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Guidance for Employers with Salaried Employees in

COVID-19 Response Resource Center: Timely Counsel for your Business

By William Cary and D. Beth Langley on 03.23.2020
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Employers are faced with difficult and unpleasant choices in response to the current COVID-19 crisis. Some are closing down or reducing operations. This guidance addresses your rights and obligations concerning salaried employees, and suggests strategies available to you.

The general rule under the federal Fair Labor Standards Act (FLSA) is, if an employee is "salaried" and works *any* time during a workweek, the full salary for the workweek is due. For these purposes, "salaried" refers to exempt employees subject to "white collar exemptions" under the FLSA and non-exempt employees promised a fixed payment for a fixed work period of a week or longer.

What changes are permitted?

1. Any changes are first restricted by any contract the employee may have.
2. If there is no contract, in North Carolina, the employer may, with 24 hours advance written notice, change the rate and method of pay *prospectively*. No retroactive pay decrease is permissible.
3. The pay reduction may be proportionate to a reduction in the employee's hours, but that is not required. A reduction in salary is allowed, so long as minimum wage and FLSA exemption requirements are met.
4. The change could convert the employee to hourly-paid: the employee would only be paid for time worked.
5. If the employee is converted to hourly, or if the new salary falls below the minimum required for the federal FLSA exemptions ($684/week for executive, administrative, or professional; $107, 432 per year for high salary exemption), that employee is then non-exempt (regardless of his/her duties), and the employer must keep time records and pay overtime if the employee works more than 40 hours in one week.
6. For salaried employees who continue to be exempt, if they work any time in a work week, they must be paid for the full week, with very few exceptions.
7. If you choose to reclassify exempt employees as non-exempt during this crisis, current Department of Labor guidance indicates that you can later restore those employees to exempt status if all other elements of the exemption test are met), provided the employer

does not make a practice of these reclassifications frequently or they are not designed to avoid the requirements of the federal FLSA. A one-time change and reversion therefore appears safe.

If we can help you plan a specific change to your practices, please contact a member of our Labor and Employment team.

Brooks Pierce is dedicated to keeping our clients fully informed during the COVID-19 crisis. For more information, please visit our COVID-19 Response Resources page.

Tags: Fair Labor Standards Act, U.S. Department of Labor