

Q&A WITH CHRIS THRUTCHLEY

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TORNADO DRILLS CAN MINIMIZE EMPLOYERS' LIABILITY RISKS

Q: Does a business need severe weather policies and procedures?

A: Recently, a Houston meteorologist warned during a broadcast that he would “expose” employers who fired workers for not showing up due to deadly flooded streets. Yet a 2015 Staples survey found 55 percent of employees are expected to show up to work during severe weather; half said their employers don’t have emergency plans for severe weather. An inclement weather policy that’s carefully customized to fit your business needs and the situations your people may face is one part of a prudent business plan that covers various potential disasters. Things to consider include: who’ll announce closures; employee notification methods like text, email, call, hotline, radio or TV, website, social media; identifying “essential” employees who need to report to work; processes employees should follow to notify the organization if they can’t make it or are late; contingencies for closures, early departures and late arrivals; and work-from-home policies. A good policy will emphasize that employees should prioritize their personal safety and the safety of others when deciding whether to report to work or leave the workplace early.

Q: Can an employer minimize risk of liability by conducting tornado drills?

A: Absolutely. Employers generally aren’t liable for injuries suffered in a tornado when an employee has no greater exposure than the general public. Well-trained employees who follow proper precautions but still suffer injury likely had no greater exposure to the tornado than the general public. When, however, an employee’s duties result in greater exposure to the risk of tornadic injury than the general public, then the injury will be compensable. For example, in the case of *Bruce’s Tulsa Truck Plaza v. Thornhill*, a truck-stop waitress suffered injuries when struck by glass from a window blown out by a tornado while checking to see if patrons had taken cover. The court held the waitress’s injuries were compensable because she was performing a work-related duty that placed her in greater harm’s way than that of the general public. Employers also face risk of liability to third parties for negligent supervision and negligent failure to train employees.

Q: What additional liability may an employer be exposed to for providing access to a shelter or safe place?

A: Oklahoma law provides that “any entity or individual that provides access to a safe place in times of severe weather shall not be liable for any civil damages to any person using the safe place during severe weather if the entity or individual was acting in good faith and the damage or injury was not caused by the willful or wanton negligence or misconduct of the entity or individual.” A “safe place” includes “any property, dwelling, shelter or other structure that can be reasonably considered protection from severe weather.” Negligence could potentially include failure to adequately train employees on how to properly utilize the safe place and any attendant safety precautions.

Q: How is pay impacted when work is missed due to weather-related emergencies?

A: The federal Fair Labor Standards Act requires nonexempt employees to be paid for all hours actually worked. Employers may decide if employees will be allowed to use accrued vacation or paid time off to cover absences. If time off due to weather is paid, it needn't be counted as work time when calculating overtime pay. Exempt employees must be paid their full salaries for any workweek in which they performed any amount of work. So, employers shouldn't make deductions from the salaries of exempt employees for early departures or late arrivals caused by bad weather. If an employer is open for business, but an exempt employee chooses to stay home for personal reasons, the employee isn't entitled to pay. If the employee has accrued time-off benefits, it can be used to cover the absence. If not, the employer can reduce the employee's pay but only if the absence is for one or more full days.