

# Guidance on Employee Compensation during Coronavirus Closures

March 17, 2020 -- 11:30 a.m.

*Please be aware that these recommendations are current as of the above-referenced date. This is a fluid situation. Changes in laws at the federal, state, and local level could have an impact on our recommendations going forward. Please watch for future, updated versions of this document.*

The Coronavirus pandemic has taken a toll on our normal parish and school routines and schedules, as well as our communities as a whole. Our hope is that this is a temporary situation, and that we can continue to take precautionary steps to “flatten the curve” of this virus spreading throughout our parish and school communities.

The Central Offices of the Archdiocese is implementing a temporary work-from-home policy for most of the office staff. There is no requirement to come into the office other than potentially picking up supplies or accessing files and/or a copier. As of today, we are not forcing people to work from home; however, we may need to do this at some point. Office managers are identifying activities and special projects that both exempt and non-exempt employees can work on from home during this period of time, e.g., projects/programs, operating procedures, etc. In some positions, such as our building maintenance employees, it is impossible to work from home. In these cases, we are trying to limit exposure and promote safe working conditions.

This document will provide parish and school leaders with guidance and considerations as individual parishes and schools deal with the ordered shutdown of schools, as well as other impacts resulting from mandated actions to deal with the spread of the Coronavirus. All public celebration of Masses have been suspended by Archbishop ListECKI from Wednesday, March 18 through Friday, April 3. All events and gatherings with more than 10 individuals should also be cancelled we will continue reassess this accordingly.

## **Continuity of Operations: On-Site or Remote**

One of the first decisions is to determine if your parish and/or school employees will continue to work on-site with precautions, or to continue to have employees work from home.

- **Schools:** All schools have the ability to implement innovative programming, including but not limited to, Virtual Instruction and Learning, in situations when schools are unable to provide traditional face-to-face instruction. As such, there is the expectation that our schools will implement said programming with the goal of finishing the 2019 – 2020

school year on schedule.

- **Parishes:** Each individual parish will need to decide the level of service it will be able to continue to provide during the next few weeks.

It is the recommended goal of all parishes and schools to continue to fully compensate and provide applicable benefits to all employees during the next few weeks. There are a number of options that the parish and/or school may consider:

### **Option 1: Remain Open**

- Review current policies and practices. If lacking, you may want to consider adding special Coronavirus paid days off, or let employees have a negative sick bank. NOTE: The CDC is recommending that employers do not require the normal level of leave substantiation in this situation, given that medical providers are overwhelmed at this time.
- Implementing a leave donation plan for extended absences that allow employees to donate leave to co-workers who have exhausted their paid-time-off benefits (PTO).
- **We encourage parishes and school employers to implement work-from-home practices for all employees, if possible. Alternatively, operate with reduced staff.** This allows for minimizing the spread of the virus, and flexibility if employees are infected; self-quarantine; caring for someone; and home care for children due to school/daycare closings. This will require some planning to ensure due oversight, as well as a plan on how to stay connected.
  - The disruption of the normal operations in parishes and schools will require flexibility on the part of the employer regarding employee tasks and responsibilities. Parishes and schools are strongly encouraged to implement the concept of *work equivalency*. This concept means that supervisors will need to provide guidelines and options to employees to complete the essence of their position, if not the exact specifics defined by their job descriptions. Non-exempt employees must track their time via time cards.
  - Recognize that not all people will want to work from home. Implement procedures to collaborate, e.g., deep office cleaning, working different hours, limit face-to-face contact, etc.
  - To avoid discrimination, please implement the decision for all exempt and non-exempt employees.

## **Option 2: Closing**

- If the decision is made for the entity to close for an extended period of time, examine how the paid-leave policies will be implemented and/or if employees can work from home.

## **Compensation of Employees**

- The employer must decide whether to pay employees during health-related absences and/or shutdown, and at what point does paying the employee stop for not performing work. Note the Fair Labor Standards Act (FLSA) before paying:

### **Hourly (Non-Exempt)**

- Need only pay for actual hours worked unless there is a leave policy that promises pay.

### **Salary (Non-Exempt)**

- When an employee is paid a salary for a set number of hours per week, an employer may dock the pay when the employee is absent and does not work the agreed-on-hours.
- When an employee is paid a salary for a fluctuating workweek, the salary is meant to cover any hours worked, whether few or many. Thus, an employer is not allowed to dock pay when an employee is absent.
- The Fair Labor Standards Act does not limit the types of work employees age 18 and older may be required to perform.

### **Salary (Exempt)**

- Exempt employees generally receive a guaranteed weekly salary regardless of the number of hours they work during the week. However, here are some exceptions:
  - If PTO time is provided, it is permissible to reduce or substitute PTO so long as the exempt individual continues to receive their full salary and their expected amount of pay is not reduced in conjunction with reduction of PTO. If there is a negative balance in PTO, this is something that the employer needs to address in a policy regarding the use of PTO, and can be a temporary adjustment to the current policy.

### **Contracted Employees (Principals and Teachers)**

Contract employees may still be able to fulfill their responsibilities as defined by contract and job description with virtual learning and/or work equivalency. The Office of Schools is available to assist with ideas on how to help fulfill this contract.

- For absences other than those specified under local personnel policy, deduction may be made from the salary at a rate of  $1/(\text{number of work days})$  of his/her yearly salary for each day of absence.
- If, for any reason, instruction and/or administration needs to be extended beyond the last date, as defined in the contract, an addendum needs to be created and signed by both parties to define the new terms.

### **Continuation of Employee Benefits**

During this pandemic, it is important that employees continue to receive their health benefits coverage. The Archdiocese is encouraging parishes and schools to ensure employees' continuation of health benefits, especially for employees whom are furloughed or are subjected to a temporary reduction in wages. Parishes and schools that participate in the St. Raphael Health Plan will receive a premium holiday for the April premium, for health benefits only. This will help ensure continuation of Health Benefits coverage for employees. The premium holiday does not apply to the Vision, Dental, AD&D, LTD, or Life insurance.

### **Specific Questions**

#### ***Can we require employees to stay home if they are sick? Do we have to pay them?***

The Center for Disease Control (CDC) recommends that people with influenza-like illness remain at home until at least 24 hours after they are free of fever (100 degrees or more), or signs of a fever without the use of fever-reducing medications.

If the employer tells the employee to stay home, the employer will likely be obligated to pay an exempt employee for that time. However, if an exempt employee performs no work for an entire workweek, no pay is required.

#### ***What should we do if an employee discloses they have been in contact with COVID-19?***

According to [CDC guidance](#), individuals who have had close contact with a person diagnosed with COVID-19 should self-quarantine. Employers should require an employee who has been exposed to the virus to stay at home.

#### ***If an employee is diagnosed with a communicable disease, do we tell other staff?***

Generally, employers can share that a contagious illness may be present in the workplace. However, please do not reveal the identity of a particular employee or employee's

family member with a contagious illness. Focus on precautionary steps suggested by the medical community. Work to address the scope of the risk, the employee's fears and answer questions. Staffing strategies may include short term telecommuting, staggered shifts or alternative work schedules so fewer employees are in the office at the same time, etc.

***Can I ask if an employee has the Coronavirus?***

Employers can ask an employee how he or she is feeling in general, but should not inquire about a specific illness as that could rise to the level of a disability-related inquiry under the ADA.

***Is there property or casualty insurance to cover employees' wages during a temporary closure due to COVID-19?***

No, there is not any property or casualty insurance coverage for business interruption due to COVID-19. The PIPIT program does provide business interruption coverage when there is a loss to the property, such as a flood or fire.

***Can employees file for unemployment benefits from the Church Unemployment Pay Program (CUPP) during a temporary closure of a parish or school?***

No, to qualify for benefits employees need to be terminated from employment. CUPP does not cover temporary reductions in earnings or employment. Terminating employees could also result in the loss of employer-provided benefits.

The U.S. Department of Labor has posted Q&A regarding the Fair Labor Standards Act <https://www.dol.gov/agencies/whd/flsa/pandemic>

***This information does not constitute, and should not be taken as, legal advice. Always consult an attorney with specific concerns.***