

One Minute Memo®



Weathering The Recent Storms in Texas: How to Compensate Employees for Lost Time

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In the wake of Houston's recent flooding, countless businesses closed their doors, and many individuals are coping with homes in disrepair. Texas employers wondering whether they must pay workers for lost time during inclement weather or clean-up work during the aftermath should follow a few simple rules from the Department of Labor ("DOL").

Rules for Exempt Employees

Closed For Business. An office closure may not affect the salary of an exempt employee. If the office is closed, employers may not make deductions from an exempt employee's salary. However, employers may require that exempt employees take vacation or paid time off ("PTO") to make up that time. If an employee does not have vacation or PTO days available, the employer can allow her to take the PTO or vacation day anyway and make it up at a later time.

Open For Business. If the office is open, and the exempt employee decides to stay home, employers may deduct that day's wages from his pay without violating the salary-basis. But beware. If the employee works any portion of the day, then the employer must pay him as though he worked a full day. This includes any work performed remotely.

Rules for Non-Exempt Employees

Whether the office is open or closed, employers are only required to pay non-exempt employees for hours worked. However, inclement weather often results in traffic delays. If the employee works during the delay (by taking phone calls or answering emails, for example), then she must be compensated for time worked. But not all situations are as clear-cut. Consider, for example, an employee who is stranded in an employer's vehicle and instructed to safeguard the vehicle. Or consider an employee who is instructed to transport or retrieve employees or company goods and gets stranded during the storm. In each of these situations, it is likely that the DOL or a court would later find that all of the time while the employee was stranded was compensable time. The cost of defending the claim and then paying the amount owed would exceed the cost of simply paying the amount in the first place. In these special circumstances, it makes legal and practical sense to pay

employees for this time.

Employees Who Volunteer For Clean-Up Or Recovery Work

It is an unfortunate truth that businesses are sometimes reduced to wreckage during inclement weather. Some are fortunate enough to also experience the goodwill of employees ready to help the company rebuild. Exempt employees who volunteer to help will not be entitled to any additional compensation. But remember that too much time spent on manual tasks or other tasks unrelated to their regular job duties could invalidate their exempt status and allow them to collect overtime compensation.

Non-exempt employees must be paid for all time worked, even if they offer to work for free, with one exception. Employers may accept free work from employees of government or non-profit agencies who volunteer out of public-spiritedness to perform work that is not at all similar to their regular duties.

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