

Snow days and the FLSA



Last week it snowed hard in the Mid-Atlantic region, notably south of Washington, D.C., where *Politico* reported Sen. Tim Kaine (D.-Va.) was stuck in his car on I-95 for 21 hours. A colleague in D.C. noted he had a lot of wet snow to shovel. Isn't that why you have kids?

While we're accustomed to dealing with snow further up north, some local residents still haven't developed good winter driving skills. I can recall a mind-numbing two-hour crawl home from work—and work was less than three miles away. After that incident, I created our list of winter driving do's and don't's.

- There are gears below the D on your gear shift. Use them. Drive slowly and be patient.
- Don't tailgate.
- Never slam on your brakes.
- Always steer into a skid, even with a front-wheel or all-wheel-drive vehicle.

However, those aren't the only rules that inclement weather triggers.

Key FLSA rules for lousy weather

The Fair Labor Standards Act is indifferent to the weather. You can't afford to be indifferent to the law, though, as inclement weather may cause employees to be late, leave early, or stay home all together.

The FLSA has four simple rules for paying **nonexempts**:

1. You must pay nonexempts for every hour they work, even if they haven't sought permission to work. Collaterally, once you have paid them, you can discipline them for not seeking said permission to work

from home.

2. Nonexempts who are working from home must keep track of their working and nonworking times, such as meal and rest breaks.
3. Nonexempts don't need to be paid if they're not working, including those who come in late or leave early. They can use accrued paid leave if they have any. If nonexempts substitute accrued time for nonworking time, and they work overtime during the same week, *don't* include the time off in their regular rates when figuring their overtime rates.
4. If nonexempts don't have any accrued leave, they'll be taking an unpaid day off.

Under the basic FLSA rule for **exempts**, you must pay them their guaranteed weekly salary in any week they do any work. But there are exceptions. The salient one here allows you to dock exempts' pay for a *full day* if they stay home and don't work.

The key is not performing *any* work from home. If they work at home, the FLSA's basic rule applies.

PTO banks, however, change this landscape considerably. If you use leave banks and allow exempts who would run out of time due to current debiting to borrow time, then you can use them in these two typical winter weather scenarios:

- Exempts come in late or leave early.
- You decide to close early, open late, or to not open at all.

If you don't allow exempts to borrow time and they work during the week, you'll be on the hook for their guaranteed weekly salary.

Take our advice, please

Here's our one tried-and-true tip: Work from home on snow days if you can. Leave the driving to the professionals.