

Management Alert



If We Close Because Of The Storm, Whom Do We Have to Pay and How Much?

As Hurricane Sandy bears down on the eastern seaboard, employers should begin to plan ahead for any weather-related closures of their offices, factories or other facilities. The effect of a storm closure on compensation requirements varies for different types of employees and also varies by state.

Exempt Employees

Most employees who are exempt from federal overtime requirements and paid on a salary basis are not subject to reductions to their weekly salaries because of a closure. Even if an exempt employee misses a full day of work, the employer may not reduce the employee's weekly salary (unless the employee misses an entire work week). An employer that improperly reduces an employee's salary might lose or jeopardize the ability to treat the employee as exempt from overtime pay requirements -- potentially a very costly mistake.

Even though employers will almost certainly have to pay exempt employees their full salaries regardless of storm-related closures, employers do have the right to charge exempt employees for vacation or PTO for any work that they miss. However, employees who do not have enough accrued vacation or PTO to cover the closure must still be paid their full weekly salaries.

The legal rules for paying exempt employees apply in all states. Of course, in deciding whether to charge employees with vacation or PTO, employers may also want to consider non-legal factors such as employee morale and the organization's finances.

Non-Exempt Employees

For non-exempt employees, federal law requires only that employers pay employees for the hours they actually work.

Telecommuting

In assessing pay requirements for all employees, employers should keep in mind that, even if an office or other facility is closed, some employees might work remotely. Work performed remotely generally must be paid to the same extent as work performed on an employer's premises -- even if the employer did not request that the work be performed. Non-exempt employees working remotely must generally be paid at their usual hourly rate (and subject to the usual requirements for overtime pay).

Reporting Pay

Certain states that are in the path of the storm have additional requirements that apply to hourly employees who report to work when a facility is closed or not operating at full capacity. For example:

Connecticut has a reporting pay requirement that applies only to employees in the "Mercantile trade." Employees in that industry must be paid four hours at their regular rate of pay, if they actually report for work. The "Mercantile trade" is defined as the wholesale or retail selling of commodities and any operation supplemental or incidental thereto.

Massachusetts mandates reporting pay for non-exempt employees of at least three hours at the statutory minimum wage (\$8.00) if they are scheduled to work more than three hours on a given day and actually report for work. Employees

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scheduled for less than three hours need only be paid for their scheduled hours.

New Hampshire requires reporting pay for non-exempt employees who actually report for work of at least two hours at their regular rate.

New Jersey requires reporting pay for non-exempt employees who actually report for work of at least one hour at their applicable wage rate (unless, prior to this report to work, the employer already made available to the employee the minimum number of hours of work agreed upon for the week).

New York requires “call-in pay” for non-exempt employees of at least four hours, or the number of hours in the regularly scheduled shift (whichever is less) at the basic minimum hourly wage (\$7.25) for employees who actually report for work. However, a 2009 New York Department of Labor opinion letter interpreted the reporting-pay obligation as not applying if “the amount paid to an employee for the workweek exceeds the minimum and overtime rate for the number of hours worked and the minimum wage rate for any call-in pay owed.” Employees working in the hospitality industry may be subject to different requirements.

Washington, D.C., requires reporting pay of at least four hours at the statutory minimum wage (\$8.25) for non-exempt employees who actually report for work if they are scheduled to work for at least four hours. Employees scheduled for less than four hours need only be paid for their scheduled hours.

Some of the reporting pay requirements noted above may be waived if the employer makes a good faith effort to provide employees with reasonable advance notice that they should not report to work. Employers that foresee that their facilities will be closed should give employees who are scheduled to work as much notice as possible for both practical and wage/hour compliance reasons.

By: *Patrick Bannon*, *C.J. Eaton*, *Loren Gesinsky* and *Barry Miller*

Patrick Bannon and *Barry Miller* are partners in Seyfarth’s Boston office, *C.J. Eaton* is an associate in Seyfarth’s Boston office and *Loren Gesinsky* is a partner in the firm’s New York office. Employers with questions about the requirements summarized above or any other impacts that the storm may have on their legal obligations as employers are encouraged to contact the Seyfarth Shaw attorney with whom you work or Patrick Bannon at pbannon@seyfarth.com, C.J. Eaton at ceaton@seyfarth.com, Loren Gesinsky at lgesinsky@seyfarth.com or Barry Miller at bmiller@seyfarth.com.



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