



BULLETIN #140/2020

December 16, 2020

REMINDER: STORMS AND DEALERSHIP OPERATIONS - REPORTING PAY RULES

Summary: Storms can cause major disruptions to residents and businesses, including the subsequent treatment of employee compensation. As you address recent and prospective winter storms and prepare subsequent payroll calculations, dealers must be aware of certain rules governing dealership closures and employee pay. Dealers also must be aware of how they handle closures due to weather conditions in the dealership's employee handbook. If you provide employees paid days off in such instances, then your payroll for the week must be consistent with those policies.

Full Bulletin

Here in New England at least once a year we can expect weather conditions to affect your business operations. Regardless of the cause for your store shutdown, dealers need to be aware of certain pay rules that apply regarding how you handle the situation.

Reporting Pay Rule: You need to be aware of how to handle employee compensation in situations ranging from you open for the day and then must close as your power goes down, for example, or due to occurrences prior to opening you never do open for the day.

Under the state's Reporting Pay Rule (found in the state Minimum Wage regulations at 454 CMR 27.04(1)), if an employee is scheduled or requested to report to work on a regularly-scheduled workday or reports to work but is sent home because of a lack of work, the employer must pay the employee for at least three hours at the applicable Massachusetts minimum wage (\$12.75 per hour for 2020, increasing to \$13.50 per hour on January 1, 2021). This regulation has been interpreted as requiring the payment only when the employee has reported to work on a scheduled workday expecting to work more than three hours and is sent home. Under that interpretation, if the employee is called in to work on a non-scheduled workday and gets sent home for a lack of work, the employee must be paid only for the time actually worked. Therefore, an employee who is called in to work on his or her off day and is then sent home after working two hours need only be paid for the two hours actually worked, unless the employee was told that he or she would be working more than three hours. [DOS Op. Ltr. MW-2002-017, 6/4/02.]

The Massachusetts Division of Occupational Safety has clarified how the Reporting Pay



requirement applies to employees scheduled to work less than three hours. If an employee is, in good faith, scheduled for less than three hours, the employer may pay the employee for only the hours worked. For example, if an employee is scheduled for a two-hour meeting and the employee works two hours, the "three hour rule" is inapplicable, and the employer must pay the employee for only the hours worked. [DOS Op. Ltr. MW-2007-002, 7/9/07.]

Further, dealers also must be aware of how they handle closures due to weather conditions in the dealership's employee handbook. If you provide employees paid days off in such instances, then your payroll for the week must be consistent with those policies.

For managers, the situation is different. You cannot limit the compensation for them on such a shortened or no-work day. Managers must be paid for the day, whether you assign them work or not.

Phone Tree: In a situation where you know you will not be able to open for the day, you can avoid having employees show up by establishing a phone tree to inform them of the emergency closure of the dealership. This can be used to effectively control compensation costs during such an emergency.

Bottom Line: If you anticipate being closed on a regular work day, inform your employees ahead of time. Otherwise, you will need to comply with the state's reporting pay rules.

No Guaranteed Workweek: Some employees believe that if they are ready and willing to work, the employer is obligated to allow them to work their regular schedule or to pay them for the hours they missed due to the closure of the business. This is not true under Massachusetts or federal law. An employer is not required to provide a set number of hours of work each week and, with the exception of "reporting pay" discussed above, is not obligated to pay an employee except for hours actually worked by the employee.

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