



## Unpredictable Weather – What’s an Employer to Do?

Tis the season for winter weather woes – at least until this past week’s 65-degree weather in February! Since New England weather is so unpredictable, it’s also the time of the year when many employers are faced with the inconvenience of business closures. This leaves employers questioning how employees should be paid when the business shuts down or when employees cannot make it to work.

While most businesses have the option of whether they wish to close their doors during inclement weather, employers must understand how to pay employees to ensure compliance under the Fair Labor Standards Act (FLSA). The short answer to the question of how to pay employees is, it depends on whether the employee is exempt or nonexempt.

Under the FLSA, exempt employees must receive their full salary for any week in which he or she performs any work, regardless of the number of days or hour worked. There are a few exceptions but these don’t apply to inclement weather closures. Therefore, an exempt employees’ compensation is typically not affected in these circumstances. Employers however can debit an exempt employee’s accrued paid time off if this is expressly written in a policy. When there is no accrued paid time off available, or no policy that outlines expectations, exempt employees are still entitled to their full salary.

The only exception to this is when the business is closed for a full workweek, exempt employee need not to be paid if they perform no work whatsoever. If an exempt employee works remotely, checks an occasional email or takes a call, this is work performed and deductions from salary cannot be made and the employee should receive their full salary.

Nonexempt employees (hourly paid) must be paid for all time spent working. Whether the employer closes its doors or not, when a nonexempt employee does not work, they do not need to be paid. When a business closes early, nonexempt employees only need to be paid for the hours actually worked. The caveat to this is that some states have show-up or reporting pay regulations. In Massachusetts, if a nonexempt employee is scheduled to work for three or more hours, and reports for duty at their scheduled time and the employee is not provided with the expected hours of work, they must be paid for at least three (3) hours at no less than minimum wage.

Employers should be mindful that working remotely is considered work, which can include answering an email or a phone call. While telecommuting is increasingly popular, it can be problematic for employers to monitor and track time worked for nonexempt employees.

HR Knowledge recommends employers create an Inclement Weather policy so that you’re prepared in these situations. Having a well-crafted policy often takes away the guesswork on how to handle these situations by not only addressing how employees will be paid, but what the communication procedure is should the business close. Such policy should also highlight that safety is paramount when making decisions whether to report to work during periods of inclement weather when the workplace is open.

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