issues to consider. The Fair Labor Standards Act (FLSA) requires exempt employees to be paid their full week's salary when they perform any work in a workweek. Further, exempt employees must be paid an amount equal to their full salary for full or partial-week absences required by the employer. While the employer may require an employee to use accrued paid time off (PTO) if allowed under the company's PTO policy, the exempt employee's full salary must be paid regardless of whether they have available PTO. In situations where PTO is not available, the employer either advance the necessary PTO to the employee or pay the employee's full salary. Regardless of the decision, employers should be careful to provide the same benefit in the future for similarly situated exempt employees.

The FLSA requires employers to pay nonexempt employees only for actual time worked, unless the employer has a policy or collective bargaining agreement that is more generous.

Additional concerns include employee morale and possible discrimination issues. For example, an employee traveling for company business may feel they are being treated unfairly if they are required to use accrued PTO during this period. Others returning from travel may feel they have been singled out based on their national origin (i.e., an employee visiting family in heavily infected areas), which could lead to discrimination claims.

Before implementing a policy or otherwise requiring an employee to remain away from work as a precautionary measure, the employer should review the most up to date guidance and recommendations from the Centers for Disease Control (CDC), the World Health Organization (WHO), and OSHA. In addition, we recommend discussing the situation with an employment attorney to avoid unintentionally violating any applicable laws or regulations.

Further, before taking any actions that the employee may feel are unfair or discriminatory, explore all available options, such as allowing the employee to work from home. If left with no other options, consider paying nonexempt employees their regular wages as a temporary emergency measure and gesture of goodwill.

Above all, make sure you communicate openly and often with all employees on the company's actions, and the precautions they can take to reduce the potential spread of COVID-19 and other viruses.