

Emergency Closures and Paying Employees

Most employers, at some time, will have to deal with bad weather, power disruptions or other circumstances that may require closing business for a day or altering working hours. Following is a discussion on pay practices in such circumstances.

Must employees be paid if you have to close because of bad weather?

Maybe. (Would you have expected any other answer but “maybe” given the complexity of HR law?)

Severe weather can create many problems for employers. One common issue involves payment of employees if businesses are forced to close. Whether employees must be paid in such circumstances depends on a number of things including exempt/nonexempt status, the length of the closure (i.e., for a week, a day or a part day), and state law.

What’s exempt status got to do with it?

Remember that under the federal Fair Labor Standards Act (FLSA), to be exempt, an employee, generally, must be paid on a salary basis, among other requirements. To meet the “salary basis” test an employee must be paid a predetermined amount that can’t be reduced because of the quantity or quality of work performed, including partial day absences or lateness.

The FLSA regulations make clear that salary deductions because of “employer or...operating requirements” would violate the salary basis test. Therefore, if an exempt employee is “ready, willing, and able to work, pay deductions may not be made for time when work isn’t available.”

So if we close early because of bad weather or a power outage must we pay employees?

Exempt Employees: Yes. To do otherwise would violate the salary basis test.

Nonexempt Employees: Probably not unless yours is one of the states that requires that employees be paid a minimum amount of pay for reporting to work.

What if we close for a whole day or even 2 days in a week, must they be paid?

Exempt Employees: Yes, same answer as above. Exempt employees must be paid.

Nonexempt Employees: No payment is required.

What if the closure lasts a week or more?

Exempt Employees: No. The FLSA regulations provide that, generally, an employee need not be paid for any workweek in which no work is performed.

Nonexempt Employees: No payment is required.

Can we require that employees use vacation time if the business is forced to close because of emergency or bad weather?

Exempt Employees: The federal FLSA does not address vacation pay. In general, as long as exempt employees receive amounts equal to their regular salaries the FLSA isn't violated by substituting vacation pay. However, such an approach may create unintended problems, including serious morale issues, as some employees may have exhausted their vacation, thereby requiring that they be paid their regular checks, while others could be forced to use their vacation. Additionally, there may be state law requirements. Be cautious on this one.

Nonexempt Employees: Requiring a nonexempt employee to use his vacation days would be governed by company policy.

What if an employee is unable to leave work on time because of bad weather or other circumstances?

Exempt Employees: There is no issue regarding exempt employees who must be paid their predetermined regular salaries no matter how many hours they work.

Nonexempt Employees: If nonexempt employees work beyond their regular hours (or are allowed to do so) because they are "stuck" at work, they would need to be compensated. There may also be overtime implications.

What about state law?

Some states have "reporting pay" laws that require employees to be paid a minimum number of hours for reporting to work, even if they are sent home early. Some states also have exceptions to their reporting pay requirements and don't require such payments if the business closure results from threats to employees or property, recommendations by local authorities, public utility failure, or Act of God. Check your state law to determine if you're subject to these types of requirements.

What should our company do?

While your business may never be destroyed or seriously damaged because of bad weather, it's likely at some point that snow, ice, rain, power outages, or other cause may require you to close. Most states do not impose reporting pay requirements; however, you'll still need to determine how you'll handle the situation. Some companies voluntarily implement policies that provide nonexempt employees with a couple of hours of pay for reporting to work. Others allow employees to use vacation time if desired. Some simply pay their nonexempt employees only for their "hours worked." It's wise to plan ahead and decide what your approach should be.

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