

Frequently Asked Questions When a Business Must Close Because of Inclement Weather... Such as Hurricanes

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As employers in Florida and throughout the Gulf Coast region have become painfully aware in the past two years, companies may be required to close because of dangerous inclement weather. Hurricanes Charley, Frances, Ivan, Katrina, Rita and Wilma have wreaked havoc and forced many business closures in anticipation of, during, and after the dangerous weather conditions and the resulting damage and loss of vital services. Many employers are puzzled about their obligations to their employees in terms of wages when business closures are forced by inclement weather.

Here are some frequently asked questions and answers:

Q. When a company closes because of inclement weather, must the company pay a salaried exempt employee for the day(s) when the business was closed?

A. The answer depends upon whether the business was closed for a partial or full week. On October 24, 2005, the Department of Labor issued an Opinion Letter which directly addressed this issue. The DOL opined that, "if the employer closes the business due to inclement weather or other natural disasters *for less than a full* workweek, the employer **must** pay the employee's full salary even if:

1. the employer does not have a bona fide benefits plan;
2. the employee has no accrued benefits in the leave bank;
3. the employee has limited accrued leave benefits and reducing the accrued leave will result in a negative balance; or
4. the employee already has a negative balance in the accrued leave bank."

Private employers, in this situation, may deduct from an exempt employee's leave bank for the day or days closed during a workweek, whether for full day or partial day's absences, as long as the employee receives payment in an amount equal to their guaranteed salary. If, on the other hand, the business is closed for a **full workweek**, the employer does not need to pay an exempt employee for the full week when the business was closed.

Q. When the company remains open during inclement weather or other types of disaster, may an exempt employee's leave bank be reduced or may the employer dock the employee's salary for a full day absence without jeopardizing the employee's exempt status?

A. Yes. Leave bank or salary deductions are permissible when the exempt employee is absent from work *for a day or more for personal reasons, other than sickness or accident*. An absence due to inclement weather is an absence for personal reasons. An exempt employee who does not have any accrued benefits in his or her leave bank does not have to be paid for the **full days** he or she fails to report to work because of inclement weather or other disaster. For an employee to be required to receive pay, the employee must be ready, willing and able to work.

Q. When a company closes because of inclement weather, must the company pay an hourly non-exempt employee for the day(s) when the business was closed?

A. No. The company is not obligated to pay an hourly non-exempt employee for the day(s) when the business was closed. Whether the company requires the hourly non-exempt employee to use his/her vacation days is a matter of company policy.

Q. If an hourly non-exempt employee is not able to leave the company's facility and go home, because of inclement weather, and continues to work, must the company pay the employee overtime for any hours worked in excess of forty (40)?

A. Yes. Non-exempt hourly employees who work more than forty (40) hours in a workweek must be paid overtime. Whether that employee also is entitled to premium pay for working during this time period is a matter of company policy.

Q. Must an employer pay an employee who reports to work and then is sent home because of inclement weather?

A. It depends. In Florida, there is no state law requiring employers to pay employees a minimum amount of pay for reporting to work in circumstances where the employee is then sent home due to inclement weather. It would be a matter of company policy. Some companies have policies that pay employees a fixed number of hours, for example two hours pay, for reporting to work even though the employee is sent home without having worked the two hours. The policy encourages employees to come to work when weather conditions may be uncertain but no decision has been made to close the business. Some states require pay in these circumstances and state law should be reviewed.

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