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EMPLOYER ALERT

WINTER WEATHER CLOSINGS – WHAT TO KNOW ABOUT YOUR PAYROLL OBLIGATIONS

Delayed openings and partial or complete closures due to inclement weather can impact employer payroll obligations. Here are the rules you need to know.

Non-Exempt Employees

Non-exempt (hourly) employees must be paid for all hours worked in any given workweek. They need not be paid for hours not actually worked. For example, if your business is closed because of winter weather and no work is performed, you have no obligation to pay your non-exempt employees. If, however, your non-exempt employee works for several hours before being sent home from work, he must be paid for those hours. And, if your non-exempt employee worked from home, he is to be paid for any time actually worked from home. Some jurisdictions, including New Jersey, have “report-in” laws requiring non-exempt employees to be paid for a minimum amount of time if they report to work but are sent home early through no fault of their own.

Exempt Employees

Exempt (salaried) employees are those whose job classification is exempt from the overtime pay requirements of The Fair Labor Standards Act (the “FLSA”), the federal law that governs wage and hour requirements. Exempt categories of employees include executive, administrative and professional employees, as well as computer professionals and outside sales persons. Generally, exempt employees must be paid their full salary for any workweek in which they perform any work. There are, however, exceptions to the general rule which permit the employer to make deductions from an exempt employee’s salary. One such exception is likely to arise in connection with inclement weather. In this regard, for example, if your place of business remains open during a snowstorm but the exempt employee fails, for personal reasons other than sickness or accident, to come to the office and does not perform any work from home, she may be docked a full day’s pay. It is generally not permissible, however, to dock an exempt employee’s pay for a partial day’s absence.

Both exempt and non-exempt employees may also be required to use accrued paid time off (“PTO”) during office closures due to winter weather so long as the employer has an appropriate written policy in effect at the time.

The rules governing the classification of employees and permissible deductions of pay for exempt employees are complicated, and can have severe consequences for an improper classification or impermissible docking of pay. Employers are well advised to consult in advance with an experienced employment attorney

This employer alert is intended as a general discussion of employer payroll obligations during inclement weather closings. As with any legal topic, each case requires a thorough analysis of the facts in order to determine the best steps for your business. As such, it is not intended to be legal advice.

Lawrence Z. Kotler is a partner with the law firm of **Carlin & Ward, P.C.** in Florham Park, New Jersey. Mr. Kotler regularly represents employers and employees in employment law matters in New Jersey, including the defense and prosecution of employment related claims. He has extensive experience counseling employers in day to day employment matters and the preparation of employee handbooks, confidentiality and non-competition agreements and related policies and agreements. Mr. Kotler also represents employers and employees in negotiating employment contracts and separation agreements.