

## Inclement Weather Checklist for Employers



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It's afternoon on the day before forecasts are calling for a snowstorm. The excitement and trepidation around the office are contagious—will the storm be as strong as projected? Will it be a storybook snow or an icy mix with a hint of white? Maybe even a school-child whisper—will the office be closed? If you've been tasked with deciding whether to keep the proverbial lights on at your business, your snow day excitement may be mitigated by how to balance your business' viability with your employees' safety. You're probably weighing the impact of business closure on the bottom line, wondering how your employee leave policy fits into all of this, and maybe even debating whether a day working from home offers the best of all worlds. The answer? It depends. Having thorough and well-maintained employee policies can make your

decision at times like this considerably easier. It's a good idea this time of year to review office and employment policies that may factor in to any decision about closing your workplace for inclement weather. Among other things, you might want to revisit:

**Your Inclement Weather Policy.** This policy should be somewhere easily accessible for all workers, like your employee handbook. An inclement weather policy might detail things like when the company will make decisions about closures due to inclement weather, and how employees will be contacted about whether to come into work (a website/phone tree/ TV or radio, for example), keeping in mind that inclement weather could cause power outages or impact employees' access to the internet or phone service. The inclement weather policy could also identify be deemed "essential personnel" if the business needs to operate on a skeleton crew, and whether employees will be asked to use accrued vacation time in the event of an office closure (more on this below). You may elect to re-distribute the inclement weather policy when the forecast looks grim to ensure that employees are familiar with the company's procedures and expectations.

**Your Classification of Employees Under Wage and Hour Law.** An employee's classification under applicable wage and hour laws will impact the employer's compensation obligations in the event of inclement weather. For example, a salaried employee must be paid for a full day, even if he or she only works for part of a day, and must similarly be compensated if the employee is "ready, willing and able to work," even if the work is not available due to an office closure. The same requirement may not apply to isolated date(s) when the office is open and the salaried employee does not come in because of transportation difficulties. Keep in mind that employees identified as exempt from minimum wage and overtime requirements must be paid on a salaried basis, so it is important not to jeopardize their payment structure.

**Your Policy for PTO, or Similar Leave.** Federal wage and hour law does not prevent employers from requiring employees to use vacation time and/or PTO in inclement weather, or from providing a set number of "inclement weather" days for which employees will be compensated in the event of office closures due to weather.

However, some jurisdictions treat accrued leave as earned wages, preventing employers from making retroactive changes to the terms of redemption. With that in mind, employers should ensure that their leave policy covers scenarios in which they would ask or require employees to use PTO or similar benefits.

**Your Teleworking Policy.** If you run the type of business that is easily adaptable to remote work, you may be able to keep at least part of your business running in the event of inclement weather. There are obvious benefits to allowing for telework during inclement weather; it alleviates the need for operations to come to a complete halt without requiring you to assess whether employees can safely come into work. This, combined with increasing mobility and accessibility of technology, might make allowing your employees to telework a tempting option in the face of bad weather.

If you are inclined to permit teleworking at all, including in inclement weather, it is a good idea to have a policy on the books about how and when that occurs. Here are some things to consider before you offer tele-working as an option to employees:

**Wage and Hour Laws Still Apply to Telecommuters.** An employee who is entitled to overtime in the office has the same protections when logging in from home. Similarly, employees paid on an hourly basis must still be paid for all hours worked. Employers may wish to provide employees with certain prerequisites for teleworking, such as advance authorization before an employee logs on at home. An overzealous employee could lead to accidental overtime if expectations are not clearly communicated in advance. Conversely, an employer who does not know an employee logged on from home could erroneously presume absence and dock the employee's pay or PTO for that day, in violation of applicable laws.

Under federal wage and hour law, it is the employer, and not the employee, who carries the burden of maintaining accurate time records. Accordingly, employers also should give thought to the best method for tracking employees' hours remotely, and may even want to impose schedules—for example, saying that employees are expected to “report” at their standard working hours and to take their lunch break as normally scheduled—to ensure better and easier tracking of remote workers' time.

- **Employee Safety is Always an Issue.** An employer may be liable for an employee's on-the-job injury, even if that injury occurs in a home office. Some courts that have considered this issue have deemed a home workspace to be an extension of the workplace. A solid teleworking policy could include specific expectations for neat, hazard-free workspaces in the home.
- **Teleworking Brings its Own Security and Data Privacy Concerns.** Telecommuting necessarily requires removing employer information—data, paperwork, even company

laptops—from the security of the company office. Employees working remotely may rely on public wi-fi networks to get the job done, or work in locations that are less secure than the company office. Employers should consider including terms in a telecommuting policy regarding the removal of equipment and documents from the office and requiring access to company networks using a VPN or similar software to mitigate the risks associated with working out of the office.

- **Be Thoughtful About Anti-Discrimination Laws.** A telecommuting practice that disproportionately benefits employees of a certain race or age could be seen as discriminatory. Alternatively, teleworking parameters that preclude employees with disabilities from participating could violate the ADA. Employers should reflect upon their reasons for authorizing certain employees over others to telecommute, making sure that the rationale isn't driven by presumptions about an employee's technological ability or reliability based on their demographics. Formal policies outlining what types of employees are eligible to telework, and under what circumstances, can help to alleviate the risk of liability in this regard.

These are just a few examples of ways that employers can proactively plan for severe weather events. Though it takes some time and careful planning, putting in the legwork now can save a headache down the road.