



# Coronavirus and Work from Home Compliance Q & A

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Although the following questions do not break new ground for how to set policy regarding workers who work from home, the following will provide some answers that comply with federal and state laws when the township makes the decision to require their workforce work from home.

## **Should townships suspend operations and require workers to work from home?**

MTA and Member Information Services cannot give legal advice to townships regarding whether they should close their office and/or if they should require employees to work remotely. Individual township boards are responsible for making those decisions in consultation with their township attorneys.

However, the Occupational Safety and Health Administration (OSHA) recently published [Guidance on Preparing Workplaces for COVID-19](#), outlining steps employers can take to help protect their workforce. OSHA has divided workplaces and work operations into [four risk zones](#), according to the likelihood of employees' occupational exposure during a pandemic. These risk zones are useful in determining appropriate work practices and precautions. The four areas of risk in summary are (See "Guidance on Preparing Workplaces for COVID-19" for full details):

**Very High Risk:** Healthcare (doctors, nurses and emergency technicians) and Mortuary (autopsies) Workers

**High Risks:** Healthcare (delivery and support staff), Medical transport workers (ambulance drivers) and Mortuary (those that prepare for cremation and full-body burial) workers.

**Medium Risks:** Those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with COVID-19, but who are not known or suspected COVID-19 patients.

**Low Risk:** Those that do not require contact with people known to be, or suspected of being, infected with COVID-19 nor frequent close contact with (i.e., within 6 feet) of the general public.

## **Pay for workers who are working remotely**

Employees subject to a union agreement or other employment contract are subject to those agreement(s).

Elected and appointed officials are [not covered](#) by the FLSA (e.g., township board members, deputies, planning commissioners, zoning board of appeals, board of review, volunteers and others).

All other employees are subject to the Fair Labor Standards Act (FLSA) and must be paid while working remotely.

The FLSA requires:

- Employers to pay nonexempt workers at least the minimum wage for all hours worked **and** at least 1 1/2 times the regular rate of pay for hours worked in excess of 40 in a work week.
- Salaried, [exempt](#) employees generally must receive their full salary in any week when they perform any work, subject to certain very limited exceptions.

When employees' jobs can't be performed from home, the U.S. Department of Labor (DOL) is encouraging businesses "to consider additional options to promote social distancing, such as staggered work shifts."

## **Can townships reimburse employees for their expenses related to working from home?**

Reimbursing employees is a benefit similar to reimbursing employees for mileage to drive to a workshop or other work-related activities. It would be a lawful expenditure for townships, by policy, to reimburse employees for any business expenses related to working from home, such as for Internet access, computers, additional phone lines, etc. Individual township board's would determine if related expenses will be reimbursed and at what rate by township policy.

## **Townships cannot discriminate when determining who is eligible to work from home**

Townships must not single out employees either to work from home or to continue reporting to the workplace on a basis prohibited by any of the Equal Employment Opportunity laws.

Employers are advised to check the U.S. Equal Employment Opportunity Commission's webpage, [Work at Home/Telework as a Reasonable Accommodation](#).

## **How will the township track hours worked for non-exempt hourly employees that work from home?**

Townships must keep an accurate record of hours worked for all employees, including those participating in work from home or other flexible work arrangements, to ensure that the employee is receiving no less than minimum wage for all hours worked, plus to track any required overtime pay, when nonexempt employees work over 40 hours in a workweek.

Employees who are non-exempt salaried (make a flat dollar amount per pay period) or employees who are paid by the project/run/complaint, etc. and not classified as exempt salaried employees, must track their hours in compliance with the FLSA.

Townships are encouraged to create policies to establish hours of work for employees who work from home and to provide a mechanism for recording their hours of work.

## **When do we pay employees who are working from home?**

All employees must be paid in compliance with the [Michigan Payment of Wages Act](#) regardless if they are working from home or not. The Michigan Payment of Wages Act requires employees to be paid at least every 30 days. Townships can enter into an agreement with the employee to have their wages paid through direct deposit to a bank and/or to use an employee debit card as stated in the act.

## **Are employees required to use paid-time off benefits if not working from home during federal and state emergency situations?**

Due to the current COVID-19 emergency, effective April 1, 2020 (expiring December 31, 2020), [Families First Coronavirus Response Act](#) will be implemented for all employers (including townships) under 500 employees.

NOTE: This Act has expired, but employers who want to extend the benefit through March 31, 2021, can do so.

Employees subject to a coronavirus quarantine or isolation ordered by the township, governmental agency, or been advised by a health care provider to self-quarantine due to coronavirus concerns; an employee who is experiencing symptoms of coronavirus and is seeking a medical diagnosis; an employee caring for an individual experiencing symptoms or seeking medical diagnosis; an employee caring for a child whose school or place of care is closed, or the child care provider of the child is unavailable, due to coronavirus precautions; or an employee who is experiencing any other substantially similar condition specified by Health

and Human Services in consultation with Treasury and Labor Departments must receive the following:

Full-time employees are to receive 80 hours of sick leave, and part-time workers are granted leave equivalent to their average hours worked in a two-week period, with the sick leave in either instance being available for immediate use regardless of the employee's tenure at the township.

Townships who employ health care providers or emergency responders may elect to exclude those employees from the emergency sick leave provisions.

Paid sick time will not carry over from year to year.

The act also includes:

- Workers taking leave for themselves will have to be paid at least their normal wage or the applicable federal, state or local minimum wage, whichever is greater. Workers taking time off to care for family members must be paid at two-thirds of the foregoing rate. Sick leave is capped at \$511 per day and \$5,110 in the aggregate for leave on one's own behalf, and capped at \$200 per day and \$2,000 in the aggregate for leave taken to take care of another.
- Wages required to be paid under the emergency sick leave provisions will not be subject to the 6.2 percent Social Security payroll tax typically paid by employers on employees' wages.
- Employers with existing paid leave policies will be required to provide workers with sick leave under this emergency act. ***An employer cannot require a worker to use any other available paid leave before using the sick time as stated in the act.***
- Employers will be prohibited from requiring workers to find replacements to cover their hours during time off; or discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer related to such.
- Employers will have to post a notice containing information regarding the emergency sick leave provisions; the U.S. DOL is to create a model notice no later than seven days after the act is enacted.
- The U.S. DOL will be authorized to issue regulations to exclude certain healthcare providers and emergency responders from paid leave benefits and/or exempt small townships with fewer than 50 employees from the paid leave requirements. ***Note: As of this publication (3/20/20), the U.S. Department Labor has not issued any additional provisions limiting township with fewer than 50 employees to comply with this act.***
- The U.S. DOL will also ensure consistency between the emergency sick leave provisions and [Emergency Family Leave Provisions](#).



## **Do townships have to comply with the Emergency Family Medical Leave Act?**

All townships (governmental entities) have to comply with the Family Medical Leave Act (FMLA), but not all employees are eligible for family medical leave. To be eligible the employee must: have worked for the township for 12 months; **and** work at a location where at least 50 employees are employed by the township with a 75 mile radius. See the US DOL's [Employer's Guide to the Family and Medical Leave Act](#) for more information regarding the [FMLA](#).

The **Emergency Family Medical Leave Act (EFMLA)** is temporarily (effective April 2 through December 31, 2020) expanding the regular qualifications for FMLA leave by requiring all governmental entities under 500 employees to comply with EFMLA when an employee who has been on the job for at least 30 days, is unable to work or telework because they have to care for a minor child if the child's school or place of care has been closed, or if the child care provider of that child is unavailable due to a coronavirus emergency. In such case the employee is eligible to receive up to 12 weeks of EFMLA.

NOTE: This Act has expired, but employers who want to extend the benefit through March 31, 2021, can do so.

EFMLA will coordinate with the Families First Coronavirus Response Act as stated in the previous question which requires full-time employees to receive 80 hours of sick leave, and part-time workers to be granted leave equivalent to their average hours worked in a two-week period, with the sick leave in either instance available for immediate use regardless of the employees tenure at the township.

The first 10 days of leave can be unpaid (a worker could opt to use accrued vacation days or other available paid leave for those days).

The remainder of the EFMLA leave will be equal to at least two-thirds of their normal pay rate. The paid leave is capped at \$200 per day and \$10,000 in the aggregate.

In addition the EFMLA requires:

The employee on leave, generally, must be restored to his or her prior position; however, this requirement does not apply to employers with fewer than 25 employees if the position held by the employee on leave no longer exists due to economic conditions or other changes in the employer's operating conditions caused by the coronavirus pandemic, and the employer makes reasonable efforts to restore the employee to an equivalent position.

The Department of Labor will be authorized to issue regulations to exclude certain health care providers and emergency responders from paid leave benefits, and exempt

small businesses with fewer than 50 employees from the paid leave requirements “when the imposition of such requirements would jeopardize the viability of the business as a going concern.”

### **Are employees required to use paid-time off benefits if not working from home during other emergencies or non-emergencies?**

The use of *medical* paid-time off is regulated by Michigan law during normal working conditions as stated below.

[\(Public Act 369 of 2018\)](#) requires townships with 50 or more individuals regardless of full or part-time status or how many hours they work to provide and accrue up to 40 hours of paid medical leave as defined by the act in a benefit year at a rate of one hour for every 35 actual hours worked in a calendar week.

If your township is required to offer paid medical leave as defined above, the act would allow employees to take paid medical leave related to the closure of the workplace by order of a public official due to a public health emergency, to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or if it has been determined by health authorities that the employee or the employee’s family member’s presence in the community would jeopardize the health of others.

Townships can also require employees to use paid time off (PTO) for leaves that do not meet the requirements of the Michigan Paid Medical Leave Act based on individual township policy.

The FLSA does not regulate policies regarding paid time off. However, if employees are told not to come to work, the board may want to consider a policy that would allow the employee to use any PTO for missed work or compensating them as part of a wage continuation policy due to public emergency.

### **Are employees who are laid-off or required to stay home with no pay eligible for unemployment?**

Yes, if the employee is eligible for unemployment benefits. See MTA’s resource on [“What townships need to know about unemployment”](#) for information on wages that must be reported and who may be eligible for unemployment benefits. The state Department of Labor and Economic Opportunity Unemployment [Division](#) determines who may be [eligible](#) for unemployment.

### **Are townships liable for employees while they are working from home?**

Townships are encouraged to contact their liability insurance carrier to determine coverage as it applies to employees working off-site. However, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) does not hold employers liable for nor expect employers to inspect their employees' home offices.

However, townships that are required to keep [records of work-related injuries and illnesses](#) will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.