



## Massachusetts AG's Fair Labor Division Publishes FAQ About Employer Wage and Hour Obligations in the Wake of Covid-19

Recently, the Massachusetts Attorney General's Fair Labor Division ("FLD"), which enforces the state's wage and hour laws, published its [answers](#) to frequently asked questions ("FAQ") that the FLD has been receiving from both employers and employees in the wake of COVID-19. The FAQ covers the following important issues:

**Unemployment:** The FAQ confirms that employees can apply for unemployment benefits if they are discharged, laid off, or subject to an hours or earnings reduction of more than one-third due to COVID-19. Note that employees cannot be forced to use all of their earned sick time before applying.

**Requiring Employees to Stay Home/Leave Work:** The FAQ provides that an employer can tell an employee not to come to work or to leave work if the employee is sick, but the employee must still be paid regular wages for hours worked before being sent home. The FAQ also provides that an employer may require an employee to stay home because the employee or one of their family members may have been exposed to COVID-19, even if public health officials or healthcare providers have not recommended or required a quarantine. The FAQ reminds employers that exempt employees must be paid their full weekly salary for any given week if they perform any work during that week.

**Requiring Employees to Report to Work or Travel:** The FAQ recommends that all employers follow applicable federal and state guidelines with respect to travel and social distancing restrictions, and further recommends that if an employee does not feel comfortable carrying out an assignment, employers should allow liberal use of earned sick time, vacation or paid time off.

**Use of Earned Sick Time:** The FAQ provides that employees may use their earned sick leave to take care of themselves and certain family members, including when public health officials or health care providers recommend or require an employee or a family member to quarantine. When an employee misses work because their child's school is closed due to COVID-19, the FAQ encourages employers to allow use of earned sick time, accrued vacation or other paid time off, even if not legally required.

**Payment of Final Wages and Accrued Vacation Time:** The FAQ addresses whether an employer that "temporarily lays off" employees must pay such employees in full, including accrued vacation time, on the day of the layoff. The FAQ answers this question in the affirmative, explaining that when an employee is temporarily laid off, the employee has a right to be paid all earned wages, including all accrued vacation pay, on that same day. According

to the FAQ, however, if an employee voluntarily agrees to save accrued vacation for later use, the AG's Office will not take enforcement action for untimely payment of vacation pay, though the AG's Office cannot control private litigation.<sup>[1]</sup>

***Paying Employees During a Temporary Shut Down:*** The FAQ also addresses whether employees must be paid if a business temporarily shuts down due to COVID-19. The FAQ provides that, in general, hourly employees do not have to be paid when they do not work, absent a few very specific exceptions. The FAQ further explains that exempt employees must be paid their full weekly salary for any given week if they perform any work during that week. The FAQ also explains that for exempt employees, if the business shuts down for only part of the week, full pay is required for that week, but the employer may require employees to use vacation or other paid time off for the part of the week the business is closed for an entire day to ensure full weekly salary.

Employers should consult with an HRW attorney if they have any questions.

### **For Questions/More Information**

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<sup>[1]</sup> Note that FAQ uses the work “temporary layoff” and not “furlough.” Generally, the term “furlough” is used when an employee is relieved of duty and is without pay for a defined period but is not formally terminated and can remain on the employer's benefit plans as an employee. Because a furlough is not a “discharge” — the operative term appearing in the state's applicable wage and hour statute — we believe that an employer would not be required to pay out accrued vacation time in a true temporary furlough situation. We have requested clarification from the FLD on this issue and will provide further updates when new information is available on this important issue. Of course, employers should consult with counsel regarding the nuances of their unique situation and particular job action.