

## Don't Flake Out on Inclement Weather Practices

This week's blizzard dramatically affected the region's workers and the business community, leaving many employers wondering about their employee payroll obligations when inclement weather causes workplace disruptions or closures. Below is an overview of certain key wage and hour issues that employers should consider to ensure that their employees are properly compensated during these challenging winter conditions.

### NON-EXEMPT EMPLOYEES

In the event an employer is unable to provide work or open an office due to severe weather conditions, the employer's payroll obligations largely hinge on whether employees are characterized as "exempt" or "non-exempt" from receiving overtime compensation. Employers are generally only required to compensate non-exempt employees for time actually worked. Thus, in the absence of a policy or agreement to the contrary, an employer is usually not required to pay non-exempt employees for missed worked occasioned by a blizzard or other weather-related incidents. Note that non-exempt employees should be paid for time worked from home. One exception to the rule that non-exempt employees must be paid only for time actually worked is where the employer pays a non-exempt employee utilizing the somewhat uncommon "fluctuating workweek" compensation method, i.e., where there is an agreement providing that the employee will be paid his or her full salary in any workweek in which he or she performs any work.

### EXEMPT EMPLOYEES

Personnel who are characterized as exempt from receiving overtime compensation must normally be paid their full salary for any

workweek in which they perform any work. Accordingly, to the extent an exempt employee performs any work in a week, the employee should receive his or her regular salary for days missed as a result of an office closure. On the other hand, employers are generally not obligated to pay exempt employees for days on which the employer's place of business remains open, but the exempt employee was unable to perform any work, for reasons such as mass transit shutdowns or other problems. Note that employers may deduct from an exempt employee's accrued paid time bank to pay such employees for time missed due to inclement weather.

### ON CALL & PAY REQUIREMENTS

A non-exempt employee who is required to be "on-call" or "waiting" (such as at or near the employer's premises for maintenance-related work) must generally be paid for that time to the extent the employee is not free to use such time for his or her own benefit. In addition, New York State law generally requires that employers compensate non-exempt employees who show up for work at least four hours at the minimum wage – even if they were instructed to leave work early. This requirement generally phases out for employees who earn more than the minimum wage in a workweek.

### CONCLUSION

As regular business operations resume, employers must be especially mindful of their payroll obligations to employees affected by inclement weather. Employers are also well-advised to draft and implement an inclement weather policy (such as in an employee handbook) and to review their written wage and hour policies with experienced legal counsel.

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