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Don't Get Caught Out in the Cold: Winter Wage Law Woes

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Now that winter will soon be officially here and many parts of the country are expecting snow in the near future, employers should be mindful of how winter weather impacts wage laws. Employers should review their inclement weather policies and ensure they properly compensate all employees who may miss work because of adverse weather conditions.

The Fair Labor Standards Act (FLSA) governs employee compensation and dictates whether or not certain employees must be paid for time missed at work because of winter weather. When it comes to hourly workers not otherwise exempt from overtime provisions of the FLSA, the analysis is straightforward. Absent an employer policy or agreement (such as a collective bargaining agreement) to the contrary, these workers do not have to be compensated for time they did not work, regardless of the reason, under the FLSA.

Employers may also want to look to state and local laws to ensure they are in compliance with any state-specific wage laws governing scenarios created by winter weather. Currently, Tennessee does not have a law that requires workers to be paid for a minimum number of hours even when they work fewer hours. Regardless of the law, some employers elect to pay non-exempt employees for time they are off work as a result of inclement weather. If an employer chooses to do this, then any inclement weather policy should be uniformly applied. Furthermore, an employer should be mindful of safety concerns when making inclement weather decisions.

Exempt employees require a more in-depth analysis. If the business is closed, exempt employees should be paid if the business is closed for less than a full work week. FLSA regulations require that an exempt employee receive his or her full salary for any week in which he or she performs any work without regard to the number of days or hours worked. When no work is performed for an entire work week, then an employer may choose not to pay the employee for that work week.

It should be noted that an employer with a bona fide leave plan may require its exempt employees to use vacation, personal, sick leave or paid time off for the days missed when the office is closed. If the exempt employee does not have any accrued leave, then snow days become paid days off from work for exempt employees without available vacation time.

If the business is open and the exempt employee does not report to work because of winter weather woes, then the employer may make a deduction from the employee's pay for each full-day absence. According to the U.S. Department of Labor, such absences are deemed personal in nature, and a deduction may be made for any full day missed without jeopardizing the exemption.

However, it is not unusual for employees to telecommute and/or to report to work for a small portion of a day. In that situation, the employee should still receive compensation as if a full day had been worked, because salary deductions for less than full-day absences are prohibited by the FLSA.

When preparing for the next big storm or round of inclement weather, it is prudent for employers to look beyond the snow plows and salt and ensure that they comply with all provisions of the FLSA. If you do not

have an inclement weather policy, now is the time to implement one. Employers with policies should clearly communicate the policy and expectations to all employees well in advance of any inclement weather.