

## WHO'S AFRAID OF A LITTLE SNOW?

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Lots of folks may dream of a white Christmas, but healthcare employers often struggle with handling weather-related disruptions, such as snow days in the workplace. Even in a hospital, some departments or free-standing satellite facilities must deal with such events. Healthcare employers should therefore implement policies addressing inclement weather, including how employees can find out how a facility's schedule may be changed and what they should do if the facility is open, but they are unable to make it to work due to the weather.

These issues are tricky, as healthcare entities must provide continuity of care, while ensuring that employees are not taking unnecessary risks in commuting to work. In addition to dealing with scheduling and commuting issues, facilities must also ensure that employees are paid properly.

### THE LEGAL STANDARDS INVOLVED

When reviewing your policy, your first concern should be to ensure that it makes sense for your organization. Second, make sure that the policy explains what occurs when employees wake up in a winter wonderland (or face flooding, storm damage, or some other natural disaster). In handling these scenarios, companies must comply with the Fair Labor Standards Act (FLSA).

Employees are treated differently under the FLSA, depending on whether they are classified as non-exempt or exempt. Briefly, non-exempt employees are those who are entitled to overtime pay. Exempt employees are those who are paid on a salaried basis, *and* also meet specific legal requirements to be exempt from the overtime pay requirements.

## **PAY NON-EXEMPT EMPLOYEES FOR TIME SPENT WORKING**

Compliance with the FLSA for non-exempt employees is straightforward: non-exempt employees are only paid for hours worked. Absent some contractual obligation (such as an individual employment agreement or a union contract) a company does not have to pay non-exempt employees when they miss work due to snow or other inclement weather. Also, non-exempt employees can be required to use vacation time for an absence due to inclement weather (even for a half-day).

Of course, before implementing such a policy you should consider how disgruntled your employees may be if they're required to use vacation time when missing work. Employees are more likely to favor a policy that allows them to choose whether to use a vacation day to cover their absence due to inclement weather or to simply not be paid if they are saving vacation for special plans.

## **EXEMPT EMPLOYEES MUST BE PAID WHEN OPERATIONS ARE SUSPENDED**

Exempt employees must be paid their full salary for any week in which they perform work. Accordingly, if you are shut down for business for three out of five days during the workweek, the exempt employees must be paid their normal salary for the entire week. To do otherwise signifies that an employee is not exempt.

The FLSA does not require employers to provide paid vacation or time off for any employees, exempt or non-exempt. But when an employer does have a vacation or PTO policy that covers exempt employees, it may substitute or reduce the accrued leave for the time an employee is absent from work. Even if the substitution is for less than a full day, it will not affect the classification of the employee as exempt. Either way, if the exempt employees work for a small portion of the workweek, they must be paid for the entire week, even if the employer's operations are closed for a portion of the week.

## **WHAT IF YOU ARE OPEN, BUT EXEMPT EMPLOYEES ARE SNOWBOUND?**

The above discussion assumes that the company shut down due to inclement weather. What should a healthcare employer do when it stays open and the employee is unable to come to work? The U.S. Labor Department finds that if the employer is open for business and an exempt employee chooses not to report to work (or is unable to report), the employer may count this as time-off for personal reasons.

Under the FLSA, you can take deductions from an exempt employee's salary or leave time for absences due to personal reasons, so long as time is not deducted for sick leave. The sole caveat is that a company may deduct from an exempt employee in

this scenario in full-day increments only, not for half-days missed. Thus, if your exempt employee shows up for work at noon and works until 6 pm, you will not be able to deduct from his or her pay.

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