

Employee management guidelines

VT Public Library HR minute 1 APRIL 2020



EMPLOYEE MANAGEMENT during the COVID19 pandemicⁱ

Non-exempt (per Fair Labor Standards Act) labor guidance for Vermont public libraries

Dear public library colleague,

This quick missive isn't going to answer all your questions about employee management during this pandemic, but I hope it helps. Although I am a certified HR professional, I am not a labor lawyer or unemployment benefits expert. Please visit Vermont Department of Labor for the latest guidance.

<https://labor.vermont.gov/unemployment-insurance>

Employee management is *big* right now. I think you would agree that it is an especially challenging time to manage employees. As director or trustee, you want to be empathetic with workers, while at the same time doing your level best to comply with labor law and upholding your fiduciary responsibilities. As you read my thoughts below, and the accompanying guidance from the U.S. Department of Labor, I recommend you keep these common "themes" in mind:

- be **consistent** in what you do with all your employees;
- **communicate** as transparently as possible;
- be **reasonable** and **flexible** to the extent possible; and
- Try to maintain something that I think is the *one* most important characteristic of a good supervisor: **courage**. Make your best decisions given the information you have. During emergencies leaders are looked to for guidance, direction, and making choices that will lead their respective organizations forward.

Can you still pay an employee if they don't work? No. Why? Labor law, fairness, and your fiduciary and "best" management responsibility to your town, community, and organization are among my reasons. There's plenty to do when *librarians* put their creative hats on! See:

<https://libraries.vermont.gov/sites/libraries/files/Misc/IdeasForProjectsWhileTeleworking.pdf>

Following are excerpts from **Questions and Answers** published by the **U.S. Department of Labor, Wage and Hour Division** on "**Pandemic Flu and the Fair Labor Standards Act.**" I have brought special attention to some common questions about non-exempt staff. The link to this webpage is:

https://www.dol.gov/whd/healthcare/flu_FLSA.htm

Please consider, as you read this, that there will be differences between municipal, incorporated, and community libraries. I strongly urge that each type of library seek answers and commonality throughout your governance structure. For example, a municipal library should consider working closely with the town to ensure common labor practices. Maintaining consistency and fairness within the umbrella of your governance system is very important. Also, many of you are working with unionized employees; therefore, conditions of work are determined by contract. In any case, reading your library's personnel policy (or contract language) is the first place to go to see if guidance exists on terminations, layoffs, furloughs, et cetera. If you do not have a personnel policy, well we can visit about *that* situation *later*. ☺

While specifically relating to municipalities, the Vermont League of Cities and Towns is publishing an excellent and regularly-updated guidance on **Human Resources and COVID-19 FAQs** that is helpful to all. This is a good place to check out on a regular basis: <https://www.vlct.org/resource/human-resources-and-covid-19-faqs>

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Opening comments, from US Dept. of Labor

The Fair Labor Standards Act (FLSA)¹ and its implementing regulations do not prevent employers

¹ The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards

affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

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from implementing telework or other flexible work arrangements allowing employees to work from home. Employers would still be 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 over 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 mechanism for recording each teleworking employee's hours of work. Non-exempt employees must receive the required minimum wage and overtime pay free and clear.

How many hours is an employer obligated to pay an hourly-paid employee who works a partial week because the employer's business closed?

The Fair Labor Standards Act (FLSA) generally applies to hours actually worked. It does not require employers who are unable to provide work to non-exempt employees to pay them for hours the employees would have otherwise worked.

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 an infection-control strategy, based on timely information from public health authorities about pandemic conditions.

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 EEO laws.

Do employers have to pay employees their same hourly rate or salary if they work at home?

If telework is being provided as a reasonable accommodation for a qualified individual with a disability, or if required by a union or employment contract, then you must pay the same hourly rate or salary.

In the event an organization bars employees from working from their current place of business and requires them to work at home, will employers have to pay those employees who are unable to work from home?

Under the Fair Labor Standards Act (FLSA), employers generally only have to pay employees for the hours they actually work, whether at home or at the employer's office. However, 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. (See 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 you to consider additional options to promote social distancing, such as staggered work shifts.

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