

One Minute Memo[®]



Payment of Wages While on Lock Down

Employers in metro Boston awoke on Friday morning to an unprecedented lock down, with Commonwealth and city officials asking business to remain closed and individuals to remain in their homes while law enforcement officials continued with a manhunt for a suspect in the Boston Marathon bombings. As the tension from the manhunt begins to ease, employers may begin to wonder about their obligations to pay employees for work that they performed or missed during the lock down.

Exempt Employees

Salaried exempt employees generally will be entitled to receive their usual weekly pay, regardless of Friday's events. Most employees who are exempt from minimum wage and overtime requirements and paid on a salary basis are not subject to reductions to their weekly salaries because of a closure. Even when 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 workweek. Improper deductions from an employee's salary can compromise the employer's ability to treat the employee as exempt from overtime pay requirements.

While employers typically must pay exempt employees their full salaries regardless of closures imposed by the lock down, employers legally may charge those employees vacation or PTO for any work that they missed. However, even employees who do not have enough accrued leave to cover the closure must receive their full weekly salaries. Of course, in deciding whether to charge employees with paid leave in conjunction with the lock down, employers may also want to consider non-legal factors such as employee morale and the organization's finances.

Non-Exempt Employees

Employers are only required to pay non-exempt employees for the hours they actually work. There is, therefore, no legal requirement to pay hourly employees who stayed home and performed no work during the lock down. Again, non-legal considerations may motivate some employers to pay employees who were scheduled to work but prevented from doing so because of the lock down.

Employees who were scheduled to begin their work day early on Friday may have arrived at work before the lock down was imposed. If those employees had no work to do as a result of the lock down, they may be entitled to reporting pay. Massachusetts law requires that non-exempt employees receive at least three hours at the statutory minimum wage (\$8.00/hour) if they are scheduled to work more than three hours on a given day and actually report for work. Employees scheduled for less than three hours need only be paid for their scheduled hours.

Some employees who reported to work also may have felt that they needed to remain in place, at least until the government clarified that such individuals were free to return to their homes. To the extent that such employees continued to work while on their employers' premises, they must be paid their usual rates of pay. Unless the employer prohibited employees from leaving their premises, any individuals who had no work to perform or were completely relieved of duties during the lock down need not be paid for such non-working time.

Working from Home

In assessing pay requirements for all employees, employers should keep in mind that, even if a business 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).

The events that occurred following the Boston Marathon bombings have had a disruptive effect on businesses throughout the metro area. However, following the rules outlined above may help employers avoid further complications and be prepared for other emergencies that may arise in the future.

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