

Is Your Business Prepared for Winter Weather?

Strategies for Employers Facing Inclement Weather

by NICOLE ELGIN, Attorney, Barran Liebman

As we head into the coldest winter months, employers should prepare for inclement weather. From deciding when to close the office, from how to notify employees, to how to pay employees for closures, this article provides a guide to prepare employers for inclement weather days.



Deciding to Close the Office

Whether or not to close the office can be a difficult and important decision for companies. There are many factors to consider, including personnel safety, business productivity and deadlines, and whether to pay employees when the office closes. Employers should prepare by designating one person in management with the task of deciding whether to close the office. That way, when inclement weather does arise, the company does not have to spend time deciding who will make the call, and can instead focus on what call to make. Additionally, employees will know exactly who to contact for office closure questions.

Having a Notification Plan

Once employers have established the decision-maker for office closures, they should also ensure they have a proper notification system implemented. For many important reasons, including safety and childcare, employers should be prepared to notify employees as soon as possible of office closures. Employers want to avoid having employees attempt the commute in bad weather just because they did not find out about the office closure early enough. Additionally, employers may notify employees even if the company decides to stay open or when reopening the office. During bad weather, employees sometimes assume that the company

will close and sending a reminder to employees that you are remaining open will help prevent no-shows. Depending on the company, these notification procedures may also include contacting your clients, customers, or vendors. This is especially important for companies with storefronts regularly open to the public or those businesses with appointments scheduled throughout the day.

The type of notification system to implement often depends on the size of the employer, regular modes of communication with employees, and customer or client needs. For large companies, an inclement weather call line is often the best solution. All employees are notified to call into the phone number that will have information on any delayed openings or closures. Additionally, posting delays or closures on a company website can be a good backup notification system. Smaller employers may use a phone tree or a policy for management to call or text each employee individually. Emailing about office closures may not be the best option where not all employees have company emails, or where some employees do not have remote access to email or do not check email early in the morning.

Adjusting Payroll for Inclement Weather Absences

First, if a non-exempt employee is absent for work but the company has not closed, payroll should treat the time as a personal absence. The Department of Labor (DOL), a federal agency that enforces wage and hour law, considers an absence due to adverse weather conditions to be an absence for personal reasons, such as when transportation difficulties during a snow emergency cause an employee to choose not to report for work. In addition, under Oregon's Paid Sick Time Law, school closures are not a covered absence, so employees should not be permitted to use Paid Sick Time to cover such absences. However, depending on the company's policies, employees may be able to use

available paid time off (PTO) to cover the absence.

If a company decides to close the office, or for exempt employee weather-related absences, payroll needs to understand how the closures will affect those employees' pay. Both state and federal laws require employers to pay some employees even on inclement weather closure days, depending on whether the employee is exempt from overtime. Under the Fair Labor Standards Act (FLSA), non-exempt employees need to be paid for any time that the employee actually worked. So, any employees that are non-exempt and do not perform any work for the day will not need to be paid on days that the office closes.

However, salaried employees that are exempt from overtime are trickier. DOL regulations explain that if an exempt employee is "ready, willing, and able to work, deductions may not be made for time when work is not available." If the exempt employee performs any work, such as checking email, even if not in the office, the employee must be paid for the full salary day. Where an exempt employee performs no work at all in a workweek, employers may be able to direct the employee to use PTO, but typically only if the employer has already provided written notice of this policy. If the business is closed for the entire week and the exempt employee performs no work at all, the employer may deduct the week's pay.

Check Your State and Local Laws!

Many state and local laws have additional requirements for inclement weather days, especially for public employers. Employers should check any applicable state and local laws to ensure their inclement weather policy is compliant on all fronts.

For questions on how employers can prepare for inclement weather, contact Barran Liebman attorney Nicole Elgin at 503-276-2109 or nelgin@barran.com