

Considerations for Employers and Employees Affected by Hurricanes Harvey & Irma - Notice

September 13, 2017

In light of the continuing devastation caused by Hurricanes Harvey and Irma, affected employers and employees should be aware of how federal and local laws may impact them in this time of emergency. The following is a non-exhaustive list of issues that may be relevant:

- **Leaves of Absence After a Natural Disaster:** Under the Family and Medical Leave Act (FMLA), eligible employees affected by a natural disaster are entitled to leave in order to tend to their own or a family member's serious health condition caused by the natural disaster. Likewise, under the Americans with Disabilities Act (ADA), an employee who is physically or emotionally injured as a result of a disaster may be entitled to leave as a reasonable accommodation, so long as it would not place undue hardship on the operation of the employer's business. In addition to federal laws, local ordinances and/or company policies and collective bargaining agreements may provide other types of leave.
- **Exempt Employees:** Under the Fair Labor Standards Act (FLSA), when an employer shuts down its operations because of adverse weather conditions for less than a full workweek, exempt employees must be paid their full salary. This is true even if the employee doesn't work the full day. However, exempt employees may be required to use accrued leave time (including vacation days) during these days if the employer provides a bona-fide leave policy. If an employer has a leave policy, but the absent employee does not have a leave account balance, the employer is not obligated to pay the employee for time off.
- **Non-exempt Employees:** Non-exempt employees are only required to be paid for the time they work. That means that employers need not compensate non-exempt employees for missing work due to the hurricanes regardless of whether it was the employer's decision to close the work-site or the employee's decision not to show up. Certain exceptions to his general rule may apply, such as employees who are "on-call," as a result of the state of emergency.
- **Delays in Wage Payments:** Both the FLSA and state laws speak to the issue of delays in wage payments, which may be an unavoidable consequence of Hurricanes Harvey and Irma. The Texas Workforce Commission has advised that an employer who expects any delays should provide employees with written notice of the delay and an indication of when the employee can expect payment. At present, other state governments in the hurricanes' path – including Georgia - have been silent on this issue.

- **Record Keeping:** FLSA does not list any exceptions to its record-keeping requirements due to weather-related emergencies. Employers are still required to maintain records to time worked, and should instruct employees accordingly.

- **Unemployment Benefits:** Employees in Florida, Texas, Georgia and/or Louisiana who have been displaced by the hurricanes may be eligible for federal and/or state unemployment benefits through the Federal Emergency Management Agency (FEMA), Disaster Unemployment Assurances (DUA), and/or through state relief programs. Please visit the following websites for more information on eligibility (please note, victims may be eligible for federal and state aid):
 - Federal Aid:
 - <https://www.fema.gov/media-library-data/1502303598195-3dc608049769c5e1e928cbbb5c3077af/FACTSHEETDisasterUnemployment.pdf>
 - <https://www.benefits.gov/benefits/benefit-details/597>
 - <https://www.disasterassistance.gov/>
 - Florida Aid:
 - <http://floridadisaster.org/info/>
 - Texas Aid:
 - <http://www.twc.state.tx.us/news/hurricane-harvey-disaster-aid-available-18-texas-counties>
 - <http://www.twc.state.tx.us/jobseekers/disaster-unemployment-assistance>
 - Georgia Aid:
 - <https://dol.georgia.gov/individuals-faqs-disaster-related-benefits>
 - Louisiana Aid:
 - <http://emergency.louisiana.gov/>

Qualified Disaster Relief Payments: Under IRS Code Section 139, employers are permitted to make “qualified disaster relief payments” to employees without any payroll tax consequences. A “qualified disaster” is usually one declared by the U.S. President. This means that employers may provide tax-free disaster relief to employees, and that employer may receive tax deductions for these payments. For more information, visit the [IRS website](#).

- **IRS Tax Relief for Hurricane Victims:** The IRS announced tax relief for some victims of Hurricanes Harvey and Irma. Taxpayers in certain areas of the U.S. Virgin Islands, Puerto Rico and Florida affected by the disasters whose deadlines for filing quarterly estimated income tax payments are usually on September 15, 2017 and January 16, 2018 now have until January 31, 2018. The extension also applies to the quarterly payroll and excise tax returns which were originally due on October 31, 2017. The IRS automatically identifies and applies payment relief to taxpayers located in the covered disaster areas, but relief may also be available to those outside the designated areas. Unsure taxpayers should call the IRS disaster hotline to determine relief eligibility at (866) 562-5227. Visit the IRS website for more information on tax relief for victims of Hurricanes [Harvey](#) and [Irma](#).

On September 12, 2017, The U.S. Department of Labor posted a [press release](#) with more extensive guidance for employers and employees impacted by the hurricanes:

Cast & Crew wishes the best to all impacted by these terrible disasters.

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