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Labor and Employment Update

Employer's Payroll Obligations following Hurricanes Irma & María

The following are some pointers on how to address payroll obligations when employees are absent because of personal predicaments or when the employer's operations are impacted by weather events such as hurricanes Irma and Maria.

Non-Exempt (Hourly) Employees

There is no statutory obligation to pay non-exempt employees when they do not work, either if they are absent, or if the employer has reduced operations, because of a weather inclement.

Exceptions: (1) If a contract, employee manual or collective bargaining agreement provides otherwise. (2) If the employee is "engaged to be waiting" for work, such as if required to be on-call on-premises or, in certain circumstances, off-premises.

Exempt Employees under FLSA and local Regulation 13

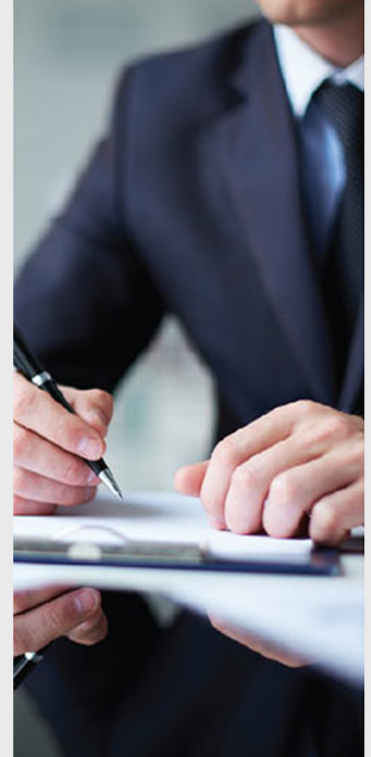
Generally, exempt employees must be paid a guaranteed weekly salary regardless of quality or quantity of work. Therefore, they are entitled to full weekly or daily pay, even if they only work a partial week or a partial day.

Exempt employees need not be paid:

- for any week in which they perform no work.
- for any full-day absences for personal reasons, other than sickness or accident. An absence due to inclement weather, such as because of transportation difficulties, is an absence for personal reasons.
- for a full-day absence due to sickness or accident if there is a *bona fide* paid leave policy in place and the employee has not yet qualified for leave or has exhausted it. A partial day absence must be compensated as a full day, but the employer can charge the partial day absence against accrued leave.

If an exempt employee is ready, willing and able to work, the employer may not dock his or her guaranteed weekly salary when work is not available. The employer has the following options in this scenario:

- Substitute accrued leave for the time an exempt employee is absent for lack of work.
- Allow an exempt employee to volunteer to take time off.



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- Prospectively reduce weekly salaries, though never below the \$455 minimum weekly guarantee, as part of a long-term plan, rather than a day-to-day or week-to-week decision.

Our attorneys at *Reichard & Escalera* are available to help you understand and manage payroll and other labor obligations that may arise in connection to these unfortunate weather events.

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