

Insights, News & Events

WINTERIZING EMPLOYMENT POLICIES TO HELP INSULATE FROM LIABILITY & COSTS

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Gabe McGaha's article "Winterizing Employment Policies to Help Insulate from Liability & Costs" was featured in the *Greater Memphis Chamber's* February Newsletter.

Although Punxsutawney Phil predicted that spring is just around the corner, two weeks ago, milk, bread and batteries were scarce commodities in Memphis, as the city braced for a winter storm of epic proportions. Fortunately, the snow bluffed. The season is not yet over, however, and it is never too late (or too early) for employers to take steps to winterize their policies to help insulate themselves from liability and costs.

Under the Fair Labor Standards Act (FLSA), employers are required to pay non-exempt employees only for the hours they worked, even if the employees were scheduled to work more hours and were sent home or work was canceled due to inclement weather. If, however, exempt employees are ready, willing, and able to work, an employer may not make deductions in their pay when work is not available. In other words, weather conditions do not affect an employer's obligation to pay exempt employees (unless the business is closed for a week or longer). Employers who improperly deduct pay from an exempt employee due to a weather closure risk losing the employee's exempt status.

Because exempt employees' pay is largely driven by productivity, the obligation to pay employees when they are not "productive" can have a chilling effect on the employer's willingness to keep exempt employees on the payroll. While this FLSA rule is not likely to change any time soon, employers can take steps to control costs and prevent liability by requiring that employees use paid time off (PTO) when the office is closed due to weather.

In the article, Gabe provides advice on how to write a predictable and clear policy requiring that employees use PTO due to inclement weather.

The policy should:

- Be disseminated to all exempt employees (before the inclement weather occurs);
- Address what constitutes inclement weather;
- Address how exempt employees will be required to use PTO;
- Address whether employees who have not accrued enough PTO to cover the absence will have it deducted from future PTO accrued;
- State that if an exempt employee has not accrued enough PTO to cover the absence, the employer will not deduct the difference from employee's salary;
- Include alternatives to using PTO for employees who are able to work remotely from home.

While the weather is not always predictable, how employers respond to inclement weather conditions should be. By creating a PTO policy that contemplates office closures due to weather conditions, employers can prevent a hail storm costs and liability issues down the road.

To read the full article, please visit the [Memphis Chamber](#).