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Salaried-Basis Employees In The World Of Temporary COVID-19 Furloughs

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In light of the COVID-19 pandemic, workplaces across the country are experiencing fast-paced furloughs (temporary layoffs). In the haste to implement these necessary measures, however, employers must remain mindful of their obligations for salaried-exempt employees under the FLSA.

It is imperative that employers keep sight of the fact that exempt employees must be paid their *full* salary for any workweek in which they perform *any amount of work*, subject to very limited exceptions. [DOL guidance](#) makes clear that the FLSA only permits deductions from an exempt employee's weekly salary under the following circumstances:

- a) The employee is absent from work for one or more full days for personal reasons other than sickness or disability
- b) The employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness
- c) To offset amounts employees receive as jury or witness fees, or for military pay
- d) For penalties imposed in good faith for infractions of safety rules of major significance
- e) For unpaid disciplinary suspensions of one or more full days imposed in

good faith for workplace conduct rule infractions

f) For the portion of the work week not worked in the initial or terminal week of employment

g) For weeks in which an exempt employee takes unpaid FMLA leave

What does this mean for temporary furloughs? It means that it is ideal – but understandably impossible at times – to have the furlough begin at the onset of a new workweek and cover only full workweeks. In instances in which *no work* is performed during the week, of course, no compensation is owed to furloughed, exempt employees. Employers should explicitly advise their employees that they are not to perform any work during such weeks and should take all necessary measures to ensure that employees comply.

So what happens if a furlough begins or ends in the middle of a workweek? The DOL's [COVID-19 guidance](#) reiterates that an exempt employee is entitled to payment for his/her full weekly salary if he/she has performed *any amount of work* during a week in which furlough or closure occurs. There may be, however, some options to address this under certain paid time off plans maintained by a company.

Bearing these requirements in mind while planning and implementing furloughs is critical to ensure that exempt employees continue to be considered paid “on a salary basis” and that the exemption is maintained.