



COVID-19 Business Continuity Response Work From Home Workforce FAQ

For businesses that have moved to a Work From Home (WFH) workforce pursuant to government orders mandating residents remain in their homes unless an exception applies, below are common questions/answers that arise:

Q: How do we make sure the WFH workforce understands work parameters and performs efficiently while working remote from home?

A: Employers should have well-written and easy to understand instructions to employees about expectations and work parameters. The instructions should set forth expectations and include key terms, such as: at-will employment, the employer's right to terminate the arrangement, acceptable telecommuting locations, a defined home work space, acceptable methods of communication, how much time is expected in the office (if any), reimbursable expenses, travel time pay, express understanding that WFH employees are not "on call," safety issues, procedures if any employee suffers any injuries, homeowner's insurance, and cybersecurity and more.

Q: How do we provide our WFH workforce with a safe work environment when we cannot control the premises where they are working?

A: OSHA requires employers to provide employees with a safe work environment, even if the employee works from home. Employers should encourage employees to set up a work space that is equipped with ergonomic seating, adequate desk space and supplies, adequate ventilation, and free from all hazards. Employers can further support employees by conducting online safety trainings and/or providing safety surveys.

Q: Do we have to provide reasonable accommodations to our WFH workforce?

A: Yes. According to the DFEH "an employer's responsibilities to individuals with disabilities continue during a pandemic. If an employee with a disability needs the same reasonable accommodation at a telework site as at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should work together to identify an alternative reasonable accommodation." Engage the employee in the good faith interactive process and open the lines of communication to find reasonable solutions.

Q: If employees are working from home, what should we do if there are workplace injuries?

A: Employers should specifically notify WFH workforce in writing of their obligation to immediately report any work-related injuries at the home office. Employers need to promptly investigate any injury to determine whether it was work-related. Employers should also maintain a record of the workplace injuries for WFH workforce.

Q: Does worker's compensation apply to the WFH workforce?

A: An employee working from home at the time of injury will likely be entitled to worker's compensation benefits. Establish a process for WFH workforce to report any work-related injuries. Confirm with your workers' compensation carrier if coverage is provided and consider putting carrier on notice that your workforce is now WFH because of government orders.

Q: Will allowing employees to work from home have any tax implications?

A: Employers may be responsible for paying corporate taxes in the states where their employees reside and work, even if they only work from home in that state. Some employees who work from home can claim tax deductions related to their home work spaces. Employers should consult with experienced tax attorneys concerning these issues.

Q: Can we allow exempt employees to WFH and not extend the same opportunity to non-exempt hourly employees?

A: Yes. It is much easier for an employer to allow an exempt salaried employee to work from home rather than a non-exempt hourly employee. Some employers strictly prohibit non-exempt hourly employees to WFH to avoid tracking time, ensuring meal and rest periods, travel time pay, etc. Consider the pros/cons of non-exempt WFH employees and whether the tasks that must be accomplished to stay in business can be completed without the non-exempt workforce.

Q: If we allow non-exempt employees to WFH, what are best practices?

A: If employers allow non-exempt employees to WFH, the employer must carefully track and record his/her hours worked. Employers should devise a system that tracks the employees' hours worked, including frequent telephone call-ins, email check-ins, and related checks to make sure that the employees are actually working. Some employers are using mobile tracking apps on devices that show where the employee is located during the time they are on the clock and supposed to be working.

Q: Should we treat WFH employees the same as "on call" employees?

A: No. It is important that WFH workforce should not be treated as "on call" or on "controlled standby" outside of their normal working hours. To do so could result in changing their non-compensable time ("uncontrolled standby") into compensable time ("controlled standby"). Employers must make sure any WFH policies and/or instructions are clear that the employee is not "on call."

Q: How can we make sure our non-exempt WFH employees take appropriate meal and rest periods?

A: Employers must ensure that non-exempt employees working from home or otherwise outside the office take their meal periods and rest periods. Be sure to have employees clock out when they start and clock in when they stop their meal periods at the times they are actually taking them. Remind employees of your company policy in writing to continue taking all meal and rest periods. Use this as a reminder for employees to take time for self-care and the importance of that during these difficult times. Non-exempt employees should be required to log off

their access to work through their home computers during rest periods and meal periods. Employers can use “Certification Forms” that have non-exempt employees self-verify that they are taking these breaks. Employers can also use “Meal/Rest Period Violation” Forms. Auto-deduct systems should not be used to track meal periods.

Q: What should we do about employee travel?

A: California employees who are not critical infrastructure are currently under Executive Order not to travel or leave their homes and can be advised that they should not be traveling for work purposes. When the Order lifts and if employees remain WFH for a period of time, travel time is an issue that must be addressed for non-exempt employees who may be required to travel from home. The DLSE has opined that any time a non-exempt employee who normally works from home, but who travels from home to a central office and then back home is not compensable time. It is akin to an employee driving from home to work and back, which is not compensable time. Travel time to other locations, however, may be compensable.

Q: Do we have to reimburse WFH workforce for home office expenses?

A: Yes. California Labor Code Section 2802 requires employers to reimburse employees for expenses in direct consequence of employees discharging their job duties and precludes employers from passing their operating expenses on to their employees. Employers must carefully assess what expenses must be reimbursed for employees who work from home. Consider a fixed monthly amount that may adequately compensate employees for a pro rata share of home utilities like internet usage, energy, phone costs, and other costs. Confirm your reimbursement policy allows employees to submit additional expenses that are actually incurred (like long distance phone charges) that are above and beyond the monthly fixed reimbursement amount.

Q: What kinds of expenses should we reimburse for WFH workforce?

A: Typical expenses that will likely have to be reimbursed for employees in pro rata amount: cell phone use, home internet access, laptops, pens, paper, and other items needed to meet their work requirements.

Q: Are we required to reimburse for cell phone use, even if the employee would have incurred this expense if not working from home?

A: Yes. Employers must reimburse expenses incurred in direct consequence of employees discharging their job duties. This includes a fixed cost that the employee would still have incurred. Although many employees have unlimited minutes on their cell phone plans, and may incur no additional cost when they use their cell phones for work, the employer still should reimburse some portion of the bill if the employee uses that cell phone for work.

Q: How can we reduce cybersecurity risks with a WFH workforce?

A: Employers must take extra steps to protect data and systems. Threat actors are using COVID-19 and a remote workforce as an opportunity to exploit users. Offer online cybersecurity training that covers increased risks to your technology infrastructure. Employers should require employees to check in and out of servers over a dedicated, secure line accessible only through a password-protected system. Enable multi-factor authentication for remote access. Send reminders to employees not to click on links or attachments from a sender they don't recognize. For employees who are initiating wire transfers, require a phone call or video conference with the requesting party any time a request is made to change routing numbers.

This is not intended to be specific legal advice to any particular entity, person, or company. The COVID-19 pandemic continues to evolve on a daily basis as do the federal, state, and local laws pertaining to employers and their response thereto. We advise recipients to seek guidance related to the most up-to-date guidance and regulations.