

**In This Issue:**

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Winter has arrived. In addition to heavy rain, sleet, and snow, employers must brace themselves for the potential payroll storms that may follow. Employers must be aware of and comply with state “reporting time pay” laws that require non-exempt employees be paid a minimum amount whenever the employee reports to work as required or requested by the employer, even if no work is provided.

## **Reporting Time Pay: A Wage & Hour Winter Wonderland**

**By Christopher Kaczmarek**

As demonstrated by the recent storms that stranded travelers across the country, winter has arrived. In dealing with disruptions caused by heavy rain, sleet and snow, employers also should prepare themselves to handle payroll issues that result from winter storms. Indeed, although federal law has no such requirements, some states have “reporting time pay” laws that require non-exempt employees be paid a minimum amount whenever the employee reports to work as required or requested by the employer, even if no work is provided. The following is a general discussion of such reporting time pay laws, along with illustrative hypotheticals, to help employers weather the storm.

### **Reporting Time Pay**

A wage obligation may exist under a state reporting time pay law or a wage agreement, discussed further below. The good news for employers is that the vast majority of states do not have reporting time pay laws. The jurisdictions that do have reporting time pay laws are: California, Connecticut, the District of Columbia, Massachusetts, New Hampshire, New Jersey, New York, Oregon (minors only), and Rhode Island. Once an employer determines that a reporting time pay law exists, the following must be considered:

1. Does the law apply to all non-exempt employees or only to those scheduled to work a specific number of hours?
2. If applicable, how much must the employee be paid?

#### ***Scheduled Hours***

Although reporting time pay laws vary from state to state, the majority of such laws require that an employee be scheduled to work a specific number of hours to be eligible for reporting time pay. Some state laws apply if an employee is scheduled to work at least four hours, but other states have lower thresholds. In addition, different standards may apply in different industries. Some states also have separate standards for adult and minor employees. As a general matter, employees who are not scheduled to work the applicable threshold number of hours are not eligible to receive reporting time pay.

**EXAMPLE:** Massachusetts's reporting time pay law applies if an employee is scheduled to work at least three hours. Employees John and Jane are scheduled to work a two-hour shift and a five-hour shift, respectively. Both arrive at work to begin their shifts, but, because of a snowstorm and vacant streets, their employer closes the business for the day, providing neither employee any work. Jane, whose scheduled shift exceeds three hours, will be entitled to reporting time pay, but John will not because his scheduled hours did not meet the three-hour threshold.

### **Hours Owed**

When a reporting time pay law exists and an employee who is scheduled for the requisite number of hours reports to work, the employer must next determine both: (a) how many hours of compensation that individual is owed; and (b) the rate at which those hours must be paid. Again, requirements vary from state to state. Some reporting time pay laws require that an employee receive compensation at his or her regular rate of pay, whereas other states only require payment of at least the minimum hourly wage. Moreover, the amount owed may vary depending on how many hours, if any, an employee works.

**EXAMPLE:** California's reporting time pay law requires employers to compensate employees for half of their scheduled hours, up to a maximum of four hours. Jane was scheduled to work five hours. Because her employer did not provide her with any work after she arrived at the workplace, she is entitled to reporting time pay for half her scheduled hours: 2.5 hours of pay. If, however, Jane had worked one hour before being sent home by her employer, she would be owed 1.5 hours of reporting time pay in addition to one hour of regular pay.

### **Exceptions**

Exceptions vary by state. For instance, some states do not require employers to provide reporting time pay if:

- an employer makes a good faith effort to notify an employee not to report to work;
- the interruption of work is caused by an "Act of God" or other cause not within the employer's control; or
- the employer previously provided enough hours during the week to meet any minimum number of hours agreed to between the employer and employee.

### **Overtime**

It is important for employers to determine how the states in which they operate treat reporting time pay for purposes of state overtime law. First, the employer must determine whether reporting time pay counts as "hours worked" for purposes of the state overtime law. Second, if reporting time pay does constitute hours worked, the employer should determine whether such pay must be factored into the employee's regular rate for that week. Many reporting time pay laws are silent on these issues, thereby requiring employers to look for guidance elsewhere, e.g., the state wage and hour laws or the state labor department.

### **Wage Agreements**

Although a state may not have a reporting time pay law, certain employers have wage agreements that provide employees with a guaranteed minimum number of work hours and/or pay. In these situations, employers must abide by the agreement's terms and conditions.

**EXAMPLE:** Illinois does not have a reporting time pay law. John and Employer enter into a written wage agreement providing that John will receive 32 hours of work each week at the state minimum wage rate. Employer's payroll workweek is from Sunday to Saturday, and John is scheduled eight hours per day Wednesday through Saturday. John works eight hours the first three days, but only is provided two hours of work on Saturday because a snowstorm adversely affects Employer's business. Assuming the agreement does not provide the Employer with a justification for not paying John for a full eight hours on Saturday, John is entitled to compensation for the six remaining scheduled, but non-worked, hours.

## What Employers Should Do

Employers should consult with knowledgeable employment law counsel to determine whether a reporting time pay law exists in the jurisdictions where they operate. Multi-state and national employers, whose odds of operating in states with reporting pay laws are greater, must recognize the differences between the state reporting time pay laws and develop state-specific strategies to ensure compliance in each jurisdiction. In addition, employers should consider taking the following actions now, so that they can be prepared before the next big winter storm:

- Ensure that employee contact information is current;
- Obtain multiple forms of contact information if possible, e.g., home telephone number, mobile telephone number, email address;
- Ensure that staff who are responsible for notifying other employees of closures or delayed openings have ready access to employees' contact information;
- Make certain open lines of communication exist between decision-making employees and supervisory staff to guarantee adequate notice is provided if and when operations will stop due to weather conditions;
- Develop a protocol for providing notice and designate primary and secondary staff charged with providing notice; and
- Train payroll staff on if, when, and how much reporting time pay is due employees and ensure that timekeeping records can and do accurately reflect the difference between regularly-worked and reporting time pay hours for overtime purposes.

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