Engage PEO Client Alert:

Winter Storm – Guidance for Employers

The following is HR guidance to assist businesses that have be impacted by the winter storm currently affecting the Northeast.

Office Closures

With regards to whether an employer must close for business - according to OSHA, any "substantial threat" posed by an imminent natural phenomenon would entail a judgement by the employer and employ the general duty clause in enforcing issues concerning weather. Under the General Duty Clause of the Occupational Safety and Health Act (OSHA), employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard.

Wage and Hour Questions

There is nothing wrong with paying employees for time off due to bad weather. Nevertheless, if you have decided to close for business and if you are unable to provide work to employees due to a natural disaster, an employer is not required to pay non-exempt employees. An employer will be required to pay the full salary of exempt employees if the worksite is closed or unable to reopen due to inclement weather or other disasters for less than a full workweek. However, an employer may require exempt employees to use allowed paid time off for this time. If you are open for business and an exempt employee has chosen to stay home because of weather, the DOL considers an absence caused by transportation difficulties experienced during weather emergencies as an absence for personal reasons. Under this circumstance, an employer may place an exempt employee on leave without pay (or require the employee to use accrued vacation time) for the full day that he or she fails to report to work. If an employee is absent for one or more full days for personal reasons, the employee’s salaried status will not be affected if deductions are made from a salary for such absences. However, a deduction from salary for less than a full-day’s absence is not permitted.

Other Considerations

Many schools will be closed. If you have stayed open for business, some employees may have needed to stay home to take care of their children. State law and local ordinances may allow employees to use accrued sick time to care for a child whose school is closed by a public official.

Also, others may have property that is damaged, may live in an area that makes it more difficult to come to work, or may expect for your business to be closed. Therefore, if you are staying open for the full day you may need to allow exceptions to attendance policies.

If you have any questions, please contact your Engage HR Consultant at 888-780-8807.