



# EMPLOYMENT DURING NATURAL DISASTERS

## PROHIBITION AGAINST DISCRIMINATION

The Texas Labor Code prohibits employer from discharging or in any other manner discriminating against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order. A person discharged in violation of the Texas Labor Code is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay. This provision does not apply to Emergency services personnel including fire fighters, police officers and other peace officers, emergency medical technicians, and other individuals who are required, if the employer provides adequate emergency shelter for those individuals.

## TEXAS WORKFORCE COMMISSION DISASTER UNEMPLOYMENT ASSISTANCE

Employers may encourage employees who have lost wages due to being displaced from their work facility by a natural disaster to apply for unemployment insurance benefits. To apply for benefits, workers may go online to apply at [www.twc.state.tx.us/jobseekers/unemployment-benefits-services](http://www.twc.state.tx.us/jobseekers/unemployment-benefits-services), or call **1-800-939-6631** to speak with a TWC representative on weekdays from 8:00a.m. – 5:00 p.m. Individuals must specify that their application is related to their inability to work due to a natural disaster. The employee must submit proper documentation in support of the application within twenty-one days of his or her application.

## NON-EXEMPT EMPLOYEES

**On call time.** If an employee is required to remain on call at the employer's premises or close by, that employee must be paid for all of his or her time as time worked. For example, employees who remain at a facility "on standby" during a natural disaster or emergency situation to help 'as needed' must be compensated – even if they perform no actual work – if they are not free to leave at any time.

**Waiting time.** If an employee is required to wait on duty – even if they do not perform actual work – that time is compensable. For example, if an employee is required to remain at work and wait for electric power to be restored, that is considered time worked.

**Shelter.** Employees may become stranded at a facility. Non-exempt employees need to be paid for any time they are "suffered or permitted to work." This means that if the employer reasonably knows the employee is working, even if that employee has been instructed not to work, the employee must be compensated for that time. If an off-duty employee must wait out a storm at the employer's facility, the employee should be fully relieved of all work responsibilities; otherwise, his or her time is compensable. Ideally, employers should provide employees with a separate area to rest or otherwise avoid the possibility of working.

**Volunteer time.** Employees are not "volunteers" if they perform the same services they are regularly employed to perform. They must be compensated for those services.

**Facility Closures.** The FLSA requires employers to pay non-exempt employees only for hours that the employees have actually worked. An employer is not required to pay non-exempt employees if the employer is unable to provide work to those employees due to a natural disaster. However, be conscious of the potential for non-exempt employees to perform work from home or other off-site locations. If there is reason to believe non-exempt employees are performing work from home or away from their assigned location, take affirmative steps to determine (a) whether such work was performed off-site, and (b) how much time the employee worked.

## EXEMPT EMPLOYEES

**Facility Closures.** For exempt employees, an employer is required to pay the employee's full salary if the worksite is closed or unable to reopen due to inclement weather or other disasters for less than a full workweek. Further, if the exempt employee performs any work during the work week, he or she must be paid their full, normal salary. Consequently, if an employer closes because of inclement weather or other emergencies, if the employee worked that week, he or she must be paid her normal salary. However, an employer may require exempt employees to use or exhaust available Paid Time Off or other paid leave time.

**Employee chooses to stay home because of weather.** If a facility is not closed and an employee cannot (or chooses not) to come in to the facility due to inclement weather, transportation issues, road closures, or states of emergency/travel bans, the U.S. Department of Labor considers these personal absences. Employers may deduct from an employee's salary for any full days during which he or she (1) performs no work and (2) does so because he or she cannot or chose not to come to the facility due to

weather-related issues (unless, of course, the employee uses accrued vacation or Paid Time Off pursuant to the employer's leave policy). A deduction from salary for less than a full-day's absence is not permitted.

### EMPLOYEES WORKING FOR PUBLIC AGENCIES

Individuals who volunteer their services to a public agency (such as a state, parish, city or county government) in an emergency relief capacity are not considered employees due compensation under the FLSA if they:

- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. The volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services; and,
- Offer their services freely and without coercion, direct or implied; and,
- Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

### EMPLOYERS REQUESTED TO PERFORM WORK UNDER POLICE POWERS

Where employers are requested to furnish their services, including their employees, for disaster relief under Federal, state or local general police powers, the employer's employees will be considered employees of the government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the Fair Labor Standards Act.