

## **COVID-19 EMPLOYER LEGAL OBLIGATIONS:**

Salaried employees are to be paid in full for the week or partial week that they work, with limited exceptions. As an example, if a salaried worker works on Monday and Tuesday, and goes out sick on Wednesday of that week, the dealership still has the obligation to pay the salaried employee for that entire week. Thereafter, the dealership's sick day policies and paid time off handbook policy would kick into place.

Hourly employees are to be paid for the hours they work. For example, if an hourly employee works four (4) hours on a Monday and then leaves because of illness, that hourly employee must be paid for the four (4) hours they worked on Monday and then the dealership's sick days and paid time off policy would kick into place.

Generally speaking, you do not have to pay an employee for not working, absent an employment contract or a requirement in your work policies and employee handbook. Of course, there are exceptions and different classes of employees can create different requirements.

However, there is legislation passed by the House of Representatives (now pending in the Senate) that have paid leave requirements, and I caution employers to consider the public relations aspect of not paying employees who may not be working if they contracted or are avoiding the COVID-19 virus. This could damage your reputation and employee morale.

There are several laws in place aside from just wage and hour laws that are in play in the present situation. One law that is very strongly in play is the General Duty Clause under the OSH Act of 1970. ("OSHA"). OSHA's General Duty Clause requires ALL employers to protect workers from serious and recognized workplace hazards. It is the obligation of every employer to keep its workplace free of recognized hazards that can cause serious injury or death. Given the present situation, employers likely have the right to require employees infected with the Coronavirus or those that have been likely exposed to the Coronavirus (either because they have visited the high risk countries in the past few weeks or because they have been in close contact with a person who is suspected to have the virus) to leave the dealership and not come back for a period of time (14 days) or until they are no longer contagious.

In addition, due to the nature of COVID-19, under the OSHA General Duty Clause, an employer may require an employee who has family members that have been exposed to the Coronavirus to leave the dealership and self-quarantine for a period of time that is recommended by medical personnel. For those employees, depending upon whether the employee was salaried or hourly, the previous addressed rules regarding the employee's pay that were discussed would have to be followed and thereafter, for every day the employee was out sick, the sick days provided in the handbook and paid time off would apply. Review OSHA's COVID-19 standards [here](#).

Remember that any type of influenza, including COVID-19, could qualify as a serious health condition under the Family and Medical Leave Act (FMLA). This only applies to companies with more than 50 employees and if the employee has been employed at least one year and worked over a certain number of hours. Also, it could rise to a level

of disability under the ADA and State disability statutes, and this is very fact specific. Consult with counsel on these questions.

One should also consider privacy laws. The dealership has an obligation to continue to respect and protect its employee's privacy. It is important if an employee can work off site and is involved with dealing with the private information of customers that adequate protections are put in place to protect the private information of the dealership's customers.

The dealership must continue to remain sensitive to and respect its obligation not to discriminate against employees based on sex, race or nationality. For example, an obvious discriminatory practice would be to ask all Asian employees to self-quarantine or just ask Asian employees if they have been to China, Hong Kong or Japan. It is very important that the treatment of all employees be consistent and treat all employees in the same manner. If the dealership is going to be flexible with time off for employees, then it is very important that flexibility be consistent for all employees.