

Louisiana Employment Law Letter

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Highlights

- 2004 hurricane season: when Mother Nature disrupts your workplace
- Court says casino worker is out of luck
- Unchecked supervisor sends employer to trial
- Class actions: What can you do to stem the tide?
- HR Trends
- Union Activity Across the Country

EMERGENCY RELIEF

2004 hurricane season: when Mother Nature disrupts your workplace

It's impossible to live anywhere along the Gulf Coast, or in the United States for that matter, and not notice the devastation caused by this year's hurricanes and tropical storms. While South Louisiana avoided a direct hit from this season's most powerful and destructive hurricane — Ivan — we were given a strong reminder of what could happen to our coastline, cities, economy, and population if (or, rather, when) the worst-case scenario becomes a reality for Louisiana.

As an employer, there are countless ways your operations may be affected by such a natural disaster — storm damage to your facilities, losses and injuries to your employees, and the negative input on the economy overall. Even though disaster relief may be on the way fairly soon after such an event, is there anything you can do in the meantime?

Remind employees of their benefits

If you're like most employers, some of the most important benefits you provide to your employees are health, disability, and life insurance. If any of your employees or their beneficiaries have been injured or killed in a natural disaster, those benefits may be their (and their families') only hope.

For employees who are injured or receive medical treatment, make sure you provide whatever they or their families need in filing their health insurance or workers' compensation claims. Injured employees may also need help filing claims under your short-term or long-term disabilities policies. Here are some helpful things you can do:

- Let the employees know about pertinent deadlines. Be sure to provide them with the correct forms in a timely manner and help them fill out the forms if necessary.
- If an employee's injuries prevent her from filing a claim, contact her spouse or a family member to let him know what benefits are available.

- If an employee is disabled, work with her on finding a reasonable accommodation that will allow her to return to work.

Employee leave

A concern you should keep in mind is the proper application of your company's leave policies — and the various state and federal leave laws that may protect employees who are injured or have family members who are injured. Take heed to apply your sick, personal, vacation, and bereavement leave policies uniformly and with compassion.

Injuries sustained during the storms may qualify employees for leave under the Family and Medical Leave Act to care for themselves or a family member. If an employee needs to take a leave of absence for nonmedical reasons, check your policies and let her know what her options are. Even if you don't usually allow nonmedical leaves of absence, hurricane cleanup or the need to find alternative housing may be extenuating circumstances that will allow you to grant leave at that time. Just remember to treat all employees fairly and consistently when doling out leave.

Employees' pay or benefits in the event of a disaster

You aren't required to pay *nonsalaried exempt* employees for their time away from work occasioned by a workplace disaster. But you should be cognizant that under the Fair Labor Standards Act, you must pay *salaried exempt* employees their full salary for any workweek in which they perform any amount of work — regardless of how many days or hours are actually worked — or else you risk losing the exemption for them.

Nevertheless, deductions from salaried exempt employees' wages are possible if they're absent for not less than one day because of sickness or disability and the deduction is made in accordance with a plan, policy, or practice of providing compensation for loss of salary occasioned by sickness or disability. Because of the technical nature of federal wage and hour laws, you're encouraged to call counsel before making any wage or salary determinations based on an employee's failure to attend work because of a workplace emergency.

Layoffs

Because of the devastation caused by hurricanes and tropical storms, you may be faced with the unpleasant task of laying off some — or all — of your workers. In the aftermath of a natural disaster, there may a tendency to panic and rush to the conclusion that layoffs are needed to save costs. Avoid knee-jerk reactions. Carefully assess whether to conduct a layoff, including the costs that will be incurred in paying severance and whatever other benefits you may be considering and in training the remaining employees to do the work of those who leave.

You should also consider the inevitable toll on the morale of the remaining employees, who may grieve over the layoffs of their colleagues (and worry about whether they will be next) and the financial condition of your company. That worry may result in lower productivity and valued remaining employees deciding to seek employment elsewhere. You should also assess the likelihood that you will be looking to add employees again when conditions warrant and the costs that the hiring and training process will entail down the road. You may wish to consider seeking volunteers from employees to participate in a layoff or look at reduced-schedule options to avoid layoffs altogether.

In the event of a mass layoff, you must be aware of your obligations under the Worker Adjustment and Retraining Notification Act (WARN). The purpose of WARN is to cushion the impact on employees when a plant closing or large layoff occurs. Under the Act, covered employers must provide workers with 60 days' notice of a plant closure or mass layoff. If such notice isn't given, the employer may be liable for the pay the workers would have received during the 60-day notice period.

WARN provides several exceptions to the notice requirement, however. For example, you may be entitled to a reduced notice period if the plant closing or mass layoff is the result of "business circumstances that were not reasonably foreseeable as of the time that notice would have been required" (which may apply depending on the circumstances).

Cleanup concerns

The Occupational Safety and Health Administration (OSHA) has issued an alert associated with cleanup and recovery after hurricanes and similar storms. OSHA notes that there's great potential for serious and even fatal accidents after storms, including electrocution from power lines and injuries associated with tree removal and trimming. Three fact sheets covering cleanup hazards, food cleanup, and fungi are available from OSHA. The fungi fact sheet includes information on fungi diseases and conditions that can develop after floods. The fact sheet also includes recommendations for protecting workers from exposure and what to do if symptoms develop after exposure. The fact sheets can be accessed at www.osha.gov.

Bottom line

Now that we're approaching the end of this hurricane season — and hopefully will escape any serious threat this year — take the time to review your policies and procedures that will come into play if disaster strikes. Prepare now to avoid making what is sure to be an already bad situation worse should Louisiana get a direct hit by "the big one."

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