

COVID-19 AND PAY ISSUES FOR EDUCATIONAL INSTITUTIONS

The COVID-19 pandemic has ushered in an unprecedented era of uncertainty and volatility for the entire world. During these unpredictable times, financial security becomes of the utmost importance for individuals and institutions alike. At Thompson & Horton, we are equipped and ready to assist your educational institution in addressing pay issues that may arise in formulating a response to the outbreak of the novel coronavirus.

FAIR LABOR STANDARDS ACT

Nonexempt employees. Under the Fair Labor Standards Act (FLSA), an employer is required to pay its nonexempt employees only for the hours that the employee has worked. If the district is closed because of COVID-19, a school district is not required to pay nonexempt employees, irrespective of whether the employee would be scheduled to work otherwise. This class of employees includes bus drivers, administrative staff, instructional aides, and cafeteria workers. This general rule does not apply to nonexempt employees who are paid fixed salaries for fluctuating workweeks. However, if any nonexempt employees are allowed to tele-work, the employer must ensure adequate recording of the hours worked and pay the employee for these hours, including any over-time.

Exempt Employees. There are two classes of exempt school district employees: (1) statutorily defined “educators” and (2) all other exempt employees. Educators are employed under contracts providing for a minimum of 187 days of service. However, even if the number of days of service is reduced as result of the COVID-19 outbreak, an educator is entitled to receive the full amount of their salary. Teachers, principals, superintendents, counselors, and librarians are included in this class of employees.

Other exempt employees, such as administrative and business personnel, must be paid their full salary if they work any part of the workweek. However, if the employee works no hours due to a school closure, the district is not required to pay the employee.

LEAVE ISSUES

On March 18, 2020, President Trump signed the [Families First Coronavirus Response Act \(FFCRA or the Act\)](#). The Act contains provisions that modify an employer’s obligations under the Family and Medical Leave Act (FMLA) and provide for additional paid sick leave for employees affected by COVID-19. Thompson &



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Horton's guide answering FAQ's on employee rights and employer responsibilities under the Act can be accessed [here](#).

Districts are permitted to create a leave-sharing bank for employees adversely affected by the novel coronavirus outbreak. According to IRS guidance, an employee is "adversely affected" if COVID-19 caused severe hardship to the employee or a family member of the employee that requires the employee to be absent from work. Under these circumstances, the leave donor will not incur negative tax consequences in the form of income realization. The District must be careful to draft a policy that does not create tax liability on behalf of the leave donor.

AMERICANS WITH DISABILITIES ACT (ADA)

It is critical that employers make every effort to keep their campuses and school property safe and sanitary. However, in an effort to mitigate the spread of novel coronavirus, educational institutions must maintain their commitment to non-discrimination and implement policies in a manner that honors the medical privacy of its employees. More information regarding the compliance standards for the Americans with Disabilities Act can be found [here](#).

UNEMPLOYMENT

Inevitably, some employees will file claims for unemployment as a result of financial difficulties related to COVID-19 school closures or hour restrictions. Information regarding the unemployment application and appeals process in Texas can be accessed [here](#).

FEDERAL RELIEF FOR CERTAIN LABOR COSTS

A school district may be eligible for federal reimbursement of labor costs incurred during a national emergency. Information regarding reimbursement opportunities can be found [here](#).

For further information or should you have questions, contact your [Thompson & Horton](#) attorney. If you do not have a Thompson & Horton attorney with whom you currently work, please contact [Chris Gilbert](#) in Houston, [Holly McIntush](#) in Austin, or [Dianna Bowen](#) in Dallas/Fort Worth and they will put you in contact with the most appropriate T&H team member to assist you.