



# As Winter Approaches, Prepare Your Workplace For The Cold November Rain

Insights

11.01.19

Tastes may differ, but there can be no dispute that the [music video](#) for “November Rain,” the ultimate power ballad by the ultimate Hair Nation band of the 1980s, Guns N’ Roses, is the best video ever created. It’s like a mini-movie. Is there a more iconic image than Slash playing his guitar solo in the yard of a church in the middle of nowhere? And the song – with its piano, violin, and guitar solos – is like nothing else. Axl Rose reportedly worked on the lyrics for the song for nearly a decade.

And so, as November arrives, we are reminded not only of this music legend but also of the effects of cold weather on workplaces across the country. This article will focus on four risks that cold weather may bring: how to properly compensate your workers during weather-related absences, the dangers of this year’s flu season, how to limit risks associated with cold-weather exposure, and making sure your company holiday party doesn’t lead to a lawsuit, all narrated by the lyrics of the best monster ballad of all time.

## ***Everybody Needs Some Time On Their Own: Paying Employees During Snowstorms***

First and foremost, you should plan ahead and develop policies addressing inclement weather. These include how employees can find out if the business is open, how their schedule may be changed, what they should do if they are unable to make it to work or continue working due to the weather, and any reporting time rules for compensation that may apply under state law. If you already have such policies on the books, now is the time to review them to make sure they are up-to-date, compliant with applicable wage and hour laws, and reflect the current company philosophy on these issues. Keep in mind technology advances, like group text messaging, when analyzing the best ways to communicate with employees during weather events.

### ***Legal Standards***

In addition to dealing with scheduling and commuting or travel time issues, you must also ensure that employees are paid properly. Your company must comply with the federal Fair Labor Standards Act (FLSA) and any associated state or local wage and hour laws.

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

exempt from the overtime pay requirements. In addition, conditional exemptions from overtime may be available for eligible outside or inside salespersons provided all requirements are satisfied under local, state, and federal laws.

### ***Pay Non-Exempt Employees For Time Spent Working***

Compliance with the FLSA for non-exempt employees is fairly straightforward: you only have to pay non-exempt employees for hours they work. Absent some contractual obligation (such as an individual employment agreement or a union contract) or obligations arising under public policy (e.g., reporting time regulations), you do not have to pay non-exempt employees if they miss work, in whole or in part, due to snow or other inclement weather. Also, non-exempt employees may 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 might be if they are forced to use vacation time when missing work. Your employees are more likely to favor a policy that allows them to choose whether to use a vacation day to cover their winter-related absence, or to simply not be paid if they are saving vacation for special plans.

### ***Exempt Employees Must Often Be Paid When Operations Are Suspended***

Exempt employees are different. You must pay them their full salary for any week in which they perform work. So, for example, if your company is shut down for three out of five days during the workweek, you must still pay the exempt employees their normal weekly salary. To do otherwise signifies that an employee is not exempt and might lead to costly litigation.

The FLSA does not require you to provide paid vacation or time off for any employees, exempt or non-exempt. But if you have a vacation or PTO policy that covers exempt employees, unless otherwise prohibited by local or state law, you 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 your operations are closed for a portion of the week.

### ***What If Exempt Employees Are Snowbound?***

The above discussion assumes that your company is shut down due to inclement weather. What should you do when you stay open but the employee is unable to come to work? The U.S. Department of Labor says that if you are open for business and an exempt employee chooses not to (or is unable to) report to work, you 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 other than sick leave. The sole caveat is that you may deduct from an exempt employee taking personal leave in full-day increments only, not for half-days missed. Thus, a salaried exempt employee who misses a full day of work due to personal reasons generally may receive a deduction of the day's salary, although some restrictions may apply (for example, if an employee works remotely by checking emails or performing work at home). Thus, if your exempt

employee shows up for work at noon and works until 6 pm, you will not be able to deduct from their pay (although you may be able to reduce the vacation leave bank).

For more information, contact the authors at [CLeyes@fisherphillips.com](mailto:CLeyes@fisherphillips.com) (901.526.0431), [RMenaghello@fisherphillips.com](mailto:RMenaghello@fisherphillips.com) (503.205.8044), [JSkousen@fisherphillips.com](mailto:JSkousen@fisherphillips.com) (949.798.2164), or [TVance@fisherphillips.com](mailto:TVance@fisherphillips.com)

**Related People**

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**David Klass**  
Partner  
704.778.4163  
Email



**Courtney Leyes**  
Partner  
901.322.1656  
Email





**Richard R. Meneghello**  
Chief Content Officer  
503.205.8044  
[Email](#)



**John K. Skousen**  
Partner  
214.220.8305  
[Email](#)





**Travis W. Vance**  
Regional Managing Partner  
704.778.4164  
Email

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