

Legal Matters

Hospitals' Obligations to Employees Withstand Natural Disasters



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Hurricane Harvey reminded hospitals that obligations to employees do not cease during or after horrific natural disasters. Hospitals should have a plan in place when preparing for a natural disaster, such as an inclement weather policy, a communications plan, and a crisis management plan, and should be

Administration's (OSHA) guidance for handling hazardous conditions before a natural disaster strikes and incorporate that guidance into their crisis management plan. Visit the U.S. Department of Labor's Occupational Safety and Health Act (OSHA)'s website for additional information on workers' rights, employers' obligations, and other services required under OSHA.

Compensating Workers for Work Performed

Exempt and nonexempt employees: When a hospital has to close in the middle of a workweek or pay period, it must pay an entire weekly



mindful of the below tips when creating a crisis management plan to avoid employment-related lawsuits and/or agency action following a natural disaster.

Employee Safety

Hospitals must exercise caution if asking employees to assist with preparing for and cleaning up after a natural disaster. In addition to their patients, hospitals are responsible for the safety and health of their workers and for providing a safe and healthy workplace, which includes protecting workers from anticipated hazards associated with preparing for and cleaning up after a natural disaster. Employees who lack the proper training to perform such work face significant risk and may fail to heed necessary precautions when assessing or cleaning up damage to the hospital. Alternatively, hospitals should consider contracting with a professional disaster recovery service to minimize risk to employees post-disaster.

Hospitals should review the Occupational Safety and Health

salary to exempt employees who are paid on a salary basis if they work any portion of the workweek under the Fair Labor Standards Act (FLSA). However, hospitals are generally not required under the FLSA to pay nonexempt employees if the hospital is unable to provide work to those employees due to a natural disaster. Instead, hourly workers must be paid for the actual time they work.

Actual work:

Employees may be forced to take on new responsibilities to aid in preparing for or cleaning up after a natural disaster. For example, a security guard may be tasked with cleaning up debris after a storm. Although the guard's duties don't typically include cleaning up the hospital, the hospital must compensate the guard for all time worked. A hospital must compensate an employee for performing any activity that is primarily and necessarily for its benefit.

Volunteers: After a natural

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disaster, hospitals may receive offers from employees to volunteer with its recovery process. A hospital must exercise caution when deciding whether to allow workers to “volunteer” with such efforts, as it may be required to compensate “volunteers” who perform work that

can be construed as compensable time worked. In addition, private non-profit hospitals must compensate employees who “volunteer” to perform the same services they ordinarily perform in the regular course of business.

Requests for Leave

Hospitals typically receive an influx of requests for time off from employees immediately before and after a natural disaster. Although hospitals are not required to provide employees

time off in all circumstances, such as to clean up damage to their personal property, there are certain situations in the aftermath of a disaster in which an employee may qualify for time off under the Family Medical Leave Act (FMLA).

Post-disaster, hospitals should be mindful of employees’ need to take legally-protected leave. The trauma and stress of the storm or the storm’s aftermath may trigger anxiety,

depression, or a mental illness, not to mention possible physical injury, and the employee may be eligible for FMLA leave to care for herself or a close family member. In addition, hospitals may also be required to provide leave as an accommodation pursuant to the Americans with Disabilities Act (“ADA”). ♦