

Flu IQ: Know who—and how—to pay during the upcoming flu season



A regular flu season is bad enough. Pair the flu with covid-19 and it may be extraordinarily difficult to manage the impact on your workplace this winter. Employees who are already working at home can still get sick and may still need some downtime. And your onsite staff is just as vulnerable to coming down with influenza as they have ever been.

Your challenge is to stay within the pay rules set by the law.

FFCRA paid sick leave for the flu?

The only paid sick leave required by federal law is limited to employees who are sick for a covid-19-related reason. The mandate is spelled out in the Families First Coronavirus Response Act, enacted in March.

Under the FFCRA, full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to a proportionate amount of leave at 100% of their regular rates of pay. You may require employees to substantiate their need for leave.

The FFCRA's paid sick leave provisions (and the tax credits used to reimburse employers for providing it) apply through the end of the year.

Flu rules for nonexempts

Nonexempt employees who can't work because they have regular, seasonal influenza don't qualify for paid leave under the Fair Labor Standards Act. In general, the FLSA doesn't require you to pay nonexempts if they don't work, regardless of whether their work location is at home or at your facility.

Nonexempts who aren't working can use accrued time off if they have it. If not, their sick time is unpaid.

Remind supervisors that they must remain alert for signs remote workers are ill. A sudden decrease in telecommuters' productivity may mean they're ailing and need some time off. Their managers need to reach out to them to explain that their time records must reflect the sick time.

Note: If nonexempts work overtime during a week they're sick and use their accrued time off, don't include the value of the accrued time in their regular rates when calculating their overtime rates. Reason: Such a payment would be for idle time, which isn't included in the regular rate for calculating overtime pay.



Flu rules for exempts

Exempt employees who are out sick (whether they work from home or at your facility) don't need to be paid their full salaries, if your *bona fide* sick leave plan pays them for the lost salary.

Exception: Exempts don't need to be paid their full salaries if they haven't qualified under your sick pay plan or they have already used up their benefits for the year.

They may use other accrued time, if they have any. If they've run out of accrued time and can't borrow from the next allotment, they can take an unpaid full day off.

Final note: Federal law is just a starting point when it comes to paid sick leave compliance. You must also consider whether employees qualify for paid leave under state or local laws. In addition, some states have enacted emergency pandemic-related sick leave laws. Check the websites of your state labor department and any municipalities where you have employees.