PAYING EMPLOYEES
IN THE AFTERMATH OF A NATURAL DISASTER

By Christine Michelle Duffy, Esq.
Senior Staff Attorney
Pro Bono Partnership

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Following a natural disaster, employers may wonder if they must pay employees if their offices were closed, or if their offices were open and employees did not come to work. This article generally summarizes the relevant wage and hour rules. Please note, these rules may be subject to some exceptions, so employers should speak to an experienced employment lawyer if they need further guidance.

**Exempt Employees**

“White collar employees” – managers, professionals, and administrative personnel who satisfy the regulatory “duties” tests – are exempt from receiving overtime pay and normally must be paid their full salary in any workweek (i.e., the predefined seven-day pay period) in which they perform any work, regardless of the number of hours they work that week. There are several exceptions to this rule, set forth in the U.S. Department of Labor’s regulation 29 C.F.R. 541.602. (Note that Connecticut has not adopted all of the U.S. DOL exceptions, but has adopted the exception discussed below. See here.)

One of the exceptions is for personal absences of one or more FULL days due to personal reasons. Thus, if your office was open and exempt employees did not make it to work (e.g., because they were cleaning up from a flood or there was no available mass transit), you might not have to pay them for the full days missed. However, if the employees were periodically working from home (e.g., checking voice messages, returning e-mails, and/or preparing a submission to a funder), then you would have to pay them for the days on which they worked.

Please note that had you closed your office for part of the workweek and the employees showed up for work on the days the office was open, then the employees are entitled to their full pay for the workweek, even if they did not work from home on the days the office was closed.

**Nonexempt Employees**

With respect to employees who are nonexempt from overtime, generally an employer need pay them only for the hours they actually worked. Thus, regardless of whether your office was open or closed, if employees did not work, then you do not have to pay them. If employees worked from home, they must be paid for the hours they worked.

There are exceptions, including the following. First, if your office was open but closed early in anticipation of the storm, in addition to owing employees for the hours they actually worked that day, you may also owe them “reporting pay”. The rules relating to reporting pay vary by state:

1. Connecticut’s reporting pay requirements do not apply to employees who work in a general office environment, but do apply to employees in retail and wholesale businesses, such as stores and restaurants. Employers need to consult the specific Connecticut “wage orders” that apply to them. If reporting pay is due, then any employees who showed up for work and were told to go home before four hours were worked must be paid for four hours.
2. In New Jersey, once employees show up for work they must be paid for at least one hour’s work unless their normal workday is less than one hour.

3. In New York, any employees who showed up for work and were told to go home before four hours were worked must be paid “call in pay”, at the New York minimum hourly wage, for at least the lesser of (a) four hours and (b) the number of hours in the employees’ regularly-scheduled shifts. However, if the employees’ earnings, at their regular rates of pay, for the week for the hours they actually worked exceed what they would be paid if you multiply their actual hours worked and any extra call-in hours by the minimum wage, then no extra pay is owed for the non-worked call-in hours.

Second, some employers pay nonexempt employees a weekly salary using the fluctuating workweek payroll method. Those employees must be paid their full salary in any workweek in which they perform any work, regardless of the number of hours they work that workweek and regardless of whether they did not come to work during the storm, even if the nonprofit was open for business. However, if the employees took time off when the office was open, that time can be charged to the appropriate paid-time-off (PTO) account.

Finally, if your employees are unionized, there may be contractual obligations in the collective bargaining agreement regarding whether the covered employees are entitled to pay in connect with emergency situations and/or reporting pay.

Questions? Please contact your local Pro Bono Partnership office or visit our website at www.probonopartnership.org

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<th>Connecticut (outside of Fairfield County)</th>
<th>New Jersey</th>
<th>New York and Fairfield County, Connecticut</th>
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<tbody>
<tr>
<td>280 Trumbull Street 26th Floor 26103</td>
<td>300 Lanidex Plaza Suite 3203  Parsippany, NJ 07054</td>
<td>237 Mamaroneck Avenue Suite 300 White Plains, NY 10605</td>
</tr>
<tr>
<td>(860) 541-4951</td>
<td>(973) 240-6955</td>
<td>(914) 328-0674</td>
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