

Are you properly managing your hourly workers during COVID?

Managing hourly workers during the current COVID-19 pandemic requires careful planning and oversight. That's especially true for so-called front-line workers who have to physically be present at a worksite. Periodic government-ordered shutdowns, new rules on safety and personal protection equipment (PPE), and erratic schedules each create problems. But employers that remember the cardinal Fair Labor Standards Act (FLSA) rule – pay for all time worked – will fare best. Here's how to do it.



First, make sure you classify employees correctly

You must pay hourly workers for all time worked. In addition, They also receive overtime at time-and-a-half for hours in excess of 40 per workweek. Exempt workers generally receive a set salary for *all* hours worked – no matter how many. They receive no overtime. It's easier to manage exempt workers since you don't have to track their time as carefully – provided you classify correctly. With changing roles during the current pandemic emergency, it's possible that you don't have everyone correctly classified. Start by making sure you do.

The default position for employees is hourly. Employers who want to take advantage of exempt status must justify doing so. Do this by seeing if a worker fits neatly within one of the following classifications:

Exempt executive

The employee must meet *all* the following criteria:

- Paid on a salary basis at not less than \$684 per week;
- Primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- Have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Exempt administrative

The employee must meet *all* the following criteria:

- Paid on a salary basis at not less than \$684 per week;
- Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Exempt learned professional

The employee must meet *all* the following criteria:

- Paid on a salary basis at not less than \$684 per week;
- Primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Exempt creative professional

The employee must meet *all* the following criteria:

- Paid on a salary basis at not less than \$684 per week;
- Primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Note: Some special rules apply to professionals like doctors, lawyers, teachers, salespersons paid on commission, highly paid white-collar workers, and computer professionals.

Second, review job responsibilities for hourly workers

Assuming you've explored potential exempt status and are now left with hourly workers, review their jobs. This time, you're looking to see exactly how they spend their time. This becomes crucial to accurately counting the minutes and hours they actually perform work for your benefit. That's time you *must* account for and pay for.

Additional Resource: Learn more on [classifying remote work](#).

Changes made due to the pandemic may mean you're undercounting hours worked:

Personal protection equipment: Time spent beyond a very minimal amount putting on personal protection equipment (PPE) is paid time. So is the time spent taking it off and putting it back on after a meal break. Ditto for at the end of the shift. Generally, hourly workers in hospitals, nursing homes and medical offices who wear PPE must be paid for donning and doffing it.

Over decades, courts have considered how much time spent donning and doffing equals paid time under the FLSA. Waiting to clock in, putting on a hairnet and apron to serve food, and the like is not paid. These activities generally don't take much time. Nor are they essential for safety. However, putting on PPE that's crucial to preventing a COVID-19 infection may fall in another category. Generally, if PPE is required by law or regulation, donning and doffing it is paid time. Such equipment is essential for performing the job.

Putting on masks, gloves, and face shields in retail settings is a closer call. But state and local laws may include safety mandates and require pay for donning and doffing these.

Government ordered shutdowns: Hourly employees are only owed pay for the time they actually work. If your business shuts down temporarily and hourly workers are sent home, you don't need to pay them. You can treat temporary shutdowns as you would weather-related ones.

Safety rules: Chances are, you will be providing extra safety training sessions. For hourly workers, the time spent on training is paid time if you require attendance. It doesn't matter when you offer that training if attendance is mandatory. Be sure to include it in pay even if the training is off-premises or online.

Hazard pay: During the pandemic, some employers are offering so-called hazard pay to encourage hourly workers to work. Employers must be careful to include this pay when calculating overtime pay. It must be included in the regular rate of pay while it's being paid. If the hazard pay is coming from your state government as a supplement, then you don't have to include it. There are exceptions for government employers, so check with the [DOL here](#).

Erratic schedules: During the pandemic, some workers may not be able to work after becoming infected or exposed. That may mean others pick up the slack. You don't have to pay hourly workers under the FLSA for sudden absences. However, you must pay workers taking their place – including overtime if they work over 40 hours. You cannot rely on 'volunteer' hours. Plus, you may face penalties under state laws requiring advance scheduling for calling them in.

Third, make a plan

Review exactly how your hourly employees' routines changed with the pandemic. Include an assessment of how long it now takes to clock in. Do symptom and temperature checks now add to the wait? Does picking up masks and gloves further lengthen the wait? What about what happens at the end of the shift? And have you accounted for the time it takes for online remote symptom checks? Do employees sanitize their workstations before logging on? If it all adds up to more than a minute or two, it's best to offer pay.

Let employees know how you will compensate them for the extra time. Want to trim the extra time? Move timeclocks or card swipe stations close to symptom and temp checks. Distribute PPE directly to employees so it's all at their workstations. And finally, err on the side of paying for a bit more time than too little. If you use a round-up/round-down method, courts expect you to overpay on average.