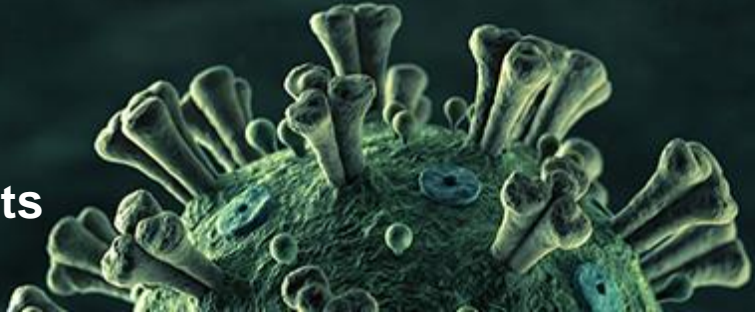




## COVID-19 Latest Insights



### Frequently Asked Questions: State Compliance and COVID-19

Last Updated April 30, 2020

**DISCLAIMER: Information presented in this FAQ is subject to change pending additional guidance from the Department of Labor, Federal and State Government, and other regulatory agencies.**

#### **Managing a Remote Workforce**

##### **How should we account for exempt employees' time while working remotely?**

Under the FLSA, and subject to applicable state laws, exempt employees must be paid in full for any workday in which they perform any work. Exempt employees must also be paid in full for any workweek in which they perform any work, if they are available but not permitted by the employer to work the full workweek (as in the case of an employee is not ill and available to work, but who is sent home because of potential exposure to COVID-19).

Accordingly, employers should communicate clearly with employees, in writing, if the employer does not want the employee to perform any work on a given workday or workweek. Employers should also anticipate that some exempt employees may have sufficient capability to perform some of their work duties remotely, but not all of their duties. In such cases, employers may consider whether there are any special projects that would add value to the business and can be assigned to employees who are being paid for a full workweek but may not have a full workload as a result of teleworking.

In addition, depending on the nature of the work performed, an employer may be able to implement an arrangement where an employee works every other week as an alternative to not permitting the employee to telework at all. Requiring the use of paid time off, and advancing leave accruals if possible and appropriate, may also be options employers can use to supplement partial telework arrangements.

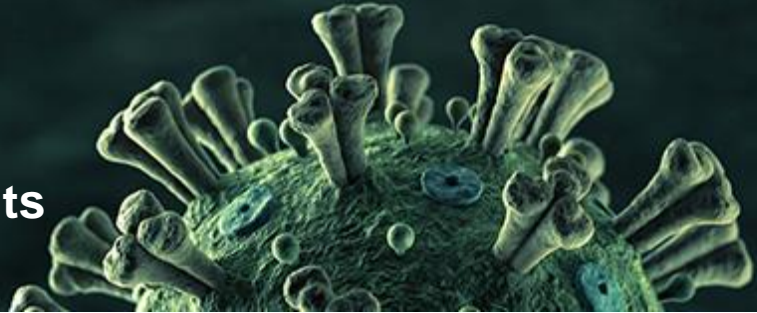
##### **Can an employer limit the type of systems that should be used while employees are working remotely?**

Yes. The COVID-19 pandemic has created an abrupt and unforeseen need for entire workforces to be moved out of corporate facilities and into virtual environments, with an estimated 62% of employed Americans saying they have worked from home during the ongoing crisis. For many companies, a shift of this magnitude would normally require long-term IT transformation efforts. Recommended actions are:

- Develop tailored cybersecurity awareness messaging for remote workers and deliver it online to all employees. Include topics such as:
  - Detecting and avoiding elevated phishing threats, including COVID-19 scams and fraudulent websites.



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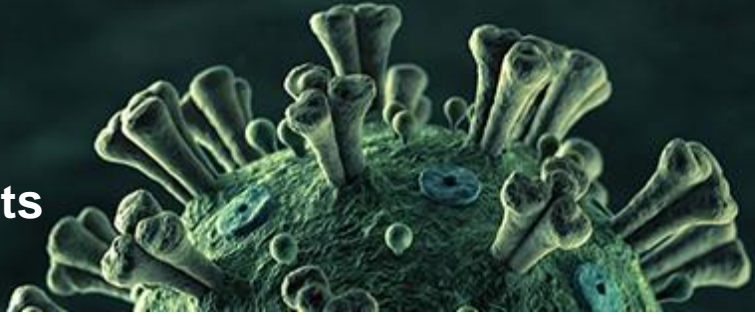
- Ensuring secure use of Wi-Fi, both at home and in public.
- Not using company computers for personal email, file sharing sites, or social media without approval.
- Saving and securing needed printouts of work files or emails and shredding others.
- Not copying work files or information to personal devices, including home network drives and personal online storage.
- Muting or shutting down in-home digital assistants that may continuously record nearby conversations.
- Not permitting family members or others to use company-provided equipment, including laptops and phones.
- Eliminating default home Wi-Fi router passwords and performing other home security checks.
- Confirming screen locks are enabled to ensure workstations are secured when not in use.
- Never leaving laptops and mobile devices unattended in public spaces or unlocked at home.
- Using company-approved cloud services or data center storage instead of local storage, particularly for sensitive information such as personally identifiable information, protected health information, financial data, and trade secrets.
- Avoiding the use of USB sticks and other removable storage.

#### **How do we adequately monitor temporary telework to ensure performance expectations are met?**

Open and ongoing communication between teleworking employees and their supervisors is key to a successful temporary telework arrangement. Employees should be directed to communicate with their supervisor to identify in advance, and on an ongoing basis, any job duties or responsibilities that cannot be effectively performed during temporary telework. Employees also should be encouraged to promptly notify their supervisors in the event that personal circumstances, such as illness or dependent care responsibilities, interfere with their ability to fully perform their job duties. Modifications to work hours, work responsibilities and/or work deadlines should be considered and adjusted as the employer deems appropriate. It is the employer's responsibility to ensure that teleworking employees have access to the necessary equipment and/or remote access approvals.



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#### **How can we better support parents with young children working from home?**

Supporting working parents is an employee engagement and satisfaction necessity. Employers may want to consider creative options, such as staggering employee shifts, rotating days or weeks of in-office presence with telework, and phasing in return-to-work starting with a reduced schedule and transitioning back to full-time.

#### **What signs should I watch for that indicate my employees are feeling stressed?**

The COVID-19 pandemic is a rapidly evolving situation, and many employees may be feeling overwhelmed or anxious. If they express concerns along those lines, evaluate whether there's anything you can do to help mitigate those feelings. Additionally, remote employees may start to feel isolated, so it's important to remind them that they're not alone, especially during these uncertain times.

Employers should be alert to:

- frequent physical complaints
- increased anger or irritability
- persistent sadness
- excessive worrying
- complaints of poor sleep patterns
- suicidal thoughts
- increase in substance use
- impulsivity or reckless behavior

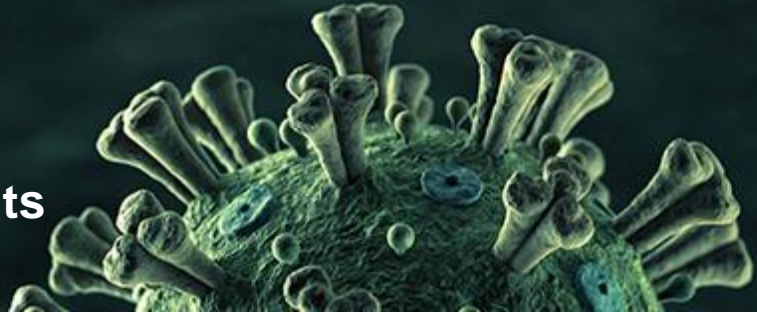
Those changes are not always easy to notice when workers are onsite, much less when supervising remote workers. Check in regularly with teleworkers by phone or video conferencing, which provides an opportunity to gauge and respond to these concerns.

#### **What is the best way to engage employees while they are teleworking?**

- prioritize communication



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- “meet” frequently, via Skype, Zoom, etc.
- set clear expectations
- recognize good work
- encourage work/life balance
- demonstrate a collaborative culture

#### **What is a good way to encourage employees to communicate with each other?**

Email alone is not sufficient. Remote workers benefit from having a “richer” technology, such as video conferencing, that gives participants many of the visual cues that they would have if they were face-to-face. Video conferencing has many advantages, especially for smaller groups: Visual cues allow for increased “mutual knowledge” about coworkers and also help reduce the sense of isolation among teams. Video is also particularly useful for complex or sensitive conversations, as it feels more personal than written or audio-only communication.

There are other circumstances when quick collaboration is more important than visual detail. For these situations, provide mobile-enabled individual messaging functionality (like Slack, Zoom, Microsoft Teams, etc.) which can be used for simpler, less formal conversations, as well as time-sensitive communication.

Consult with your organization’s IT department to ensure there is an appropriate level of data security before using any of these tools.

#### **Do we have to allow an employee to continue to work from home after we have reopened our worksite?**

Some employers have discovered during this crisis that remote work can be a successful arrangement and will consider allowing telework arrangements to continue. However, absent a need to work remotely as a reasonable accommodation under the American’s with Disabilities Act, employers are not obligated to allow telework. That being said, many employers are anticipating a “staggered” approach to returning to the workplace which may involve employees alternating weeks of working from home and working from the office.

*This information has been provided as an informational resource for NFP clients and business partners and is not intended to and does not constitute legal advice. Its purpose is to provide general guidance, and the materials presented are not intended to address specific risk scenarios. Issues related to Coronavirus are changing at a rapid pace. The materials presented today may be outdated in the near term. Please consult your legal counsel for advice on your particular facts and circumstances.*