

Management Alert



After the Storm: Workplace Safety and Wage & Hour Considerations

In the wake of Hurricane Sandy, thousands of businesses, schools and government offices face the challenge of cleaning up significant physical damage and trying to return to operation. For many of these employers, the unusual days ahead may require special attention to two important issues: workplace safety and employee compensation, in particular wage and hour issues.

Workplace Safety

In the wake of Hurricane Sandy employers need to keep in mind that storm cleanup poses significant hazards that must be addressed. Employees may be asked to perform tasks, or volunteer to undertake certain responsibilities, that are not within their regular job duties. Additionally, in the hurry to get our communities up and moving again, many unfamiliar hazards are easily overlooked by employers and employees. Even in these extraordinary circumstances, employers are responsible for the safety and health of their employees in the workplace and must take measures to prevent injury and illness. As the Occupational Safety and Health Administration urged in the days following Tropical Storm Isaac this summer, "Recovery work should not put you in the recovery room."

Cleanup Often Involves Unfamiliar Tasks and Hazards

Cleanup and recovery work presents a wide range of hazards that must be addressed by employers. Given that these hazards are unlikely to be the type regularly present in work environments, employers must pay special attention to cleanup activities and plan accordingly. Many of the hazards at issue can be minimized by knowledge, safe work practices and personal protective equipment. Before allowing or instructing employees to begin cleanup, each worksite and activity needs to be assessed to ensure the safety and health of employees.

Cleanup work may involve removal of floodwater from structures, entry into flooded areas, cleaning up debris and downed trees, exposure to hazardous substances, surface cleaning using unfamiliar chemicals, restoration of electricity, communications, structural repair and demolition activities. In the days and weeks following Hurricane Sandy, we can expect that many non-first responder employees, or others who are not traditionally involved in rescue, repair and recovery operations, will be performing work activity that necessarily involves exposure to conditions or substances that they have not been previously trained to handle. This lack of knowledge and training, paired with the nature of the hazards at issue, can lead to serious injury or illness.

Hazard Assessment and Protective Measures

The hazards posed by storm cleanup and recovery work may include illness from exposure to contaminated water, food, bacteria and fungi, exposure to the elements and/or heat stress, downed electrical wires, carbon monoxide and electrical hazards from portable generators, fall and "struck-by" hazards from tree trimming or working at heights, hazards posed by displaced animals, being caught in unprotected excavations or confined spaces, smoke from burning debris, burns, lacerations, musculoskeletal injuries, being struck by traffic or heavy equipment, and drowning or respiratory hazards from

being caught in moving water or while removing water from flooded structures.

Additionally, special attention should also be paid to HVAC systems. When submerged in flood waters, these systems may contain substantial amounts of dirt and debris and may also become contaminated with various types of microorganisms. HVAC systems contaminated with flood water must be properly cleaned and remediated to provide healthy indoor environments.

Protective measures should involve:

- Evaluating every work area for all hazards.
- Heeding all warnings and alerts from emergency management officials.
- Consulting with local emergency management and utilities.
- Task-specific hazard exposure monitoring where necessary.
- Engineering or work practice controls to mitigate hazards.
- Supplying and requiring appropriate personal protective equipment.
- Assuming all power lines are live.
- Ensuring proper hygiene procedures are in place.
- Using portable generators and other cleanup equipment correctly.
- Using proper precautions in traffic work zones.

No cleanup activity should be permitted where the hazards are unknown and cannot be properly addressed. When in doubt, do not permit employees to take on cleanup responsibilities and enlist the aid of qualified contractors.

Employee Compensation

In an earlier [Management Alert](#), we described how closing an office or other facility affects employee pay. Cleanup efforts and the reopening of a facility raise important questions about how to compensate employees, as well.

Employees Who Miss Work When The Employer Is Open

If an employee misses work on a day when an employer's business is open, the employer's pay obligations depend on whether the employee is exempt or non-exempt from federal overtime requirements.

If the employee is exempt and paid on a salary basis, the employee must be paid his or her full weekly salary unless the employee misses a full day of work. If the employee misses a full day of work for a personal reason, the employee's salary may be reduced to reflect the full-day absence. On the other hand, if the employee misses anything less than a full day, the employee must be paid his or her full weekly salary, without any deduction for the missed time. However, even when the employee must receive his or her full weekly salary, the employer may charge the exempt employee with use of vacation or paid time off (PTO), if the employee has any available.

If the employee is non-exempt from overtime, the employer is not required to pay the employee for any time that the employee misses.

Employers should keep in mind, however, that working from home or another remote location counts as work, for exempt and non-exempt employees alike. In addition, time spent putting on or taking off protective gear used for cleanup work may count as time worked. If a collective bargaining agreement (CBA) applies to an employee, the CBA may impose additional obligations regarding the employee's compensation or use of vacation or PTO.

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Employees Who Volunteer to Perform Cleanup Duties

If an exempt employee who is paid on a salary basis volunteers to help with an employer's cleanup efforts or volunteers to help otherwise in getting an organization back up and running, in many circumstances the employer will not be legally obligated to pay the employee anything more than his or her regular weekly salary. However, if the employee takes on new duties related to the cleanup for a sustained period of time, an employer may have to re-assess whether the employee remains exempt from overtime.

If a non-exempt employee volunteers to help his or her employer recover from storm damage, the employee generally must be paid for his or her time, even if the employee has agreed to work for free. An exception is when an employee of a government agency or non-profit organization volunteers out of public spiritedness to perform work that is not at all similar to his or her regular duties to help the agency or non-profit organization recover from the storm. In that limited situation, the employee's cleanup work may be uncompensated.

This alert only scratches the surface of the questions regarding workplace safety and employee compensation that the aftermath of Hurricane Sandy is likely to raise. For additional questions please contact Jim Curtis or Meagan Newman about workplace safety, Patrick Bannon or Barry Miller about employee compensation or the Seyfarth Shaw lawyer with whom you work.

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