

## Hurricane Recovery Client Alert: Managing Employees after Hurricane Harvey

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As businesses and employees begin the journey to recovery, employers should be mindful of federal and state laws related to leaves, planned and unplanned absences, accommodations, and pay practices.

In the wake of widespread devastation caused by Hurricane Harvey, the city of Houston faces a long road to recovery. While the safety of employees is first on everybody's minds, employers should be aware of legal issues they could face in the coming weeks and months as they attempt to balance the time and resources employees may need for personal recovery with the company's own business needs. This LawFlash highlights some considerations for employers managing this balance:

- Many employees may be absent from work more than usual—either on a planned or unplanned basis. Employees may be out of work because they are dealing with damage to personal property, their child's school is closed, or a family member has been injured. Whatever the reason for the absence, employers should consider the federal Family and Medical Leave Act (FMLA) before taking any action related to an individual's employment status; if an employer has more than 50 employees within a 75-mile radius, the FMLA likely applies. An employee also may be absent for a reason that qualifies as an FMLA "serious health condition." Employers should remember that they are obligated to give employees notice of their FMLA rights any time an employee is absent for a reason that might be covered by the FMLA. Given this, it will be critical to keep the FMLA top-of-mind in the coming weeks.
- Even when the FMLA does not apply, many companies may want to give their employees additional flexibility during this crisis. If so, companies can consider adopting a temporary change to attendance or leave policies rather than leaving such decisions to the discretion of individual managers.
- Employers that have nonexempt employees who are working remotely because of the storm may want to consider adopting rules to ensure that nonexempt employees are reporting and

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being paid for all of the time they work, as is required by the Fair Labor Standards Act.

- Some employees may need to be absent because they are first responders. Texas law prohibits retaliation against such employees involved in these efforts. Before taking any action in relation to an employee who is a first responder, employers should first consider contacting outside counsel to review how Texas law applies.
- Texas law protects employees who participate in an evacuation pursuant to an emergency order—even if the evacuation was not mandatory. Accordingly, employers should exercise special care when applying attendance policies in areas that were subject to an emergency evacuation order.
- Even employees who are still regularly attending work may be struggling with the physical and emotional impacts of the hurricane. If an employee is having performance or behavioral issues because of a health condition, employers should consider the Americans with Disabilities Act before taking action. Of course, significant performance or behavioral issues do not have to be tolerated, but it may be appropriate to engage in the accommodation process with an employee before imposing discipline.
- Finally, if a business is shut down for any period of time because of the hurricane, employers should consider deciding now whether employees will be paid for that time and, if so, whether the company plans to deduct the time from accrued paid time off (PTO). Before making PTO deductions, consider speaking with outside counsel about the implications of the Texas Payday Law and the state’s prohibition on discrimination against evacuees.

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