



## DEAR HRK

# How do we pay employees when our workplace closes due to weather?

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As children, being notified of a snow day was one of the greatest things that happened in our young lives. However, as a business owner, it can cause quite the disruption to your workplace. This is even true in places where snow is not a concern; instead it could be a hurricane, wildfire, or other natural disaster. When considering all forms of inclement weather, it's best to be proactive and have a policy in place addressing how the organization will notify staff in case of a closure, as well as any other expectations such as whether paid time off must be used, and how staff will be paid. This is especially helpful when your team does not have the ability to work remotely.

When it comes to pay obligations, federal and state wage and hour laws must be considered. The federal Fair Labor Standards Act (FLSA) governs most jobs and some of which are considered "exempt" from the FLSA overtime rules. This distinction is at the cornerstone of how to pay an employee when your workplace closes. Let's examine those nuances.

### **Exempt Employees**

Exempt employees must be paid a set salary each week. The FLSA does not permit employers to dock the salary of an exempt employee for partial or full days due to a workplace closure. If an exempt employee performs any work during that work week, they are entitled to their full salary. While there are limited circumstances where docking is permissible, in the case of a workplace closure, reducing pay is not allowed. Instead, an employer may require employees to use their accrued paid time off, but this should be outlined in a policy. If the employee does not have any

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time available, the employee must still be paid their full salary.

If your workplace remains open and an exempt employee chooses to stay home and not work that day, you could require the employee to use their accrued paid time off. If the employee does not have any time off available, and they are taking the entire day off for personal reasons, you may dock their salary. When docking pay, it's always wise to proceed with caution since the rules on reducing pay can be murky.

### **Non-Exempt Employees**

Non-exempt employees are entitled to overtime and can be paid hourly or salary. The FLSA requires that non-exempt employees be paid for all hours they work. If the workplace is closed and a non-exempt employee does not work from home, they do not need to be compensated for that day. The employee may use their accrued paid time off instead. Additionally, many states have what is referred to as "show up" or "reporting" pay. These rules require a certain number of hours be paid if a non-exempt employee is on their way to work or has already reported to work and they are sent home due to no work or a closure.

### **Paid Time Off**

Employers may require both exempt and non-exempt employees to use their paid time off when they do not work because of weather or other shutdown periods. Having these expectations communicated in advance, and in writing, is best practice. This will ensure consistency as well as mitigate unfair claims from staff. The exception to requiring the use of paid time off might be if an employee works in a state with mandated paid sick time, since this is protected time that can only be used for specific reasons.

### **Key Takeaways**

Having proactive verbal and written communication plans during periods of inclement weather is vital for not only wage and hour compliance, but also to ensure expectations surrounding accrued paid time off are understood. Including a written policy in your Employee Handbook sets clear expectations which can help keep your business operations, including payroll processing, moving along as inclement weather events unfold.

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