



# **Minimize Your Legal Risks to Maximize Your WFM**

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**Effective workforce management (WFM) can bring many positive results. It can increase employee performance, boost employee morale, and minimize safety risks, among many other benefits. Perhaps most important of all, effective WFM can minimize an employer's risk of legal liability.**

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Payroll and human resources (HR) professionals play an important role in minimizing their companies' potential legal liability, not only in general, but also during these unprecedented times when everyone is dealing with the coronavirus and its effects. Employers are faced with ever-changing workforce issues, including more employees working from home and ongoing safety and health issues. But even in these relatively uncertain times, sound WFM practices can go a long way to minimize the risk of legal liability.

### **Make Sure Hourly Employees Are Paid in Accordance With Law**

First and foremost, whether your employees are working from home or in your workplace, it is critical from a legal perspective to make sure that you are paying all your employees properly.

For hourly, nonexempt employees, perhaps the most important practice is keeping track of their time worked. This can pose a unique challenge when employees are working from their homes, and therefore it is difficult, if not impossible, to know what they are doing. One best practice to manage this issue is for someone in your payroll or HR department to send a weekly email reminder to all hourly employees that they are expected to record all of their time worked, even if they are working from home. Also, if they have any questions as to what constitutes "time worked," they should ask the company.

In fact, what constitutes "time worked" during these times has changed. For example, employees' commutes to and from work are not usually compensable. However, now that many employees' primary workplaces are their homes, drives to and from the office for meetings may in fact be compensable since these employees would not otherwise be going to the office. Nonexempt employees may also need to be paid for the time they spend performing coronavirus-related pre- and post-shift tasks, such as sanitizing their workspaces and waiting in line for health screenings to enter the facility.

Given the potential uncertainties with "time worked," payroll and HR professionals can help minimize legal risk by developing and enforcing policies that control when nonexempt employees perform compensable activities. Nonexempt employees should be informed of the company's expectations about obtaining prior approval for any overtime work and/or working outside their normal schedules, even including time spent checking and responding to work-related emails. Payroll and HR professionals may also want to send similar reminders to employees who supervise hourly employees, reminding them that their nonexempt subordinates will be paid for the time they spend responding to the supervisors' after-hours emails, and advising supervisors to consider withholding their emails until the next day. You may even want to consider requiring supervisors to certify on a weekly basis that they did not call, text, or email a nonexempt employee outside of the employee's regular work schedule.

Payroll professionals can also minimize potential liability by understanding how to properly calculate overtime for nonexempt employees. It is important for payroll professionals to understand that employees' bonuses, commissions, and other incentive payments should be included in calculating employees' overtime compensation. Now, with many employees receiving hazard pay,

By taking these WFM measures, payroll professionals can help minimize the legal risk faced by their employers.

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shift differentials, hardship bonuses, return-to-work bonuses, and sometimes even different wage rates for performing two different jobs, these different wages should also be taken into account into employees’ overtime compensation.

### **Make Sure Salaried Employees Are Paid in Accordance With Law**

As payroll professionals know, paying salaried employees in accordance with the law is a little simpler than paying hourly employees, since salaried employees are generally not paid based on the number of hours they work. Still, salaried employees have pandemic-related challenges of their own.

One potential area of risk is whether salaried employees are still properly classified as exempt from overtime compensation. For example, if a salaried employee’s job changed dramatically because of the pandemic, that employee’s job duties should be carefully examined to determine whether he or she is still exempt. If there is any doubt, consider reclassifying that employee to nonexempt for the duration of the new responsibilities, and pay that employee overtime compensation accordingly.

One category that may require a change from exempt to nonexempt is sales professionals. Many companies maintain sales personnel who are frequently classified as exempt from overtime under the federal outside sales employee exemption, which requires that sales employees spend a significant amount of time outside the office meeting in person with potential customers. However, because of the pandemic, salespeople are traveling far less than they did before, and videoconferences have taken the place of face-to-face sales meetings. If this is the case for your company’s sales team, you should consider either rearranging the employees’ responsibilities so that they qualify for the “inside sales” exemption or reclassify your sales team to nonexempt, have them start recording their time, and pay them overtime compensation for all the hours they work over 40 in a workweek.

### **Review All New Federal, State-Specific Leave Laws**

The federal government and many states have implemented new sick leave and other types of leave laws in order to account for the effects of the pandemic. Some employees may need to take time off from work because they are sick, because they need to care for someone in their households

who is sick, or because their children’s schools or daycare facilities are closed, among other concerns. Many, if not all, your employees will be dealing with these issues. New state and federal laws govern the extent to which employees may or may not be able to be paid for these leaves of absence, and whether wages may even be reimbursable by the federal or state government. Therefore, every payroll professional should familiarize themselves with the new leave laws that may be in place in all states in which they have employees (see *APA’s Guide to State Payroll Laws*, §13: COVID-19 Payroll Updates, which contains state and city paid leave requirements).

### **Consider Reimbursing Remote Employees for Work-Related Expenses**

In some states, like California, employers are obligated to reimburse employees for reasonable and necessary expenses incurred in working from home, such as printer toner and paper. Payroll professionals should review any potentially applicable obligations to see if and how they are required to reimburse their employees. Payroll professionals may want to consider reimbursing employees for work-related expenses that they have incurred at home, even in the absence of a requirement to do so under the law. With so many employees working from home and requiring printer toner, paper, and other supplies that would usually be provided in an office, as well as increased internet speeds to handle videoconferences, a modest monthly stipend to cover such expenses will go a long way in increasing employee morale in these difficult times. If employees are required to exceed the amount of any such stipend, they should let you know and provide receipts, and you can consider reimbursing them for any additional amounts.

In sum, these are challenging times for everyone, for payroll and HR professionals and for the employees who rely on them to make sure they are paid properly and in accordance with the law. By taking these WFM measures, payroll and HR professionals can help minimize the legal risk faced by their employers. In addition, these measures will make certain employees are properly paid, so that the employees can help themselves. ■

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