



Payroll Issues for Employers in the Wake of Hurricane Sandy

Client Advisories

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With the recent storm from Hurricane Sandy, many employers had to close their businesses for several days, if not longer. Among the many questions employers face, the most immediate is: “Do I have to pay my employees if we were closed due to the weather?” Although there is no uniform answer, here are some general rules to follow:

1. Non-exempt employees. Commonly referred to as “blue collar” workers, and usually your “hourly” employees, non-exempt employees are your workers who are entitled to overtime under the federal Fair Labor Standards Act (FLSA) and similar state laws. The general rule is that employers only have to pay non-exempt employees for time actually worked. This means that these employees do not have to be paid for time missed due to inclement weather unless there is some policy or contract stating otherwise. However, keep in mind that certain states such as New Jersey have what are referred to as “call in” or “reporting” rules, which apply where an employee was not notified of an office closure in advance and did report to work only to be sent home. Under New Jersey’s law, the employee must be paid for the hours actually worked and, even if no work was done, for at least one additional hour at their applicable wage rate.

2. Exempt employees.

- (a) Closures of Less Than a Full Workweek. Exempt employees are those employees not entitled to overtime. Commonly referred to as “white collar” workers, these are normally your employees working in a bona fide executive, administrative, or professional capacity and paid on a salary basis of not less than \$455 per week. The general rule is that employers cannot deduct pay from such employees for any workweek in which the employee does perform work. So, if the employer closed for less than a full workweek and the exempt employee did perform some work during any part of that week, the employee must be paid for the full week. However, employers can generally require that employees use vacation time or other paid time off for the days on which the office was closed without jeopardizing exempt status, so long as the employees receive an amount equal to their full salary. Also, remember that if the business stayed open, exempt employees do not normally have to be

paid for time missed by an employee's conscious decision to stay home (with the possible exception of a government-declared state of emergency).

(b) Closures of a Full Workweek. Closures of a full workweek can be treated differently since U.S. Department of Labor regulations provide that exempt employees need not be paid for any workweek in which they perform no work at all. So, if an employer had to close its business for a full workweek due to the hurricane or storm, it does not have to pay its exempt employees. However, keep in mind any separate employment contracts you may have with your exempt employees since you may still have a contractual obligation to pay certain exempt employees.

These are some sample rules that apply in paying employees in situations such as Hurricane Sandy. If you have any questions about this Advisory or other labor and employment matter, please contact Douglas Diaz, Esquire, at (856) 795-2121, or any member of Archer's Labor and Employment Department in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, or in Hackensack, N.J., at (201) 342-6000.

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