

CBIA Hotline: When It Snows and You Close

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Q: Do we have to pay our employees if inclement weather forces us to close our shop for the day?

A: If you are forced to close for all or part of a workday, hourly and salaried nonexempt employees, i.e., those eligible for overtime pay, need only be paid for time actually worked. Some employers permit nonexempt employees to draw from accrued paid time off benefits, such as personal or vacation time, to maintain their regular wages for such days.

It's a different story with exempt employees—those not entitled to overtime. To be classified as exempt, an employee's job responsibilities must meet the executive, administrative or professional duties test, their weekly salary must be at least \$475 per week, and their fixed weekly salary must not be subject to reduction because of variations in the quality or quantity of the work performed during any week in which at least some work is performed.

Where an exempt employee is absent from work because the business does not open at all for at least a full day but less than a full week, the employee's regular weekly salary still must be paid in full. However, the portion of salary attributable to the weather-related closing day or days can be charged against the employee's accrued paid time off (PTO) benefits. From the labor department's perspective, that constitutes payment of full salary for the week. If the employee has no accrued PTO benefits, full salary still must be paid, and the weather-closing day's pay can either be treated as regular wages and simply paid, or it can be recorded as an advance of PTO benefits, and charged against future accruals of PTO.

On the other hand, where the company remains open and the employee chooses not to report for work, such absence is considered an absence for a "personal" reason, and the employee may elect to draw from accrued PTO if permitted under the company's benefit policies, or the absent employee may have his or her fixed weekly salary reduced in full-day increments without jeopardizing exempt status.

Keep in mind that state and federal law prohibit salary reductions for partial day absences although, as explained above, an employee's PTO bank can be charged for the salary attributable to a partial day absence.

A word of caution: Given the relative ease of electronically accessing work-related data, records, and processes from remote locations via email, voicemail, and the Web, an exempt employee who chooses to remain at home on a day of inclement weather may not really be absent if some work tasks are performed from home. In such a case, that employee's weekly salary should be paid in full as regular wages and only charged in part against an accrued PTO benefit to the extent you are able to quantify how much work was performed, and how much time taken off.