



# Employment Law And Disasters, Natural And Otherwise

Publication

5.28.13

In addition to myriad social, emotional, security and economic issues, the Boston Marathon bombings raised employment law implications for affected businesses and employees.

The tragic bombings forced businesses and even the City of Boston itself to close. The aftermath of the blasts also prevented employees who wanted to work from getting to their places of business. The effect was similar to the disruption often caused by major storms or other natural disasters. What are employers' obligations in such circumstances? Here are a few of the employment law issues that may arise during or after a disaster.

**Wages:** Whether employers have a legal obligation to pay wages depends on whether the employees involved are exempt under the Fair Labor Standards Act. Hourly, or nonexempt employees, must be paid only for actual time worked. Therefore, if hourly employees were unable to work either because their employer was closed or they could not get to work, they are not entitled to payment. The law regarding exempt employees is different. Exempt employees, such as administrators and managers, are paid on a salaried basis under the FLSA. Under the law, an employee must be paid the full salary for any week in which he performs any work at all. If an employer closes the business for any reason – such as weather, the Marathon bombing, a power outage or the like – it must pay exempt employees their full salary for the week in order to maintain their exempt status.

**Family and Medical Leave Act:** The FMLA grants eligible employees leave for their own serious health condition or the serious health condition of a child, spouse or parent that may arise as a result of a disaster.

**Americans With Disabilities Act:** If there is a disruption caused by a disaster, employees with disabilities may in certain circumstances be entitled to a reasonable accommodation by the employer so long as it does not constitute an undue hardship on the employer's business.

**National Labor Relations Act:** Employees who refuse to work in what they consider an unsafe workplace may be protected under Section 7 of the National Labor Relations Act, 29 U.S.C. §157, which protects "concerted activity" by employees. In addition, Section 502 of the Labor Management Relations Act, 29 U.S.C. §143, protects employees from discharge for refusing in good faith to work in "abnormally dangerous conditions."

**Occupational Safety and Health Administration:** Employees have the right to refuse to perform a job if they believe in good faith that they are exposed to an imminent danger. “Good faith” means that even if an imminent danger is not found to exist, the worker had reasonable grounds to believe that it did exist. In such circumstances, there must not be sufficient time to wait for an OSHA inspector to arrive.

Natural and other disasters will, unfortunately, recur. Employers who develop disaster plans should give due consideration to the employment-related issues that are likely to arise.

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This article appeared in the May 28, 2013 issue of the *Idaho Business Review*.

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