

Hurricane Ian and Preparing for Landfall: Employer Best Practices in the Face of a Natural Disaster

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Hurricane Ian is expected to make landfall somewhere between Tampa, Florida, and the Florida panhandle this week as a Category 4 hurricane according to the National Hurricane Center. Evacuation orders have been issued and, once again, employers will be tested in the wake of a disaster that may impact the lives of employees and their families as well as company operations. Below are some best practices for preparing crisis management responses and managing employment-related issues developed from the lessons of past crises for employers to consider.

Crisis Management Response

Employee Safety

Employers are responsible to ensure the safety of their employees who need to work during a disaster. With this in mind, employers may need to immediately evaluate who, if anyone, is essential to stay at or near a potentially impacted location and who should evacuate. For essential employees who do not evacuate, employers may need to ensure that proper safety protocols are in place to protect the risk of harm. This may include making sure employees working in and around damaged workplaces are protected from unreasonable exposure to hazards that may be present, such as slip and fall hazards, electrical exposures, and even exhaustion from working extended shifts. Some employers may be required to make personal protective equipment available to protect employees.

Emergency Response Plan

An employer's emergency response plan was likely tested and updated during the COVID-19 pandemic. Employers may need to use the lessons learned from that experience in terms of managing employees who are working remotely and maintaining communications in the wake of a natural disaster.

Triage the Incident and its Aftermath

Employers may want to ensure that company senior management and department heads from operations, health and safety, human resources, security, finance, communications, and others clearly understand their roles in the coming days to prepare for and meet the impending disaster. In

addition, each department may find it useful to have persons assigned to manage and execute the continuation of business operations after a storm passes. This may require pulling in employees and supervisors from other regions to assist the locations impacted by the natural disaster where the workforce may be dealing with personal issues in the wake of the storm.

Electronic Information and Technology

An employer's IT Department may want to take steps to ensure that all electronic data is backed up, preserved, and accessible. In addition, a company's operations team may need immediate access to back-up power sources and remote servers to continue operations uninterrupted. To the extent possible, employers may want to try to ensure that employees who have the capability of working remotely have access to the support they need to continue their work during the crisis.

Crisis Communication Plan

As part of a communication plan, employers may want to complete the following checklist:

- **Company Management Teams** may need to provide regular updates to senior management summarizing the current status of their areas of responsibility and steps going forward during and immediately after a crisis occurs.
- **Employees** may need to be regularly updated via a company's website, intranet, web-based phone apps, and/or other effective communication systems regarding scheduling, resumption of operations, available employee assistance programs (EAP), and the status of the company response.
- **Customers/Clients** may need to be contacted and assured that operations are ongoing or temporarily delayed with communications that include reasonable estimates of restored operations. A company's website can provide updates as well regarding the status of operations.
- **Insurers** may need to receive prompt notice of any property damage and/or interruption of business that occurred as a result of the event. Many insurers have disaster response teams that can be deployed to assist companies in resuming operations.
- **Civil and Regulatory Agencies** may need to be contacted regarding the status of a company's operations if it is in certain regulated industries.

Employment Law–Related Issues

Employment law issues in the wake of a crisis can be complex, and employers may need to ensure compliance with certain employment laws during a crisis. Below are common employment law related issues that may arise during a natural disaster.

Non-Exempt Employees

Non-exempt employees must be paid for work performed. Overtime will likely be incurred as increased demands are placed on employees. If employees work from home or do other work away from the business premises they must be compensated. All hours worked must be recorded and tracked. If an employee cannot make it to work due to transportation issues, that may be considered an absence for personal reasons under the FLSA so long as the employee does not work from home.

Exempt Employees

Exempt employees must still be paid for an entire week if they work any portion of a work week even if the location is closed for part of the week because of a natural disaster. If a facility is closed for one week or more and no work is performed, the employer does not have an obligation to pay an exempt employee that week.

Record Keeping

There is no relief from the record keeping requirements of the Fair Labor Standards Act (FLSA) due to weather-related emergencies. Employers are still required under the FLSA to maintain records of time worked. Employees who routinely track time electronically but cannot do so due to a natural disaster, may need to be instructed to manually record time worked.

WARN

There is an exception under the Worker Adjustment and Retraining Notification (WARN) Act for natural disasters when a plant location closes due to a natural disaster. Employer may decide to nevertheless follow notification requirements imposed by the WARN Act.

FMLA

Leave under the Family and Medical Leave Act (FMLA) may need to be granted to those qualifying employees directly suffering a serious health condition. This requirement to provide leave may also extend to the employee's need to care for a spouse, parent, or child suffering a serious health condition or medical emergency caused by a disaster. Certain states have unique family leave requirements that need to be followed as well.

ERISA/COBRA

Employers continuing medical coverage for their employees may need to contact their benefits vendors to determine how and to what extent coverage is to be maintained. Vendors often have specific hotlines for customers to contact during a disaster since life, health, and disability coverages may be impacted. If employees are no longer working or discharged and fall out of coverage, the requirements imposed under the Consolidated Omnibus Budget Reconciliation Act (COBRA) may be triggered.

OSHA

Employers' workplace safety obligations do not take a break because a storm hits a company's location. On the contrary, employers are still required by the Occupational Safety and Health (OSH) Act to ensure that employees are not exposed to an unreasonable risk of injury or death. This is even more important when companies are operating out of their normal operating environment.

Military Leave

Employees may be members of the National Guard or volunteer responders and may be called up for duty by a state governor or the president during a natural disaster. Job protections are in place for these employees, and some state laws may be implicated to address unique situations.

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