

Engage PEO Client Alert:

Hurricane Florence: HR Guidance for Employers

The following is general HR guidance to assist businesses that are impacted by Hurricane Florence in North Carolina.

Your Engage team is here to help. If you have questions or concerns, please contact us at: 1-888-780-8807

Safety First/Workers' Comp

In the wake of hurricanes and natural disasters, employers face a new host of employee safety issues.

If your employees continue to work either in relief or recovery efforts that support your business, they still fall under the protections afforded by workers' compensation insurance; safety should remain a top priority.

If employees choose to work remotely, they also remain covered by workers' compensation. In these unfortunate scenarios, the most important safety tip employers can provide to employees is to be aware of their surroundings. Awareness of the environment and changing conditions are critical. Consistently conduct quick hazard assessments and never take any excess or unnecessary risks (e.g., driving in flooded areas).

Office Closures - OSHA Rules

Regarding whether the employer must close for business - according to OSHA, any "substantial threat" posed by an imminent natural phenomenon would entail a judgement by the employer and involve OSHA's General Duty Clause to enforce issues concerning weather. Under the clause, employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard.

Though the FMLA does not specifically address closures due to natural disasters, the FMLA does provide that the days a business is closed would not count against an employee's FMLA leave allotment days when that business is closed for a week or more.

Wage and Hour Issues: Non-Exempt and Exempt Workers

If you decide to close for business and if you are unable to provide work to employees due to a natural disaster, an employer is required to pay Non-exempt employees only for the time they have worked; if the Non-exempt employees have not worked then payment is not required. The exception to this is if an employee is “on call” on the employer’s premises and unable to use his/her time for non- work-related purposes.

For exempt employees, an employer will be required to pay the employee’s full salary if the worksite is closed or unable to reopen due to inclement weather or other disasters for less than a full workweek. However, an employer may require exempt employees to use allowed paid time off for this time.

If you are open for business and an exempt employee chooses to stay home because of weather, the DOL considers an absence caused by transportation difficulties experienced during weather emergencies as an absence for personal reasons. Under this circumstance, an employer may place an exempt employee on leave without pay (or require the employee to use accrued vacation time) for the full day that he or she fails to report to work.

If an employee is absent for one or more full days for personal reasons, the employee’s salaried status will not be affected if deductions are made from a salary for such absences. However, a deduction from salary for less than a full-day’s absence is not permitted.

Other Considerations

Protection for Relief Workers - USERRA

Employees may also be absent from work due to their role in the relief efforts. Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which effectively applies to every public and private employer and has no minimum employee requirement, employees may be entitled to a leave of absence for service in the uniformed services. This applies to employees who are members of the Uniformed Services or National Guard and are activated under orders of the President for disaster relief and emergency assistance.

Employers may not discharge or otherwise discriminate against an employee for leaving company premises to participate in a general public evacuation ordered under an emergency evacuation order. An emergency evacuation order is a statement from a governing body recommending the evacuation of all or part of the population of an area stricken or threatened with an emergency or disaster.

Other Leave

Employees may be entitled to use leave time or require reasonable accommodations to cope with the aftermath of this storm. Managers should be aware of their leave policies to include leave provided under

the Family Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) for employees affected by Hurricane Florence.

Also, employees may have property that is damaged, may live in an area that makes it more difficult to come to work, or may expect for your business to be closed. Therefore, if you are considering staying open you may need to allow exceptions to attendance policies.

Unemployment

For employees whose employment has been lost or interrupted as a direct result of a major disaster declared by the President of the United States, Disaster Unemployment Assistance is available through the North Carolina Division of Employment Security. If the President designates a county of North Carolina as a disaster area, then Individuals have 30 days from the date that Disaster Unemployment Assistance is announced to apply for these funds. Please note that before an individual can be determined eligible for Disaster Unemployment Assistance, it must be established that the individual is not eligible for regular unemployment insurance benefits (under any state or federal law).

Disaster Relief Resources:

Employees can find help for their immediate needs from FEMA Disaster Recovery Centers (DRCs). For more information, visit: www.disasterassistance.gov