

Must Employees Be Paid For Extreme Weather & Emergency Closings?

Labor & Employment Law Update

on January 28, 2019

In light of the current winter storm pounding the U.S. with snow and extreme subzero temperatures, this is a short reminder of when employees must be paid for emergency closures due to inclement weather.

Nonexempt Employees – Generally, hourly workers must only be paid for time they actually work. They do not need to be paid when the business is closed or closes early due to a weather emergency. As a side note, when paying a nonexempt employee on a salary basis, state laws may suggest treating compensation more like that paid to a salary exempt employee.

Exempt Employees – When the business is closed and salary exempt employees are willing and able to work, they must still be paid their full salary for the week if they perform any work during the week. However, if the business is open (or employees can work remotely), and employees choose not to work, they do not need to be paid for full-day absences, and the business may require use of vacation/PTO benefits. Salary may not, however, be reduced for partial day absences.

There Are Always Exceptions in Employment Law

Handbooks may provide for paid leave in the face of extreme weather. In particular, “cookie cutter” handbooks may contain hidden traps (which is our reminder that businesses should have their handbooks reviewed by employment counsel!). Similarly, union **collective bargaining agreements** or other inclement weather policies might create a requirement to pay for missed time.

In a developing national trend, even when the employer is open for business, state and local **paid sick leave ordinances** may require that employees be permitted to use available paid sick leave with little notice when, for example, a child’s school is closed due to a weather emergency. Employers should be sensitive to this issue, especially if they have not previously implemented written policies or complied with the requirements of these local ordinances.

Some state and local laws also require **reporting pay** when employees either report to work and are sent home before working their full shift, or when their schedule is changed or cancelled with insufficient notice. Such laws may apply to

weather closures.

Finally, **employee morale and goodwill** might dictate that an employer err on the side of paying for missed time.

Employers should review their employment policies in light of these developing laws and trends to make the determination of whether employees should be paid for a business closure or other weather-related absence. Experienced employment counsel should also be consulted to make sure the business is operating in a way that avoids needless wage and hour exposure.

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