



# There's no business like snow business - inclement weather and employer obligations

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No matter how sophisticated your business may be, severe weather conditions impose unique and unpredictable challenges. Preparing to address these issues *before* they occur will be key to effectively managing them.

While the challenges that can arise will vary vastly between workplaces, this blog will highlight some of the more common questions we hear from employer.

The issues presented by extreme weather are numerous. For example, severe weather may stimulate employee absenteeism/lateness or, if employees typically work outside, the employer might be faced with unique obligations under occupational health and safety legislation.

When facing such an unpredictable foe, there is one thing that every employer can do to avoid last minute frustration – create a policy *before* the challenges arise.

## The Basics for a Policy

At a minimum, an employer's severe weather policy should address the following questions:

- Will employees be paid if severe weather prevents them from attending their usual place of work? If not, can employees use their vacation (or other paid time off) to offset the loss?
- How and when should an employee inform the employer that the weather is preventing him or her from attending work?
- When faced with severe weather, are employees expected to work from home or telecommute?
- Who will decide if the business should be closed?
- How will any closure be communicated to employees?
- If the business is closed for the day, will the employees receive any compensation?

Developing a severe weather policy will help employers avoid getting caught without a jacket in the proverbial snowstorm.

## Common Pitfalls

*(1) Do I have to pay an employee who does not report for work because of severe weather?*

When you peel back everything else, the foundation of an employment relationship is that an employee trades his or her personal services to an employer in exchange for compensation. Although there are a number of exceptions, including situations where the employee's agreement dictates otherwise, if an employee isn't providing services through no fault of the employer, an employer does not have to pay.

However, the employer/employee relationship goes beyond the law. Many employers opt to allow employees to use their entitlements to paid time off (such as vacation or paid sick leave) to cover these types of absences. Depending on whether it's practical for the business, an employer might also want to explore flexible work options like working remotely.

*(2) If I choose to close down my operations for the day, do I have to pay my employees?*

The decision to close down operations in the event of inclement weather rests solely with employer. Again, subject to certain exceptions (such as a written policy, agreement or the provision of a collective agreement), as long as the employer informs the employees *before* they report to work, the employer is not obligated to pay employees on days when they are not providing services. Where providing sufficient notice is untenable, the employer may still have to pay. For instance, if the employee reports to work and then is immediately sent home, the employer may have some obligations. Under provincial employment standards legislation, an employee may be entitled to "call out" or "reporting" pay. The existence and calculation of statutory reporting pay differs between provinces.

In Ontario, this requirement is commonly known as the "three-hour rule." If an employee regularly works more than three hours a day and is required to report for work, the employee is entitled to be paid the greater of (i) three hours at the minimum wage *or* (ii) the employee's regular wage for the time worked.

For example, if a retail employee is paid \$11.00/hour, reports to work and is sent home after only two hours, then he or she would be entitled to compensation of three hours of minimum wage ( $\$10.25 \times 3 = \$30.75$ ) instead of his or her regular wage for the hours worked ( $\$11.00 \times 2 = \$22.00$ ).

Ontario's employment standards legislation provides an exemption to the three hour rule if the employer is *unable* to provide work because of "fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work."

It's worth noting that, just like in the question above, choosing to close down operations and then not paying employees could lead to a bitter relationship. To avoid frustrated employees, an employer has to carefully manage expectations. An employee who is informed of the employer's policy well in advance, is far less likely to be frustrated or disappointed. In addition, the employer may want to consider certain mitigating options, such as partial pay for the date of closure.

For advice on how to deal with the unique issues that severe weather may bring to your organization, please reach out to a member of our Employment and Labour Group.

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