

February 2017

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## Snow Day: Snow Pay?

New England weather is full of variety. What are a Massachusetts employer's wage payment obligations when inclement weather impacts the workplace? The answer depends on:

1. Whether the workplace is closed all day vs. the workplace is closed for a partial day vs. the workplace is open but the employee doesn't work; and
2. Whether the non-exempt employees and/or exempt employees are involved.

### If the Workplace is Closed All Day Due to Weather:

- Non-Exempt Employees: The employer is not required to pay non-exempt employees for the day.
  - o Exception: Massachusetts employers need to be mindful of the reporting pay requirement, which establishes that if an employee who is scheduled to work three hours or more reports to work, he/she must be paid for a minimum of 3 hours (at no less than minimum wage), even if there is no work. This could become relevant if the workplace is closed but the employee isn't aware of that fact and reports for work anyway.
- Exempt Employees: The employer must pay exempt employees for the day, or jeopardize exempt status.
  - o Exception: If the closure lasts for a full workweek (or more), the employer doesn't have to pay the exempt employee for the workweek.

### If the Workplace is Closed Part of the Day Due to Weather:

- Non-Exempt Employees: Federal law doesn't require any pay for hours not worked, but Massachusetts employers need to be mindful of the reporting pay requirement (which, as described above, establishes that if an employee who is scheduled to work three hours or more reports to work, he/she must be paid for a minimum of 3 hours (at no less than minimum wage), even if there are less than 3 hours of work is available). This could become relevant if the workplace is open for less than 3 hours.
- Exempt Employees: The employer must pay exempt employees for the full day, or jeopardize exempt status.

### The Workplace is Open but the Employee Doesn't Work Due to Weather:

- Non-Exempt Employees: The employer is not required to pay non-exempt employees for the day.

- **Exempt Employees:** Although the general rule (which has certain exceptions) is that an employer can't deduct from an exempt employee's pay without jeopardizing exempt status, in a 2005 opinion letter the U.S. Department of Labor ([https://www.dol.gov/whd/opinion/FLSA/2005/2005\\_10\\_28\\_46\\_FLSA.htm](https://www.dol.gov/whd/opinion/FLSA/2005/2005_10_28_46_FLSA.htm)) noted that an employer may permissibly make such a deduction if the employer is open for the day but the employee can't (or decides not to) come to work due to the weather.
  - o *Note:* The above exception only applies to a full-day absence. It would not apply to an exempt worker who arrives late and/or leaves early.

#### **Additional Points:**

- **Work from Home:** There may be employees who work from home during storms, and that service must be factored in when applying the above rules. An employer may have a policy that prohibits work from home, but if an employee nonetheless works at home, the employer (while able to discipline for the policy violation) will have to make whatever wage payments are required.
- **Forced Use of Certain Accrued Paid Time Off:** An employer may (but isn't required to) force an exempt employee to use vacation or personal time (but not earned sick time under the Massachusetts sick leave laws) if the employee misses a partial or full day of work due to weather (whether the workplace is open or closed). This is because an employer is not required to grant those forms of paid time off in the first place, but if it elects to do so, it can mandate how such time off is to be used. (This is a link to the applicable U.S. Department of Labor opinion letter: [https://www.dol.gov/whd/opinion/FLSA/2005/2005\\_10\\_24\\_41\\_FLSA.htm](https://www.dol.gov/whd/opinion/FLSA/2005/2005_10_24_41_FLSA.htm)).
- **Employers Can Elect to Provide More Favorable Terms:** Please note that the above rules create a floor of sorts. There are many employers who, for purposes of employee morale, decide to do more than the law requires.

*The above information is designed to provide a helpful overview of a relevant topic. It does not constitute legal advice nor should it be construed as such. Please do not take action based on the above information without seeking formal legal advice.*

#### **If you would like additional information, please contact Beacon Law Group:**

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