

# WAGE AND HOUR ISSUES IN INCLEMENT WEATHER BUSINESS CLOSURES AND REDUCTIONS IN HOURS

*Wage & Hour Alert*  
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With winter weather fast approaching and potentially forcing businesses to reduce or cease operations, employers are reexamining their federal and state wage and hour obligations to employees affected by weather-related office closures and reductions in work hours. This alert summarizes the key wage and hour rules implicated in such situations.

## **Overtime-Exempt Employees**

Subject to certain exceptions, the Fair Labor Standards Act (FLSA) requires employers to pay exempt employees their full salary for any week in which an exempt employee performs any work. An employer may not make deductions from an exempt employee's salary for absences caused by the employer or by the operating requirements of the business. If an exempt employee is ready, willing, and able to work, deductions from the employee's salary may not be made when no work is available. Thus, if a business is closed three days in a single week due to inclement weather, but an exempt employee performs work for the business for the rest of the week, the employee must receive his or her full salary for that week; no deductions from the predetermined salary may be made for the three days that the business was closed. However, if an employer's office is closed for the entire workweek and exempt employees perform no work that week, they do not need to be paid their regular salary for that week.

Employers may lawfully make deductions from exempt employees' salary for full-day absences due to personal reasons, other than sickness or disability. Thus, for example, if an office is open for business but an employee is unable to get to work because he or she lives in an area that has been affected by heavy storms (a personal reason), the employer may make a deduction from the employee's salary for a full day's absence.

Generally, deductions from exempt employees' salary for partial-day absences are prohibited. Therefore, an employer cannot reduce an exempt employees' salary by half of a day if the employee only works half of a day (for example, if the employee shows up to work late due to bad weather) or leaves work early (for example, if the office closes earlier to allow employees to arrive home before a snow storm).

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Exempt employees who are able to work remotely from home, even when their primary work location is closed due to weather-related problems, must be paid their full salary.

If an employer provides employees with paid time off, the employer may make deductions from exempt employees' paid time off accounts for absences occasioned by weather-related business closures or reduced work hours. Such deductions may be made in any amount, including partial days. If the employee does not have any paid time off accrued, however, no deductions may be made from their salary for any week in which they performed any work.

### Non-Exempt Employees

The compensation rules for inclement weather situations are somewhat different for non-exempt employees. Employers are not required to pay non-exempt employees' wages for any days that non-exempt employees do not work. Therefore, if a business is closed due to inclement weather, and non-exempt employees do not perform any work for the business during the closure, the business has no obligation to pay its non-exempt employees for time not worked. Importantly, non-exempt employees who work from home must be compensated for any time worked, even though the business might have been closed due to weather conditions.

### Other Considerations

Employers' wage and hour obligations with respect to non-exempt employees might be affected by state wage and hour rules. In New York, the Labor Law "call-in pay" provisions state that an employee who, by request or permission, reports to work on any day shall be paid at least the lesser of: a) four hours at the basic minimum wage rate; or (b) the number of hours in the employee's "regularly scheduled shift" at the basic minimum hourly rate. Call-in pay is due regardless of whether an employee is "called in" or simply reports for work as scheduled. Thus, for example, if an employee reports to work at his or her regularly scheduled time and, upon arrival, learns that the business is closed for the day due to weather conditions, a call-in pay obligation is potentially triggered if the employer failed to notify the employee not to come to work. Importantly, **for most employees**, there is no obligation to pay call-in pay if the total wages paid to an employee in a workweek involving call-in pay exceed the amount that would have been paid to the employee had he or she been paid at the minimum wage for all hours worked that week, plus any call-in pay owed. **However**, employers covered by the Hospitality Wage Order are not exempt from the call-in pay requirements, regardless of their employees' earnings.

**And of course**, unionized employers should consult any applicable collective bargaining agreement concerning wage and hour obligations during weather-related business closures or reductions in hours.

### Improper Deductions or Reductions in Pay

If an employer discovers that it has made **isolated** improper deductions from an exempt employees' salary because of a weather-related office closure, the FLSA contains a safe harbor provision, which provides that the exempt status of a category of employees affected by improper salary deductions will not be lost if the employer has a "clearly communicated" policy that prohibits improper deductions, provides for a complaint mechanism, and mandates reimbursement for improper deductions, and the employer makes a good faith commitment to comply with the FLSA in the future. Thus, employers should ensure their employee handbooks contain such policies and generally encourage employees to report any errors in

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pay, without fear of reprisal.

Should you have questions about this alert, please contact any one of our labor and employment attorneys.

