

Obligations for Employers Before, During and After a Storm

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As cleanup from the Nor'easter that pummeled the East Coast gets underway, we hope that you and your families, as well as your businesses and employees, are safe and warm and that the lights are on. As this has been one of the more problematic winters in recent memory, we wanted to remind employers of some of their obligations before, during and after a storm.

Temporary Closings

Unless your agreements or policies provide otherwise, you are generally not required to pay non-exempt employees when they are not working. Therefore, if your business is closed and your employees do not report to work, you are not obligated to pay non-exempt employees. However, make sure that these employees are not checking work e-mails, communicating with supervisors about work-related issues or otherwise working from home, because non-exempt employees are entitled to receive pay for these activities even if they do not physically report to work.

Note that some states require an employer to pay employees for reporting to work, even if the business closes and the employer sends them home. For example, a New Jersey employer must pay employees who report to work at least one hour of pay. A New York employer must pay employees who report to work at least four hours of pay (or the number of hours in the scheduled shift if it is less than four hours). With regard to exempt employees, they are generally entitled to receive their full salaries, even if the business is closed – at least if the shutdown lasts for less than a week. If a business is closed for an entire week and an exempt employee performs

absolutely no work during that time, the employer is generally not required to pay the employee for the week.

When a business is temporarily closed, the employer can require exempt employees to use accrued vacation time for the time off, but this requirement should be set forth clearly in the Employee Handbook and any employment contracts.

Cleanup

After a storm passes, employees whose homes remain without power, who are repairing damage to their property or whose children's schools remain closed, may seek additional time off from work. While an employer that can afford to do so may allow additional flexibility to these employees in order to give them peace of mind and boost their loyalty and morale, these requests may otherwise be handled pursuant to the employer's contracts and policies.

Other Issues

In addition to the above general points, employers should also be aware of state laws that affect certain employees and certain industries. For instance, in New York and New Jersey, the prohibition against mandatory overtime for health care personnel includes an exception for a declared state of emergency. New Jersey also provides protections for employees who miss work because of their responsibilities as volunteer first responders.

Conclusion

Extreme weather and natural disasters that disrupt business create big headaches for employers and employees. We recommend clear and consistent communication with your employees to avoid confusion about your expectations. Also, maintaining sound employment policies and consulting with counsel when issues arise is critical for avoiding additional headaches resulting from ensuing workplace legal liability.

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