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ATTORNEYS AT LAW

## What to Do When Employees Don't Show Up...

In the wake of hurricane Gustav, many employers are dealing with absent employees. In some cases, entire work-forces have gone missing. Sometimes employees have stayed in contact, and in some cases they have disappeared entirely. Many employers are asking if they must allow these employees time off of work because of the storm. The short answer to this question is no, absences from work due to damage caused by a hurricane, even when a state or federal state of emergency has been declared, are not protected leave under state or federal law. Generally, employers are free to treat absences from work due to natural disasters as they would any other type of unexcused and unprotected leave.

You will note that I said that these types of leave are "generally" unprotected. There are circumstances under which leave during such a time of emergency could be protected. For example, if both the employer and the employee qualify under the FMLA, and if the employee's absence is caused by a serious health condition, whether or not it was caused by the storm, the leave could be protected.

Such a situation could arise like this: Hurricane Gustav strikes Baton Rouge on Monday. Most of your employees lose power and

don't report to work for the next ten days. Jay, an average employee, falls from his roof on Thursday while removing a tree limb and breaks his leg. Jay's injury will require surgery, a hospital stay of three days and about two weeks off of work to recuperate. Your company decides to allow its employees until Friday to return to work or suffer the consequences.

While your company is entitled to take action against those employees who do not report to work, if you are aware of Jay's injury and need to be off of work to recuperate, you must allow him that time off under the FMLA. (This example assumes that Jay has not already used his 12 weeks of leave.) If, however, you are not aware of Jay's injury or need for medical leave, your company may treat Jay as it would any other employee who does not contact the company or report to work. If Jay informs your company of his injury after his employment has been terminated, the law does not necessarily require you to reinstate him.

## ...How Much to Pay Them...

Employees are either exempt or non-exempt. Non-exempt employees are usually paid by the hour. If a non-exempt employee does not show up for work, he is usually not entitled to be paid. Exempt employees, however, are paid a salary. If an exempt, salaried employee is unable to report to work due to temporary closure of the employer's business, the employee may be entitled to his usual salary for that work. As a general rule, if a salaried employee performs any work for his employer during work week, he is still entitled to his full salary for that work week.

There are several exemptions to this general rule:

1. First and last week of employment
2. Sick days if the employer has a paid sick leave policy
3. Absence due to personal reasons unrelated to sickness

4. Penalty of violating safety rules of major significance
5. Suspension for violating rules of conduct; and
6. Absences covered under the "Family Medical Leave Act"

An employer may require an exempt, salaried employee to use his accrued paid leave (sick and vacation) for the days that he was absent. For example, if your business was closed Monday through Thursday of a particular week due to loss of power but re-opened on Friday, an employer will be required to pay that employee for a full work week, even if he worked on that Friday. However, if he has six days of accrued vacation, an employer could deduct four of those days to cover his pay from Monday through Thursday. Of course, if the employee does not have enough accrued paid time off, then the employer must pay the difference.

## ...and When to Pay Them? By Jerry S. Stovall

In the wake of hurricane Gustav, many employees have either quit or simply abandoned their jobs. Many of these employees have not contacted their employers and are unreachable. The fact that an employee may be missing does not relieve an employer of its obligation to timely pay the employee. Louisiana law requires an employer to pay an employee all amounts due within the lesser of the next regular payday or fifteen days following the date of the employee's separation from employment, regardless of whether the separation was voluntary or involuntary. This payment may be accomplished at the place and in the manner in which it was customary to pay the employee during her employment. For example, if it was customary to have a supervisor hand out checks on payday, giving the supervisor the missing employee's check to hold in

case she comes in to pick it up should suffice. However, Louisiana law also provides that an employer may pay an employee by placing the check in the United States mail to the employee with proper postage addressed to the employee's current address contained in the employer's records. (This is another reason that it is very important to require employees to notify you of any changes in their address.) The payment will be "made" when postmarked by the U.S. Postal Service. Employers should be extremely cautious if asked to give an employee's check to a friend or family member or to mail it to any address other than that contained in the its records.



**Jerry L. Stovall, Jr.**  
Partner—Baton Rouge  
Phone: 225.381.8042  
Fax: 225.387.5397  
[jerry.stovall@bswllp.com](mailto:jerry.stovall@bswllp.com)