

General Counsel Column

Tips for Employers on Weathering the Storm This Winter

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In case the recent snowpocalypse didn't remind you, winter is here in all its glory. While for many, freezing temperatures bring thoughts of sledding, skiing or drinking hot chocolate by the fire, they can cause a host of employment-related complications for unprepared employers. Here's a quick reference guide to help you get prepared the next time inclement weather hits:

Wage and Hour Issues

Whether you're closing the office early or giving employees an entire snow day, the first question is often what - if anything - employees must be paid. The (dreaded) answer is that it depends. Generally, employers are obligated to pay non-exempt employees only for hours worked. Although some states have laws requiring "show-up pay," Oregon does not; nevertheless, employers should review their policies and employee agreements to ensure that no such compensation has been promised. Additionally, employers should be mindful that many non-exempt employees may continue working during a closure, whether due to a regular telecommuting arrangement or simply because they have an iPhone with access to work e-mail. All hours worked must be paid, regardless of where they are worked.

Exempt employees, on the other hand, are entitled to their full salary for any week in which they perform work, and cannot be docked for full- or partial-day absences due to inclement weather. Employers can require exempt employees to use paid leave during a shutdown. However, if an employee has not accrued enough paid time off to cover the absence, the employer may not deduct from his or her salary.

Employee Leave Issues

Employees who are injured due to inclement weather may be entitled to protected time off under the law. To that end, employers should be familiar with their obligations under local, state and federal leave laws, such as the Portland Sick Leave Ordinance, the Oregon Family Leave Act and the Family and Medical Leave Act. Importantly, protections under these laws may extend beyond employees to their qualifying family members. Employers should also consider applicable state and federal disability laws, and their duty to provide reasonable accommodation (which may include time off) to employees who are disabled as a result of a weather-related incident.

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Liability Issues

With the cold weather often comes icy conditions, and the possibility of employee, vendor or guest slip-and-falls. Employers should keep any potentially dangerous areas clean and well-lit, and delegate responsibility for maintenance during inclement weather in advance. It's also a good idea to implement and maintain a safety policy requiring employees to immediately report any injury occurring on work premises, no matter how minor.

Inclement Weather Policy

If you don't have an inclement weather policy, there's no time like the present to think about one. A good inclement weather policy should address the following:

- How and when employees will be notified about inclement weather closings;
- Whether non-exempt employees will be paid for full- or partial-day inclement weather closings, or if inclement weather prevents them from getting to work; and
- Whether and how exempt employees will be required to use paid time off during inclement weather closings.

Last but not least, don't get stuck in the cold - plan ahead and if questions arise, call your employment attorney. Stay safe and compliant this winter!