

If we choose to close temporarily, do we need to pay employees?

It depends on the employee's classification.

Non-exempt employees only need to be paid only for actual hours worked. For these employees, you may:

1. Pay the employee for the time, even though they did not work;
2. Require they take the time off unpaid;
3. Require they use any available vacation time or PTO; or
4. Allow employees to choose between taking an unpaid day or using vacation or PTO.

All four options are compliant with state and federal law. We generally recommend option 4—allowing but not requiring employees to use vacation time or PTO. If your office is required to close by health authorities and your state has a sick leave law, employees may be able to use accrued paid sick leave during the closure.

Exempt employees must be paid their regular salary unless the office is closed for an entire workweek and they do no work at all from home. You can, however, require them to use accrued vacation or PTO during a closure if you have a policy that indicates you will do so, or if this has been your past practice. When it comes to accrued vacation or PTO, it is safest to give employees advance notice if there are situations where you will use their accrued hours whether they like it or not.

Can we reduce pay because of economic slowdown due to COVID-19?

You can reduce an employee's rate of pay based on business or economic slowdown, provided that this is not done retroactively. For instance, if you give employees notice that their pay will change on the 10th, and your payroll period runs from the 1st through the 15th, make sure that their next check still reflects the higher rate of pay for the first 9 days of the payroll period.

Non-exempt employees (those entitled to overtime)

A non-exempt employee's new rate of pay must still meet the applicable federal, state, or local minimum wage. Employees must be given notice of the change at the time of the change, or before. This gives them the ability to stop working if they don't agree with the new rate of pay and can help prevent a wage claim.

Exempt employees (those not entitled to overtime)

An exempt employee's new salary must still be at or above the federal or state minimum for exempt employees. The federal minimum salary is \$684 per week. Several states have weekly minimums that are higher than that (California and New York, for instance, are in the \$1,000 per week range). The minimum may not be prorated based on hours worked.

Exempt employee reclassification

If an exempt employee has so little work to do that it does not make sense to pay them the federal or state minimum (or you simply cannot afford to), they can be reclassified as non-exempt and be paid by the hour instead. This must not be done on a very short-term basis. Although there are no hard and fast rules about how long you can reclassify someone, we would recommend not changing their classification unless you expect the slowdown to last for more than three weeks. Changing them back and forth frequently could cause you to lose their exemption retroactively and potentially owe years of overtime.

Employees with contracts or CBAs

If employees have employment contracts or are subject to collective bargaining agreements, you should consult with an attorney before making any changes to pay.