

Snowpocolypse Changes Inclement Weather Policies

By James Hammerschmidt

"Let it snow, let it snow, let it snow."

It's a nice little jingle, but I think most of us on the East Coast have had enough. The accumulation of white stuff - in record-breaking amounts for us Washington-area folks - has also resulted in calls from several clients concerned about their inclement weather policies, particularly in light of the snow's negative impact on productivity and profits. While employers in many locales across the country might have little occasion to consider or actually use their inclement weather policies, the massive amount of snow that blanketed the mid-Atlantic states this winter has employers in the region focused on implementing, and at the same time, re-considering such policies.

Leave policies for inclement weather are generally a matter of business judgment for employers. For example, they must decide whether to have their own standards for closing offices or to follow local, state or federal government closings. Employers must also choose whether to pay employees when the office is closed or require them to use leave or make up the time off.

A 2005 poll by the Society for Human Resources Management found that a substantial majority of employers pay their employees and do not require them to use leave time if an organization decides to close its offices. For those companies that do not adopt such an approach, however, the implementation of leave policies, particularly for exempt employees, can lead to wage and hour issues.

There are a few rules to follow to stay out of hot water:

Non-exempt employees do not have to be paid if they do not work. Thus, whether an employer decides to pay such an employee, not pay the employee or require a non-exempt employee to use leave, does not matter under the law. If a policy requires use of leave and the non-exempt employee does not have any accrued leave, the policy may provide as well that such an employee is not paid. Be careful, however, because in situations in which an employee does any work from home or other remote location, an employer should require that the employee record the time and the employer is required to pay the employee for time worked.

Applying inclement weather policies to exempt employees is trickier. First, if an exempt employee is ready, willing and able to work, deductions may not be made for time when work is not available or when an absence is occasioned by the employer or the operating requirements of the business, i.e., inclement weather. The Department of Labor specifically states that it is improper to make deductions from an exempt employee's salary because the employer was closed due to inclement weather. Additionally, as a practical matter, many exempt-type employees will work remotely even when they cannot get into the office or will go to the office for only a few hours. The wage laws are clear that in such cases an exempt employee must be paid for a full day's work. In fact, with limited exception, an exempt employee must be paid a full salary for any week in which the employee performs any work.

So, what can an employer do?

? If an employer's office is closed due to inclement weather, the employer can require exempt employees to use accrued leave if it is for a full day absence and the employee receives a full day of pay through the wage replacement benefit. In the event an exempt employee does not have any accrued leave, the employer could conceivably create a negative leave bank. However, doing so can create a dangerous situation because, if the employee's employment ends prior to going into the black with accrued leave, the employer cannot deduct any wages from the employee's last paycheck for the negative balance. In other words, if the employer's office is closed, exempt employees must either be paid or use paid leave, and the employer may not reduce the wages of that employee due to inclement weather.

? If an employer's office is open with liberal leave (or an equivalent), an employer may dock an exempt employee for a full day's pay, if the employee elects not to come to work and does no work from a remote location for that day. Again, a big word of caution – if an exempt employee checks his PDA, checks voice mail, works on the home computer, etc., the employer may not dock the employee's pay.

While those of us in the Washington, D.C. area and other cities along the East Coast hope that the largest snow accumulation in recorded history is complete, Mother Nature is unpredictable. Please contact us if you need any assistance in developing an inclement weather policy or avoiding any pitfalls when implementing such a policy.