
Pay for Weather-Related Business Closing

Question: Our business closed for three days last week because of a power outage. Do we have to pay our employees for these days?

Answer: The answer depends on whether your employees are nonexempt or exempt under the Fair Labor Standards Act (FLSA).

When your business is closed because of a power outage, inclement weather, or any other reason, you generally are not required to pay nonexempt employees since the FLSA only requires payment to these employees for time actually worked. Many employers grant nonexempt employees an authorized day off without pay when their offices are closed because of weather emergencies. Others allow nonexempt employees to use any paid time off so that they do not lose income during the closing. Some will even provide paid days off, though you are not required to do so.

Exempt employees, however, must be paid unless they are off for a full workweek. According to interpretations of the FLSA by the Wage and Hour Administrator, if you are closed because of inclement weather, you cannot make deductions for full-day absences from an exempt employee's salary, since the absences are considered to be occasioned by the employer. See Wage and Hour Admin. Op. Ltrs. FLSA 2005-41 (10/24/05) and FLSA 2005-46 (10/28/05).

The FLSA exemption regulations specifically do not allow deductions from an exempt employee's salary for absences occasioned by the employer or by the operating requirements of the business. If the exempt employee is ready, willing, and able to work, deductions may not be made for time when work is not available. See 29 C.F.R.

§541.602(a). Payment, however, usually is not required if the exempt employee does not perform any work during the entire week. See 29

C.F.R. §541.602(a).

On the other hand, the Department of Labor (DOL) treats the situation differently when you are open for business. It has indicated in two opinion letters that if the employer is open for business and an exempt employee does not come to work that day, you may require the employee to use a paid vacation day. See Wage and Hour Admin. Op. Ltrs. FLSA 2005-41 (10/24/05) and FLSA 2005-46 (10/28/05). So, for example, in *Kennedy v. Commonwealth Edison Co.*, 410 F.3d 365 (7th Cir. 2005), the court found that an employer's snow day policy requiring employees to use paid leave did not violate the FLSA salary basis requirements.

Further, if the exempt employee does not have any paid time available, you may dock the employee for a full-day absence. In its letters, the DOL reasoned that the absence is a personal day since the employee chooses not to come to work. See Wage and Hour Admin. Op. Ltrs. FLSA 2005-41 (10/24/05) and FLSA 2005-46 (10/28/05).