

HR COMPLIANCE BULLETIN

DOL FAQs: COVID-19 and the Fair Labor Standards Act

In light of the spread of COVID-19 in the United States, the Department of Labor (DOL) has published answers to frequently asked questions on how employers can stay in compliance with the federal Fair Labor Standards Act (FLSA), which regulates wage and hour conditions for employees.

When responding to pandemics or other public health emergencies, employers must be aware of the effects these events can have on wages and hours worked under the FLSA. The guidance offered by these answers provides information on common issues employers may face, and will be particularly useful for those who are considering teleworking as a prevention strategy, or those dealing with personnel shortages.

Please note that federal and state laws may differ and operate independently; therefore, you might want to contact your [state labor office](#) to determine whether there are any state laws that address your workplace rights during the pandemic.

Please see [Families First Coronavirus Response Act: Questions and Answers](#) for questions specific to the application of the Families First Coronavirus Response Act and paid leave.

Action Steps

- Employers should review this information for insight on how the DOL views compliance with wage payment requirements, remote work accommodations, home office safety and using volunteer or temporary workers.
- Employers should continue to monitor COVID-19 developments locally, nationally and internationally.
- Employers should consider proactively educating their workforce on how to identify, prevent and respond to potential coronavirus exposure in the workplace.

Provided to you by [Tilson HR](#)

Official Resources

- [Centers for Disease Control and Prevention \(CDC\)](#)
- [Occupational Safety and Health Administration \(OSHA\)](#)
- [Government Response to Coronavirus](#)



HR COMPLIANCE BULLETIN

Business Closure

Key reminder: If you have been laid off and have not received your last paycheck on time, please contact the Department of Labor's (DOL) [Wage and Hour Division](#) or your [state labor office](#). For information about assistance to continue your employment-based health plan coverage under the American Rescue Plan Act of 2021, please visit DOL's Employee Benefits Security Administration's [FAQs](#).

1. *My hours have been cut due to COVID-19. Does my employer have to pay me for the hours I would have worked if it weren't for COVID-19?*

No, under the FLSA, your employer is only required to pay you for the hours you actually worked. The FLSA does not require employers to pay employees who are entitled to the minimum wage and overtime protections of the FLSA for hours they were scheduled to work but do not in fact work because of a change in schedule.

In some states, a reduction in hours may qualify you for partial Unemployment Insurance benefits. Please contact your [state workforce agency](#) for more information.

2. *My employer has closed its office and requires employees to work from home, but I am unable to perform my job from home. Is my employer still required to pay me? (revised 04/26/2021)*

Under the FLSA, employers generally have to pay employees only for the hours they actually work, whether at home or at the employer's office. In general, 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 executive, administrative, or professional employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. Contact the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.

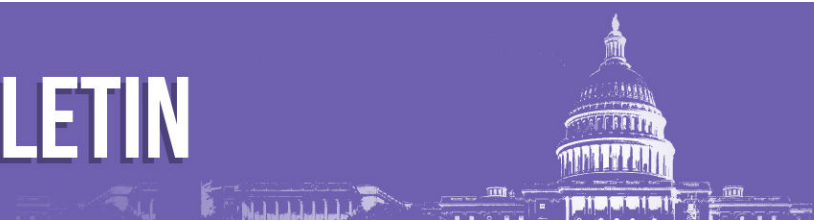
When not all employees can work from home, we encourage employers to consider additional options to promote physical distancing, such as staggered work shifts.

If your workplace has closed and you can't work from home, you may qualify for Unemployment Insurance benefits. Please contact your [state workforce agency](#) for more information.

3. *I am a salaried exempt employee; can my employer require me to use my accrued leave (paid time off [PTO] or vacation) during office closures due to COVID-19 or any other public health emergency?*

In general, salaried ("exempt") executive, administrative, or professional employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. An employee will not be considered to be paid "on a salary basis" if deductions from the predetermined salary are made for absences caused by an office closure during a week in which the employee performs any work. Exempt salaried employees are not required to be paid their salary, however, in weeks in which they do not work.

The FLSA does not require your employer to provide you PTO or paid vacation time. If your employer provides such benefits, it may require you to use accrued PTO or vacation time to cover an office closure during a week in which you perform some work. If your employer requires you to use PTO or paid vacation time during office closures, the use of such benefits will not affect your salary basis of payment, so long as you still receive in payment an amount equal to your predetermined compensation (or guaranteed salary). Therefore, in the case of a partial week office closure, an employer may direct salaried executive, administrative, or professional employees to take vacation time or debit their PTO leave bank, whether for full or partial days, provided the employees receive in payment an amount equal to their guaranteed



salary. A salaried exempt employee who has no accrued leave in the leave bank account—or has limited accrued leave and the reduction would result in a negative balance in the leave bank account—still must receive their guaranteed salary for any absence(s) occasioned by the office closure in order to remain exempt. For more information, see [WHD Opinion Letter FLSA2005-41](#).

Temperature Checks/Health Screenings

4. My employer requires all employees to take their temperature to try to screen for people who might have COVID-19 before entering the job site. Do I need to be paid for the time spent taking my temperature?

It depends, under the FLSA, your employer is required to pay you for all hours that you work, including for time before you begin your normal working hours if the task that you are required to perform is necessary for the work you do. For many employees, undergoing a temperature check before they begin work must be paid because it is necessary for their jobs. For example, if a nurse who performs direct patient care services at a hospital is required to check her temperature upon arrival at the hospital before her shift, the time that she spends checking her temperature upon entry to the worksite is likely compensable because such a task is necessary for her to safely and effectively perform her job during the pandemic. In other words, the temperature check is integral and indispensable to the nurse's job. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws.

5. My employer requires me to have a temperature check onsite to screen for people who might have COVID-19 after I have started work for the day. Do I need to be paid for the time spent waiting for or undergoing the check?

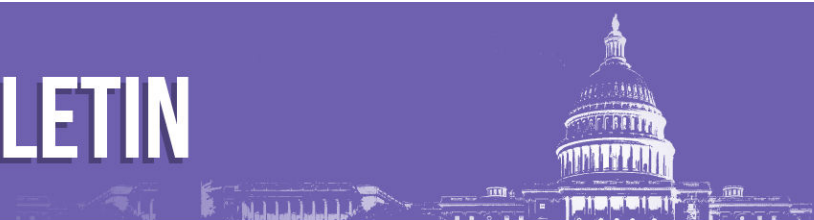
Yes, time spent waiting for and undergoing a temperature check related to COVID-19 during the workday must be paid. All time between the start and finish of an employee's workday must be paid unless it falls within one of the exceptions stated in 29 C.F.R. Part 785, such as bona fide meal breaks and off-duty time. Specifically, WHD's regulations require that employees be paid for time spent in waiting for and receiving medical attention required by their employer during the workday. The same logic applies to a temperature check required by your employer during your workday. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws.

6. If I am required to complete a COVID-19 health screening for myself during the workday, is such time compensable?

Yes, if you are required to complete a health screening during your workday, your employer must pay you for that time. All time between the start and finish of an employee's workday must be paid unless it falls within one of the exceptions stated in 29 C.F.R. Part 785, such as bona fide meal breaks and off-duty time. Specifically, WHD's regulations require that employees be paid for time spent in waiting for and receiving medical attention required by their employer during the workday. The same logic applies to a COVID-19 health screening required by your employer during your workday. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws.

COVID-19 Testing

7. If my employer requires COVID-19 testing during the workday, do I need to be paid for the time spent undergoing the testing?



Yes, under the FLSA, your employer is required to pay you for time spent waiting for and receiving medical attention at their direction or on their premises during normal working hours. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws.

8. *My employer is requiring me to undergo COVID-19 testing on my day off before I can return to the jobsite. Do I need to be paid for the time spent undergoing the testing?*

It depends, under the FLSA, your employer is required to pay you for all hours that you work, including for time on your vacation day if the task you are required to perform is necessary for the work you are paid to do. For many employees, undergoing COVID-19 testing may be compensable because the testing is necessary for them to perform their jobs safely and effectively during the pandemic. For example, if a grocery store cashier who has significant interaction with the general public is required by her employer to undergo a COVID-19 test on her day off, such time is likely compensable because it is integral and indispensable to her work during the pandemic. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws.

Quarantine

9. *What are an employer's obligations to an employee who is under quarantine due to exposure to COVID-19?*

WHD encourages employers to be accommodating and flexible with workers impacted by quarantines after exposure to COVID-19. Employers may offer alternative work arrangements, such as teleworking, and additional paid time off to such employees during a quarantine period if they are unable to telework.

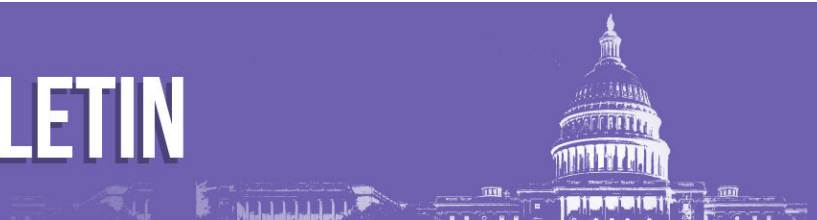
While the requirement that employers provide paid sick leave to employees who are unable to work due to a quarantine related to COVID-19 under the Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020, tax credits remain available to employers who voluntarily continue to provide paid sick leave for COVID-19 related reasons. Employers who choose to provide such leave between January 1, 2021, and September 30, 2021, may be eligible for employer tax credits. Information about claiming the tax credits for paid sick leave or paid family leave wages can be found on the IRS website at: (<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-leave-provided-by-small-and-midsize-businesses-faqs>).

In addition, other laws may have different requirements, which employers must also consider when determining their obligation to provide paid sick leave.

10. *Because of the pandemic, I am required to telework and perform my normal work duties. Does my employer have to compensate me when I telework?*

Yes, under the FLSA, your employer is required to pay you for all hours that you work, regardless of whether the work is performed at home, at a location other than your normal workplace, or at your office. If your employer knows or has reason to believe that work is being performed, the time must be counted as hours worked. This is true even for hours of telework that your employer did not specifically authorize. For more information, see [Field Assistance Bulletin No. 2020-5](#).

The FLSA requires employers to pay non-exempt employees 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. In general, salaried executive, administrative, or professional employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions. Such requirements apply regardless of where your work is being performed.



Volunteers

Key reminder: If your business has a shortage of workers and is looking for “volunteers” to help, please know that the [FLSA](#) has stringent requirements with respect to using volunteers. In general, [covered](#), [nonexempt](#) workers working for private, for-profit employers have to be paid at least the federal 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.

11. If people volunteer to a public agency, are they entitled to compensation?

People 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 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. <https://www.dol.gov/agencies/whd/flsa/pandemic-top>

12. If people volunteer to a private, not-for-profit organization, are they entitled to compensation?

People 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 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 government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the FLSA. <https://www.dol.gov/agencies/whd/flsa/pandemic-top>

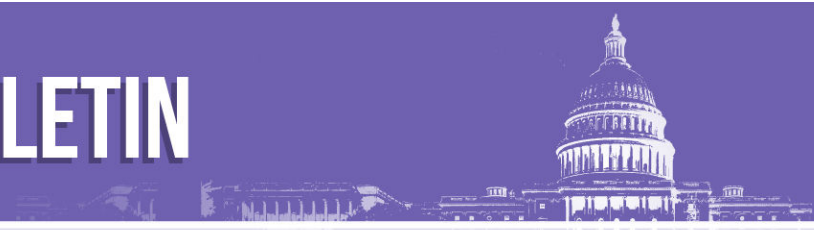
Telework

13. 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 a part of implementing their infection-control or prevention strategy. Telework also may be a reasonable accommodation for a qualified person with a disability.

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 Equal Employment Opportunity laws. (See the U.S. Equal Employment Opportunity Commission’s publication, [Work at Home/Telework as a Reasonable Accommodation](#), for more information.) <https://www.dol.gov/agencies/whd/flsa/pandemic-top>

14. Is my employer required to cover any additional expenses that I might incur if I work from home (for example, internet access, computer, additional phone line, increased use of electricity, etc.)? (revised 04/26/2021)



Under the FLSA, an employer may not require you to pay for items that are your employer's business expenses if doing so reduces your earnings below the required federal minimum wage or overtime compensation due in any workweek. If the employer provides a computer to you or pays for an additional phone line for your home, for example, the employer may not require you to reimburse it for those costs if doing so reduces your earnings below the required federal minimum wage or overtime compensation due in any workweek. (Contact the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.) Please contact your [state labor office](#) to find out whether state laws may apply in situations where employees incur additional expenses as part of working from home.

15. Do OSHA's regulations and standards apply to the home office? Are there any other federal laws that protect the health and safety of employees who work from home? (revised 04/26/2021)

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 inspect 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 FLSA and its implementing regulations do not prevent employers from implementing telework or other flexible work arrangements allowing or requiring employees to work from home. Employers are 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 more than 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 way for recording each teleworking employee's hours of work. See [Field Assistance Bulletin No. 2020-5](#). 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) needed for telework, the cost of providing the tools and equipment may not reduce the employee's pay below that required by the FLSA. (See the U.S. Department of Labor [Wage and Hour Division](#) for additional information or call 1-866-487-9243 if you have questions.)

Under the [Americans with Disabilities Act](#), telework could be a reasonable accommodation the employer would need to provide to a qualified person with a disability, barring any undue hardship. However, an employer may instead offer alternative accommodations if they would be effective. (See the U.S. Equal Employment Opportunity Commission's publication, [Work at Home/Telework as a Reasonable Accommodation](#), for additional information.)

Hours Worked and Job Duties

16. How many hours per day or per week can my employer require me to work?

The 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.



17. Can I be required to perform work outside of my job description?

Yes, the FLSA does not limit the types of work employees aged 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 pre-influenza, pandemic, or other public health emergency planning, employers might want to consult their human resource specialists if they expect to assign employees work outside of their job description during a pandemic or other public health emergency. Employers might also wish to consult bargaining unit representatives if they have a union contract.

18. I am an employee in a hospital with direct patient care responsibilities, and I am required to put on (“don”) and take off (“doff”) COVID-19 protective and safety gear, such as an N95 respirator, eye protection, and a face shield, before my shift starts and after my shift ends. Is my employer required to pay me for the time spent donning and doffing?

Yes, under the FLSA, your employer is required to pay you for putting on and taking off protective and safety gear because these tasks are necessary for you to perform your direct patient care work safely and effectively during the pandemic. In addition, any time you spend walking and waiting that occurs after you begin your workday (e.g., when you put on your protective and safety gear) and before you end your workday (e.g., when you take off your gear) must also be paid by your employer.

Telework (Hours Worked)

19. How are hours worked calculated for employees who work from home or no longer work at an employer’s worksite? (revised 04/26/2021)

Under the FLSA, your employer is required to pay you for all work performed whether at the employer’s worksite or at your home. Therefore, you must be paid for all hours of telework actually performed, including overtime work, in accordance with the FLSA. Your employer must pay you for all reported and unreported hours of telework that they know or have reason to believe had been performed. This is true even for the hours of telework that your employer did not authorize. It is an employer’s obligation to exercise control to prevent unwanted work from being performed. In most cases, your employer may satisfy their obligation to pay their teleworking employees by providing reasonable time-reporting procedures and paying employees for all reported hours. For more information, see [Field Assistance Bulletin No. 2020-5](#).

20. I am working from home. Is my employer required to pay me the same hourly rate or salary while I work from home? (revised 04/26/2021)

It depends, under the FLSA, your employer is required to pay you for all the hours you actually worked, whether at home or at the employer’s worksite. The FLSA requires employers to pay non-exempt workers at least the federal minimum wage for all hours worked, and at least time and one half the regular rate of pay for hours worked more than 40 in a workweek. In general, salaried exempt employees must receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.

In cases where telework is provided as a reasonable accommodation for a qualified person with a disability, or if required by a union or employment contract, then your employer must pay you the same hourly rate or salary.



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. (See the U.S. Department of Labor, [Wage and Hour Division](#) for additional information on the SCA or call 1-866-487-9243.).

21. I am teleworking during the COVID-19 pandemic. My employer allows employees flexible hours during the normal workday to take care of personal and family obligations, such as caring for my children while school is closed. If I begin work, take several hours in the middle of the workday to care for my children, and then return to work, what is the proper way to count my compensable hours? (revised 04/26/2021)

Under the FLSA, employers generally must pay employees only for the hours they actually work, whether at home or at the employer's office. Periods during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for her own purposes are considered "off duty" time and are not hours worked. This principle applies whether you and your employer agree in advance on the schedule or if your employer allows you flexibility to choose the hours that you will take off to care for your children. Your employer therefore does not need to count the hours in the middle of the workday that you use to care for your children as hours worked.

Salaried Exempt Employees

22. I am a salaried employee exempt from the minimum wage and overtime requirements under Section 13(a)(1) of the Fair Labor Standards Act (FLSA) as a bona fide executive, administrative, or professional employee. Can my employer reduce my salary during the COVID-19 pandemic or an economic slowdown? Am I entitled to minimum wage and overtime protections if my employer reduces my salary? (revised 04/26/2021)

In general, an employer may prospectively reduce the amount regularly paid to a salaried exempt employee for economic reasons related to COVID-19 or a related economic slowdown. However, any such reduction must be predetermined rather than an after-the-fact deduction from your salary based on your employer's day-to-day or week-to-week needs. In addition, any such salary change must also be bona fide, meaning the change is not an attempt to evade the salary basis requirements and is actually because of COVID-19 or an economic slowdown as opposed to the quantity or quality of work you performed. If your employer properly reduces your salary under these conditions and requirements, it can treat you as exempt from minimum wage and overtime pay if your reduced salary is at least \$684 per week and you are paid on a salary basis.

However, you would be entitled to minimum wage and overtime protections if your employer reduces your salary to less than \$684 per week or changes your pay from salary to hourly basis. Please see Fact Sheet #70: Frequently Asked Questions Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues at <https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs> for additional information. <https://www.dol.gov/agencies/whd/flsa/pandemic-top>

Hazard Pay and Incentive Payments (Regular Rate)

23. I am an essential employee of an employer that will provide me an incentive payment to receive the COVID-19 vaccine. Does this incentive payment have to be included in the regular rate that is used to compute my overtime pay?

No, your employer can make payments that are gifts or in the nature of gifts for special occasions (e.g., vaccination for COVID-19) that may be excluded from your regular rate of pay that is used to compute your overtime pay.



24. Is hazard pay required under the FLSA for employees working during the COVID-19 pandemic?

No, the FLSA does not require hazard pay; FLSA generally requires only payment of at least the federal minimum wage (currently \$7.25 per hour) for each hour worked and overtime compensation for each hour more than 40 worked in a workweek in the amount of at least one and a half times the employee’s regular rate of pay. In some cases, hazard pay may be determined privately between employers and employees or their authorized representatives. State or local laws may also impose other obligations; you may wish to contact your state labor office to determine whether there are any state laws that address hazard pay. You may locate that office by visiting: <https://www.dol.gov/agencies/whd/state/contacts>.

25. I am an employee of a private employer that began paying me incentive payments, such as hazard pay, for working during the COVID-19 pandemic. Do those incentive payments have to be included in the regular rate that is used to compute my overtime pay? (added 08/27/2020)

Yes, payments your employer provides you to perform work constitute compensation for employment that must be included in the regular rate, subject to eight exclusions described in section 7(e) of the FLSA. None of those exclusions apply to the incentive payments described above.

26. I am an employee of a state or local government that began paying me incentive payments, such as hazard pay, for working during the COVID-19 pandemic. Does my government employer have to include such incentive payments in the regular rate that is used to compute my overtime pay? (added 08/27/2020)

Yes, the incentive payments are paid for by your government employer as compensation for working during the COVID-19 pandemic. As such, the payments are compensation from your government employer that must be included in the regular rate.

Child Labor

27. I am 15 years old. When and how much can I work during the school year?

With limited exceptions, during any week that school is in session, children that are aged 14 and 15 years are permitted to work in nonagricultural employment only:

- Outside of school hours.
- Up to 3 hours in any school day, including Fridays,
- Not more than 8 hours in any non-school day, and
- Not work more than 18 hours total in the week.

“School hours” means the hours the local public school district is in session. This definition of “school hours” applies to all children, regardless whether they attend public or private school.

During any week that school is not in session, children that are aged 14 and 15 may not work in nonagricultural employment more than 8 hours in any day and not more than 40 hours total in any week.

Information regarding the type of work 14- and 15-year-olds may or may not perform is available here: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf>.

28. I am 15 years old. My school has physically closed due to COVID-19, but it would normally be in session. Am I permitted to work if I cannot physically go to classes?



In general, for purposes of nonagricultural employment, school is considered to be in session during any week the public school district, where the child lives, requires its students to attend school, either physically or through virtual or distance learning. See Field Assistance Bulletin No. 2020-3: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_3.pdf.

If a public school district physically closes schools in response to COVID-19, but requires all students to continue instruction through virtual or distance learning for at least one day or during any part of one day, then school is in session in the school district during that day and that week. If a school is physically closed, and the school district does not require virtual or distance learning, the school will not be considered to be in session.

During any week that school is not in session, minors that are aged 14 and 15 may not work in nonagricultural employment more than 8 hours in any day, not more than 40 hours total in any week, and only between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

29. I am 15 years old. My school has physically closed due to COVID-19 and is not in session. Am I permitted to work in agriculture?

If the schools in your public school district are physically closed, and there is no virtual learning requirement, then under the FLSA your school would not be in session. The Department's child labor regulations set standards for youth employed in agriculture. These standards differ for those in nonfarm jobs. In agricultural employment, a child below the age of 16 is permitted to work "outside of school hours" of the public school district where such child is living while so employed. Youth aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor, while minors 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent. See 29 U.S.C. § 213(c)(1)(C); 29 C.F.R. § 570.123(b) (defining "outside school hours" to mean "periods before or after school hours, holidays, summer vacation, Sundays, or any other days on which the school for the district in which the minor lives does not assemble"), Fact Sheet #12: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs12.pdf> and Fact Sheet #40: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs40.pdf>.

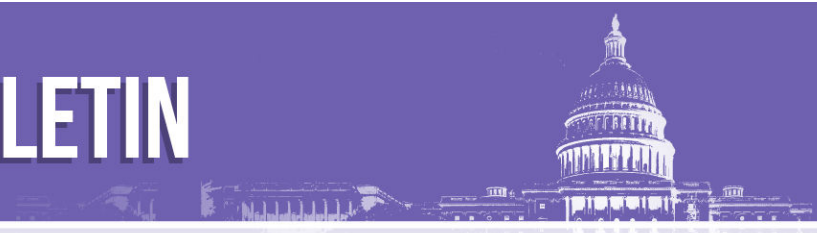
30. I work in an office. My child's school has physically closed due to COVID-19. Am I permitted to bring my child to work with me?

The FLSA does not have any restrictions on your employer permitting you to bring your child with you to work. As long as your child is not performing any work for your employer, they are not employees and therefore, are not subject to the FLSA, including its minimum wage, overtime, and child labor requirements. In terms of your work, your employer is required to pay you for all hours that you work.

If your child is assisting you with performing your work for your employer, they are likely an employee and the FLSA applies, including the child labor provisions. If your employer knows or has reason to believe that work is being performed, the time must be counted as hours worked, and paid at the federal minimum wage of \$7.25 per hour unless certain exemptions apply. See Fact Sheet #14: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs14.pdf> and Fact Sheet #43: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs43.pdf>.

31. I am a farmworker. I have a ten year-old and a 14 year-old. Both of my children's schools are physically closed due to COVID-19 and they are learning remotely. Therefore, due to a lack of day care I bring my children to work with me. Am I permitted to bring my children to work with me, and if so, can they assist me in doing agricultural work?

HR COMPLIANCE BULLETIN



The FLSA does not have any restrictions on your employer permitting you to bring your child with you to work. However, there are separate conditions for the employment of minors under the age of 16 in agriculture.

Federal child labor regulations set standards for youth employed in agriculture. Youth, aged 16 and above, may work in any farm job at any time. Minors aged 14 and 15 may work outside school hours for the public school district in which they reside while working, and in jobs not declared hazardous by the Secretary of Labor, while minors 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent. Youth of any age may work at any time in any job on a farm owned or operated by their parents. See Fact Sheet #12: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs12.pdf> and Fact Sheet #40: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs40.pdf>.

If either you or your children are performing work in agriculture, such as picking vegetables or hauling water in a field, you and your children are likely employees and the FLSA requires your employer to pay you and your children for the hours worked. If your employer knows or has reason to believe that work is being performed, the time must be counted as hours worked, and paid at the federal minimum wage of \$7.25 per hour unless certain exemptions apply.

Source: [U.S. Department of Labor, Wage and Hour Division](#)