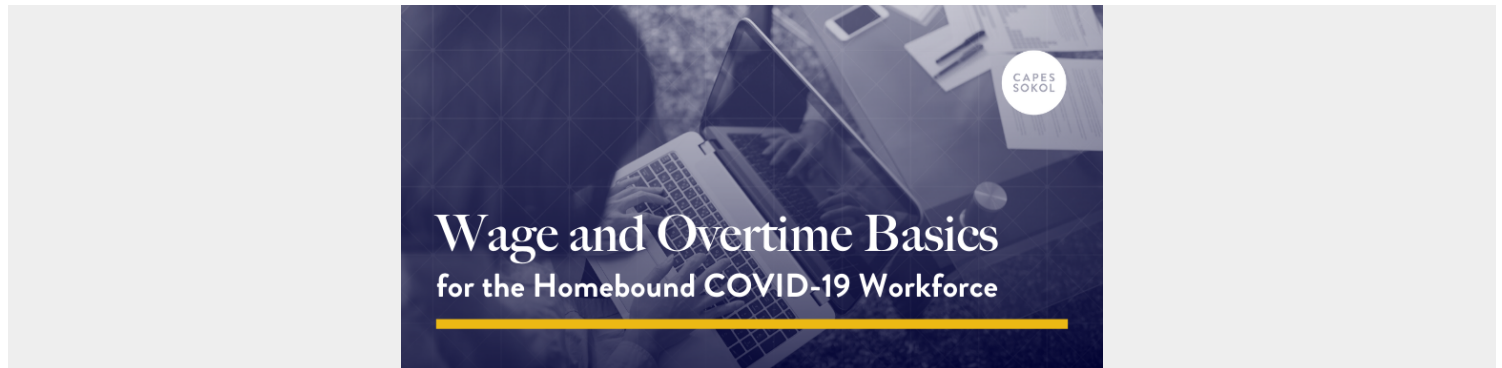


# WAGE AND OVERTIME BASICS FOR THE HOMEBOUND COVID-19 WORKFORCE

*Posted on March 26, 2020 by Aaron E. Schwartz*



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Over the past decade many employers have gradually permitted and, at times, even expected employees to work remotely. These early-adopting employers have had the luxury of methodically contemplating policies and best practices for remote work. However, with the novel coronavirus abruptly closing workplaces across the country, many employers have had to adapt on the fly.

## **Fair Labor Standards Act Basics**

Under the [Fair Labor Standards Act \(FLSA\)](#) employers must generally pay hourly, non-exempt employees for time actually worked, whether the employee works at the usual workplace, at home, or someplace else.

For those employers that have only recently allowed their hourly, non-exempt employees to work away from the ordinary place of business, need to keep in mind a few FLSA basics.

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## **Accurate Time Tracking System**

Have an accurate time tracking system to ensure employees are paid for time they work and are not paid for time they are not working. Software for remote login is readily available, user-friendly, and reliable. Even a low-tech solution like having each employee email when the work day starts and ends could be an effective solution. Simply relying on the schedules that employees worked when the employees were at the office should be avoided.

## **Fixed Weekly Salary for Non-Exempt Employees?**

A fixed weekly salary for non-exempt employees is not a solution. Do not presume that non-exempt employees may be paid a fixed salary, as opposed to hourly, simply because they are working remotely. An employee's exempt or non-exempt status under the FLSA does not change simply because an employee works from home.

The Department of Labor [publishes extensive material regrading various FLSA exemptions.](#)

## **Non-Working Hours vs. Working Hours**

There is no obligation to pay hourly, non-exempt employees for hours not actually worked. Weekly schedules and the total hours worked may be adjusted at the employer's discretion. If business has slowed and the employee is no longer needed for the same number of hours as before, there is no obligation to pay for hours not actually worked. Advance communication with employees concerning potential reductions in hours and new schedules is highly recommended.

## **Communicate Policy to Pay for All Hours Worked**

Make sure employees know it is the employer's policy to pay for all hours worked. If no policy has been adopted, have employees sign and date a new written policy – or at least respond affirmatively to an email distributing the new policy and stating that they understand. Employees should not be coerced to work "off the clock."

## **Employee Breaks**

Monitor scheduled and unscheduled breaks. Under FLSA, usually breaks of 20 minutes or less are compensable while meal breaks of 30 minutes or more can be unpaid, so long as no work is performed during the break. Make sure meal breaks are recorded. Ask employees to voluntarily report unscheduled extended breaks and periodically make unscheduled calls to supervise compliance.

Additional state laws and regulations may have other or different requirements.

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## **Unauthorized Overtime Policy**

Adopt a clear policy that prohibits working more than 40 hours in a given workweek without advance written authorization. If the policy is violated, the employer generally must still pay the overtime, but disciplinary action may be taken.

If this policy already is in place, a reminder to remote hourly employees may be in order.

## **Mandatory Telecommuting**

Employers may require employees to telecommute. But employers may not unlawfully single out employees for telework on a basis otherwise prohibited by law, for instance due to race, national origin, sex, religion, or disability.

## **Avoid Unintended Compensable On-Call Time**

Do not expect employees to be on call 24/7 now that they are at their provisional place of work 24/7. Factors relevant to whether on-call time is compensable include the frequency of the unscheduled calls, demands that calls be answered immediately, whether it is expected that the employee continuously monitor requests to do work, and whether the employee may engage in personal activities.

## **Implement with Well-Trained Managers**

Make sure managers and supervisors understand recordkeeping, wage, and overtime laws and policies. The penalties for a policy and practice that does not record and pay compensable hours or overtime time can be draconian and can be dramatically compounded by the number of employees impacted.

In these unusual times, avoid disputes with employees by adopting clear policies and clear expectations, and working with managers to fairly implement wage and overtime policies.

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