

## Employer Pay Obligations in Face of Disasters

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When unexpected natural disasters, such as Hurricane Sandy, impact an employer's ability to operate business as usual, employers are faced with last-minute decisions to close all or part of their operations or otherwise modify work schedules. An initial consideration for all employers is whether the employer has an obligation to pay its employees if they are unable to work due to the event.

With respect to non-exempt employees, there is generally no obligation under federal law or state law to pay for time not worked. However, under certain state laws, employers may have an obligation to compensate non-exempt employees under call-in/reporting pay laws, especially if the employees were not advised that they should not report to work and were denied work upon arrival at the workplace. Employers must become familiar with such laws and exceptions contained therein. If there is an applicable payment obligation, it varies by state. For example, non-exempt employees in New Jersey who report to work by request or permission of the employer must be paid for one hour at the applicable wage rate whether or not work is furnished, unless the employer has made available to the employee the minimum number of hours agreed by the employer and employee prior to the commencement of work on the day involved.

As to salaried exempt employees who federal law mandates must be paid on a "salary basis," employers may not make salary deductions for absences that result from an employer's partial-week closing of operations, including closings due to weather-related emergencies or disasters. Accordingly, absent any other permissible deduction, exempt employees must be paid their full salary if they perform any work in a workweek and only miss work time due to the employer's closure of operations. Closures for a full workweek need not be paid if no work is performed.

As a preventive measure, in anticipation of any potential emergencies, employers should establish procedures for communicating with employees regarding emergency closure and modified operations. Further, employers should consider whether they will mandate or permit use of accrued vacation or paid time off and whether their policies and applicable state law permit them to do so. With exempt employees, using paid vacation or paid time off generally resolves any issues related to "salary basis" compliance. However, employers should be careful when charging an employee's vacation or paid time off banks if the employee may have performed work from home during the closure.

Jackson Lewis attorneys are available to assist with this and other workplace issues.

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