

Dust Off That Old Blog Post: Employee Pay When Facing Snow, Ice and Inclement Weather

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With inclement weather, snow flurries, and ice in the forecast, we thought it was best to dust off the old blog post and remind you about best practices to address weather-related issues when paying employees. We hope you all stay warm and safe. As always, your priority should be safety for your employees. Here's a previously published group of tips on how to deal with paying employees during extreme weather.

Snow, Ice, and Blizzards, Oh My

Winter weather has arrived in the south. As most of us know, that means road closures, school closures, call outs, company closings, late openings, and “y’all go home.” Develop an inclement weather plan for your company and employees as early as you can and notify your employees of the plan. Inevitably, no matter how much you plan and communicate, pay questions arise for employees. Here are some things to consider on that slippery front:

- **Hourly Employees**

Pay for hourly employees during weather disasters is simple. Hourly employees must be paid for all hours actually worked. If employees do not come in, are turned away at the door, or are sent home early, the rule is the same – pay hourly employees for hours actually worked.

What hours are actually worked? Remote login, responding to work emails, PDAs, and running business-related errands count as hours actually worked. Be mindful of what your employees are doing even if they are not on site during extreme weather. Time worked away from the company’s time clock or login procedure still counts.

What if someone shows up despite a company closure? In most southern states, employers are not required to pay “show-up” pay. Some northeastern and western states have show-up pay requirements contained in their state laws. If your business is operating there, you should check state

laws for those requirements and any exceptions to them, such as one that results from timely and effective notice of a closing by the company.

- **Salaried Employees**

Salaried employees, to retain their overtime exemption, must be paid their full salary in any week in which they perform any work. Thus, a closure for the approaching wintery weather expected to hit Friday will not allow an employer to deduct any percentage of a salaried employee's pay for the hours not worked, unless one of the three exceptions below applies.

Exception 1 – If the employee has a paid time-off (PTO) plan, the employer may require the employee to use some of his or her PTO time for a weather-related closure. In this instance, the salaried employee obviously continues to receive full pay (but some of it comes from the PTO bank).

Exception 2 – An employee need not be paid his or her salary in any workweek in which no work is performed. This exception would apply to the more severe disasters that shutdown the office for the entire week. In that case, you do not have to pay even your exempt employees who performed no work. (But remember, remote work is work).

Exception 3 – Finally, employers may deduct for *full-day* absences, but only full-day absences, if the business is open and the employee is unable to get to work (or to work remotely) due to the weather (this would be like an unpaid personal day for something other than sickness or disability).

- **Contractual Pay or CBAs**

In addition to considering federal and state wage-and-hour laws, do not forget about contractual requirements that could impose greater obligations on the company than state or federal laws. Individual employment contracts could contain such provisions, as could collective bargaining agreements (CBAs) in union settings. CBAs, for example, often contain show-up pay provisions and have restrictions on mandatory use of PTO.

- **Working from Home**

As mentioned above, all employees, hourly and salaried, must be paid for all time worked. This includes time worked from home or any other “offsite” location. Employees with PDAs (and old-fashioned toolboxes) must be monitored for actual work performed when the employer's business otherwise is closed. For remote employees, the analysis is the same. If an hourly employee's power goes out and he or she is unable to work, the employer does not have to pay for time that the employee has not worked. On the other hand, a salaried remote employee who loses power for several days and is unable to work must be paid his or her entire salary — unless that stretches on for longer than a week, as described above.

- **What to Do with the Superstar Who Came in Every Day**

Bonuses are allowed but not required. Gift cards and spa treatments (we all need help with the mid-winter dry skin) are great alternatives. Just remember, though, that for the purpose of calculating overtime pay in a given workweek, all remuneration must be included in the base rate before multiplying that rate by time and a half for hours worked over 40.

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National Law Review, Volume XV, Number 9

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