

Puerto Rico Secretary of Labor Issues Opinion Regarding Employee Salaries After Hurricanes

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On October 17, 2017, the Puerto Rico Secretary of Labor (“Secretary”) issued Opinion No. 2017-001 regarding the payment of salaries for days not worked by employees due to the passing of a hurricane.

Regarding non-exempt employees, the Secretary’s Opinion reiterates that employers do not have to pay for work not performed due to the passing of a hurricane. However, employers are required to pay their non-exempt employees for time the employer required the non-exempt employee to work; time in which the employer allowed the non-exempt employee to perform work that benefits the employer, even when not requested by the employer; any hours worked outside the regular site of employment; and waiting time, or time in which a non-exempt employee is required to remain in a specific place available to the employer, and is restricted from using said time for personal matters.

With regards to exempt employees, the employer is not required to pay for any workweek in which the exempt employee performed no work, even if the employee was ready, willing, and able to work, if the business was closed for the entire workweek. If the exempt employee was ready, willing, and able to work during part of the time the business was closed and/or performed any work during such workweek, even if for a few minutes on a particular day of the workweek, the exempt employee must be paid in full his/her guaranteed salary, with no salary deductions for idle time.

In the absence of an employment policy or contractual restriction, the employer may allow the exempt employee to charge the idle time to his/her accrued and unused vacation leave.

The Secretary’s Opinion also explains how exempt employees must be paid when they are absent due to personal reasons, while the business is open and the exempt employees have been called to work.

The Secretary’s Opinion calls for employers to consider awarding their non-exempt employees more benefits than required by law, such as paying the salaries of non-exempt employees even for days not worked due to the passing

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of a hurricane without charge to vacation leave; or if that is not possible, crediting toward their vacation accruals the time not worked due to the passing of a hurricane.

The Secretary also recommends employers to pay their exempt employees their salaries in full, even for workweeks in which the business remained closed, and if that is not possible, to charge the exempt employee's idle time to a vacation leave. Moreover, the Secretary invites employers to grant their employees additional compensation to help them obtain supplies needed after the hurricanes. You may refer to McV's Tax Alert on Tax Relief for Employer Assistance to Victims of Hurricane Maria.

In any case, the Secretary's Opinion cautions employers that Company policy, employment contracts and collective bargaining agreements may require them to pay for time not worked due to an emergency or natural disaster, for which reason all such documents must be reviewed before a final decision is made on this matter.

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