

MUST EMPLOYEES BE PAID WHEN THE OFFICE IS CLOSED

by
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Given the recent severe weather events and this past Winter's snow, it is important for agency owners and employees alike to be aware of the rules applicable to the payment of employees when the agency office is closed due to such events. As with any question regarding the payment of employees, the analysis begins with the federal Fair Labor Standards Act ("FLSA"), which set the rules for how long employees may be required to work and how much they must be paid for the time spent working. State law may supplement the rules established by the FLSA, but since Georgia is an "at will" employment state and has no applicable law regarding this subject, the FLSA's rules are the only ones that agency owners and employees need to be familiar with.

Under the FLSA, employees are divided into two main groups, those who must be paid overtime pay for any time worked in excess of 40 hours in any one work week (known as "nonexempt employees") and those who are not required to be paid overtime pay regardless of how many hours they work in any one work week (known as "exempt employees"). How you determine whether a particular employee is a nonexempt or exempt employee is beyond the scope of this article, but there is one important requirement for exempt employees that is relevant to its subject and explains why the two types of employees are treated differently. As a general rule, to be an exempt employee, the employee must be paid on a fixed salary basis in an amount that equals at least \$455.00 per week. As defined by the FLSA, the employee must "regularly receive each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed."

Nonexempt Employees

Since nonexempt employees can be paid on either on an hourly or salary basis and the amount of their pay can fluctuate depending on how long they work during any particular pay period, as long as they are paid overtime for any work done in excess of 40 hours per work week, they do not have to be paid when the agency's offices are closed due to severe weather or for any other reason. In addition, if the agency's offices are closed for less than a full day, as for example when they open later than normal or close earlier than normal due to hazardous travel conditions, nonexempt employees need only be paid for the time they were actually at work on that day. However, if a nonexempt employee performs work while at home on such a day, either at the agency owner's request or on their own, they must be paid for the time they performed such work. Needless to say, if the agency's offices are open, but a nonexempt employee does not come in to work for any reason, they need not be paid anything for that day.

Exempt Employees

The requirement that exempt employees be paid on a fixed salary basis means that if they perform any work during a work week no matter how little they do and they remain ready, willing, and able to perform work during the rest of the work week, they must be paid their full salary for that week. The Department of Labor, which is responsible for the enforcement of the FLSA, has determined that the closure of a business by the owner due to

severe weather or for any other reason will not relieve the owner of paying the salary owed to an exempt employee, unless that closure is for a full work week.

However, if the business has a paid vacation or other time off policy that is applicable to an exempt employee, the employee may be required to use any available portion of their paid vacation or other time off for any day that the business is closed due to severe weather or any other reason. Such a use of paid vacation or other time off can also be required if the business opens late or closes early on any work day, but only in accordance with the policy provisions (e.g., if the policy specifies that paid time off can only be taken in four hour increments and the office opens less than four hours late or closes less than four hours early the exempt employee can not be required to use such time off). In addition, if the exempt employee does not have enough unused paid vacation or other time off to cover the time period that the office is closed during any one work week, the employee must be paid their full salary for that work week.

As with the nonexempt employee, if the agency's offices are open and an exempt employee does not come to work for any reason (even if they are "snowed in") for the full day, their salary can be reduced for that day's absence from work. But if the exempt employee makes it into work late or leaves early, their salary can not be reduced by any amount. Similarly, if an exempt employee performs any work from home on a day when the office is open, their salary can not be reduced.

This article is not intended to provide "legal advice" on the issues discussed in it. It is only for information purposes. The reader should seek advice from an attorney who is knowledgeable in this area of the law about their specific situation before acting. For other articles of interest to insurance agencies and agents, please see the website of Joyner & Burnette, P.C., at www.decaturlaw.com.

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