

## Snow Days and the FLSA!

2. February 2011 By Steve Palazzolo

My wife thinks I'm crazy. When your 10 horsepower snow blower bogs down in the snow in the middle of your driveway, you know you got a lot of snow. Never the less, I got up this morning and plowed out the driveway so I could go to a dentist appointment only to find out that the dentist office was closed. But I was already out of bed, so in to work I came. That is why (well, that is one of many reasons why) my wife thinks I'm crazy. So, yes I am sitting at my desk, in my office writing this post, when I should be home in front of a fire sipping hot coca and watching my teenage kids kill virtual zombies while listening to their ipods and texting their friends. Teenagers are great multitaskers.

And you might be in the same boat. You might just be asking yourself, what do I do about pay for all of the employee's who didn't come to work today? I mean, a bunch of them are home because they did not want to brave the bad roads, and a bunch of them are home because their kids don't have school. And a bunch of them are home because you closed your business for the day. So what do you do about pay for people who didn't come to work today. What does the law say? Let me tell you.

For non-exempt employees, the answer is easy. Under the Fair Labor Standards Act, if a non-exempt employee does not work, you don't have to pay them. It is as simple as that. Does not matter if they don't work because they couldn't navigate the bad roads, or because their kids didn't have school or because you closed the business. Under the law if they don't work, you don't have to pay them. (Now you might have a policy that says different, and that is a different law all together, we are just talking about the FLSA here, so before you do anything check your company policies).

But what about exempt employees? For them, it does matter why they did not come to work. The basic rule is this: an exempt employee, who must be paid on a salary basis, must be paid their entire salary for any week in which they do any work regardless of the quality or quantity of that work unless a deduction is specifically authorized by the regulations. You can find the permitted deductions [here](#). So, is staying home for a snow day a permitted deduction? It depends. If you close your business, you have to pay exempt employee's their full salary and cannot deduct from that salary for that time missed. Wage Hour Opinion Letter FLSA2005-46 states:

“Furthermore, an employer may not make deductions “for absences occasioned by the employer or by the operating requirements of the business.” **If the employer closes operations due to a weather related emergency or other disaster for less than a full workweek, then the employer must pay an exempt employee “the full salary for any week in which the employee performs any work without regard to the number of days or hours worked,”** because “deductions may not be made for time when work is not available.” See 29 C.F.R. § 541.602(a)(emphasis added).”

Ok, that seems pretty clear; close the business for the day and pay the full salary for the exempt employee. What about when the business is open and the exempt employee decides not to come to work because of the weather? Different rule (same Opinion Letter). Wage Hour Opinion Letter FLSA2005-46 states:

“The Department of Labor considers an absence due to adverse weather conditions, such as when transportation difficulties experienced during a snow emergency cause an **employee to choose** not to report for work for the day even though the **employer is open for business**, an absence for **personal reasons**. Such an absence does not constitute an absence due to sickness or disability. Thus, . . . an employer that remains open for business during a weather emergency may lawfully deduct one full-day’s absence from the salary of an exempt employee who does not report for work for the day due to the adverse weather conditions. . . . Please note, however, that deductions from salary for less than a full-day’s absence are not permitted for such reasons under the regulations. See 29 C.F.R. § 541.602(b)(1)(emphasis added).”

That seem pretty clear too. If the business is open and the exempt employee does not work **for the full day** you don’t have to pay. Notice I said “does not work” and not “does not come to work” here. And that is because I have one big caveat for you. Just because an employee is not at the office, that does not mean he is not working. An employee sitting at home answering emails and taking calls is working and would have to be paid. So, make sure the employee is really not working before you start making pay deductions.

So, I hope you all are warm and safe during the “BLIZZARD OF 2011” as the local news is calling it. Go out and make some snow angles and have a great day.