

# Holiday and Weather Closures – Do Employees Get Paid?

## Labor & Employment Law Update

on December 2, 2014

Every year at this time, employers ask us the same set of questions: *Do we have to pay employees for holiday time off, or overtime if they work on a holiday? What about inclement weather closings?*

### Non-Exempt Employees

Non-exempt employees are those that are covered by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and its state counterparts. These are the bulk of the workforce, and typically hourly workers. Non-exempt employees generally (exceptions follow) only need to be paid for hours they actually work – and not for holidays or weather-related office closings. For example:

1. Non-exempt employees do not need to be paid for New Year's Day if they are given the day off.
2. If the business is closed during inclement weather (e.g., snow days, burst pipes), non-exempt employees do not need to be paid when the business is closed and they are not working.
3. If employees report to work and are sent home early (e.g., due to imminent ice storm), then non-exempt employees only need to be paid for the hours they worked, and not for the time that they were sent home early and are not working.

Where non-exempt employees do work on a holiday (federal, state, etc.), they only need to be paid overtime (time-and-a-half) if they have worked over 40 hours in the workweek (or 8 hours in a day in some states): An employee who works New Year's Eve and New Year's Day does not receive a shift premium (sometimes referred to as "overtime") merely by virtue of working a holiday, unless the employee has actually worked more than 40 hours – in which case, overtime is paid only for those hours worked over 40 in the week.

*Exceptions:* Various state wage laws, employer policies (e.g., employee handbooks) and other contracts may obligate an employer to pay employees for certain holidays or business closings, and even pay shift premiums for working on holidays.

## Exempt Employees

Exempt employees are those who are not covered by the FLSA's overtime requirements. When paid on a salary basis, these employees' salaries may not be reduced in any week in which they work, except for limited circumstances (e.g., the employee's personal absence not for sickness or disability, first/last week of employment). These exceptions do not permit an employer to reduce a salaried, exempt employee's wages for holiday or inclement weather closures. Thus, these employees must be paid their regular, full salary, even though the business is closed for a holiday or due to weather (assuming the weather closure was for less than a week).

And of course, other than the exceptions noted above, there is no overtime or shift premium required for an exempt employee working on holidays.

## The Bottom Line

Holiday time off and holiday pay are benefits offered by employers and have become all but expected by employees. Employers should review their policies (or draft written policies) to ensure that they have carefully defined:

- what (if any) holidays or types of business closures are paid;
- what classes of employees (non-probationary, full/part-time) receive holiday or business closure pay; and
- how much pay will be granted.

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