

## “DON'T COME IN TO WORK TODAY”

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Even here in Maine, where we take pride in not letting winter slow us down, there are days when it just doesn't make sense to get out of the house. This past winter was a tough one to say the least – for much of the country it was one of the worst on record. Recent rains in parts of the west raise the specter of flooding and mudslides, and in the south hurricane season begins in June.

Employers may want to put a policy in place to address those occasions when, due to the weather or other emergency, the workplace must be closed or particular employees can't make it to work. In implementing such policies, you'll also need to take into account differing legal rules regarding leave time, and payment to exempt and nonexempt employees under both the Fair Labor Standards Act (FLSA) and state law.

### THE BASICS

A Weather/Emergency Closing Policy should address not only winter weather circumstances but any other weather event or emergency that would force a workplace closure. Your policy should address possible grounds for closure, such as snowfall levels, loss of power, hurricanes, governor-declared shut downs, and so on. Depending on your circumstances, certain events could constitute an automatic closure or put employees on notice that they need to check in or take other steps to determine whether there is a closure. Your policy should include means for employee notification, such as call or text trees, radio-station announcements, website or twitter notices, and so on.

You should also address situations in which particular employees may not be able to make it to work, for example, due to local road closings or power outages, unsafe driving conditions, and so on. Advise employees that they should not attempt to

travel to work in unsafe conditions, and that they should take steps to notify their supervisors as soon as possible. Your policy should also address whether and to what extent employees may (or must) work from home.

In addition, there may be times when you will want to close your facility early due to weather conditions, and your policy should address how that decision will be made and how employees will be paid for partial-day closings.

## IMPORTANT DETAILS

How you pay your employees in the event of a closing or inability to make it to work will depend on whether the affected employees are exempt or nonexempt under applicable wage and hour laws. Remember, wage and hour laws are fact specific, and these guidelines offer general rules only.

In general, you cannot dock an *exempt employee's* salary unless *the employee* chooses to miss a full day for personal reasons. So, if *you* are forced to close your office for the day due to the weather, you *cannot* deduct a day of pay from your exempt employees' salaries. On the other hand, if your office is open, you *may* (but you do not have to) deduct a day of pay from exempt employees' salaries if the exempt employees are unable to report to work.

If your workplace is closed for only a partial day, or if exempt employees leave early to get a head start on a storm, you may *not* make a partial deduction from your exempt employees' salaries (although you *may* make a deduction from the exempt employees' paid leave banks for the partial day of missed work).

Conversely, you generally do not need to pay *nonexempt employees* for any time that they do not report to work – whether or not the workplace is closed or the particular nonxempt employees are unable to make it to work. But you may choose to implement minimum report-for-duty pay rules, such as guaranteeing at least four hours of pay if an employee reports to work but is then sent home early due to weather (or other) conditions. Collective-bargaining agreements will likely affect your leeway in such cases. And remember that in making these types of decisions, you should consider employee morale and expectations, in addition to what you may or may not do under the law.

In implementing your policy, remember to consider employee injuries and transportation accidents, power outages and loss of electronic communications, responsibility for employee notifications, back-up energy requirements, and addressing conditions in and around the workplace. For additional safety information, the Occupational Safety and Health Administration ("OSHA") offers helpful information on conditions that lead to stress, frostbite, and hypothermia.

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