

## Pay and FMLA Questions in Aftermath of Hurricane Harvey

(Based on Hurricane Matthew experience)

Many employers on the Gulf Coast will be struggling with compensation and leave issues in the wake of Hurricane Harvey. While many businesses and individuals have been affected by Harvey, regions across the United States are impacted by weather-related emergencies every year.

To help organizations understand their responsibilities and stay compliant, here is an overview of federal laws that are applicable in emergency situations.

### Pay for Employees (FLSA)

Whether or not an employee must be paid during a shutdown for dangerous weather depends on the employee's status as exempt or nonexempt under the Fair Labor Standards Act (FLSA).

**Nonexempt employees.** Under the FLSA, on days that the facility does not open (and especially when notice has been given) the FLSA does not require that hourly employees be paid. If the workplace is being kept open, and employees are merely permitted to leave early or come in late at their option, hourly workers are usually not paid for the time off. If employees show up and are asked to stay until the situation is assessed, they must be paid, even if there is nothing for them to do.

**Exempt employees.** The FLSA requires that exempt employees be paid for absences of less than a full week if a facility is shut down because of a catastrophe, including a weather disaster.

If the employer's facility remain open during inclement weather or other type of disasters, and an exempt employee is absent for 1 or more full days for personal reasons, including transportation difficulties, the employee's salaried status will not be affected if deductions are made from the employee's salary for such absences.

A private employer may require the exempt employee to take vacation or make leave bank deductions without jeopardizing the employee's exempt status.

When the office is open, an exempt employee who has no accrued benefits in the leave bank account does not have to be paid (i.e., may be placed on leave without pay) for the full day(s) he or she fails to report to work.





### **Employees on Leave (FMLA)**

Much like a holiday closing, if an employer is forced to shut down during a hurricane or other weather event, the FMLA would require the employer to “count” the day(s) for shutdowns against the employee’s 12-week FMLA leave allotment if the employee is out on FMLA for the entire week. If, however, the employee worked part of the week, then only the days the employee would actually have been expected to report to work should be counted as FMLA leave.

The FMLA holiday rule only applies to shutdowns of less than a week. So, if an employer’s operations are shut down for one or more full weeks any days the employee would not be expected to work should not be counted against the employee’s FMLA leave entitlement.

- ***Inquiries please contact [HR@eESIpeo.com](mailto:HR@eESIpeo.com).***