

The 2019 Polar Vortex – Were Employees Required to be Paid?

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02.22.2019

On two extremely frigid days at the end of January 2019, a polar vortex swept through the Midwest, forcing many employers to close their offices entirely and/or allow employees to work from home. Significantly, as discussed below, an employer's obligation to pay employees for these two days hinges on multiple factors, including whether the employer's office was open or closed on the days in question.

The federal Fair Labor Standards Act (FLSA) imposes certain requirements for compensating employees in the event of workplace closures due to extreme or inclement weather. These requirements differ for hourly, non-exempt employees and salaried-exempt employees.

If an employer closes its office due to extreme or inclement weather, the FLSA does not require the employer to pay hourly, non-exempt employees who do not perform work when the office is closed. Of course, if an hourly, non-exempt employee performs work at home (including on days when the office is closed due to extreme weather), he/she must be paid for all time worked.

As to salaried-exempt employees, if an employer closes its office for one or two days due to extreme or inclement weather, salaried-exempt employees must receive their regular salary for that workweek.

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However, if an exempt employee chooses to stay home for one full “extreme weather” day and does not perform any work that day (and the office was open), the employer may deduct from the exempt employee’s salary for one full day or require him/her to use earned, but unused vacation/PTO time. This deduction cannot take place, however, if the salaried-exempt employee actually performed work from home.