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Hurricane-related absences create confusion for employers, employees

Tampa Bay Business Journal - by [Sheri D. McWhorter](#)

Faced with an overactive hurricane season, employers and employees are clashing over issues such as whether an employee can be fired for refusing to work during the storm and whether employees must be paid when there is no work available after the storm.

In Ormond Beach, a hospital fired 25 nurses for not calling in, not showing up or refusing to work, while others were suspended for not completing a shift or coming in late during Hurricane Frances.

The City of Largo made headlines when it fired a 61-year-old public works employee with 30 years of service after he chose to evacuate and remain with his 81-year-old mother rather than report for work as Hurricane Charley approached. Largo also fired a wastewater treatment plant operator for the same reason. Both employees were considered primary responders who would have roles in an emergency.

Later, as Hurricane Frances threatened and controversy swirled, Largo officials announced plans to stand by the city's policy to terminate certain employees if they don't show up to work.

Employers panicked in South Florida when Miami-Dade County Mayor Alex Penelas and State Attorney Katherine Fernandez Rundle took to the television airwaves as Hurricane Frances approached with warnings that they could face criminal prosecution for forcing employees to work during the storm. Rundle went so far as to imply that if an employee were ordered to report for work and was seriously injured the employer might be charged in civil, or even criminal, court with being "culpably negligent."

Elsewhere, supervisors met with primary responders, telling them they may be working in the face of the approaching storms and face termination if they don't show up. One city required primary responders to sign forms clearly stating their obligation to show up for work in emergencies and acknowledging that they could be fired for not doing so.

On the flip side, some employers, particularly those in the restaurant industry, found that their business doubled or even tripled by remaining open in the face of the approaching storm. In many cases, showing up for work was optional, and employees chose to report, reaping the rewards of extra pay and tips gladly handed over by weary storm victims and recovery workers.

After the historic hurricane season Florida has faced this year, the issue has come to a head and

prompted talk of possible legislation in the next session addressing the rights and responsibilities of employers and employees. The [AFL-CIO](#) has called for Miami-Dade County to enact a local ordinance preventing employers from threatening -- or retaliating -- against employees who refuse to work during a storm.

Barring any new legislation, Florida remains what is known as an "at-will" state, which means an employee can be fired for a good reason, for a bad reason or for no reason at all. The terminated employee will have no legal recourse, so long as the firing is not for an illegal reason.

There is no law on the books in Florida that even arguably forbids employers from requiring employees to report for work contrary to a governmental advisory stating otherwise. In addition, there is no law that forbids Florida employers from terminating employees who refuse to report for work during a storm.

This hurricane season, employers and employees also struggled with the issue of whether employers must pay employees for days when the business is closed due to the hurricane. Whether or not employees must to be paid under such circumstances depends upon whether the employee is classified as exempt or nonexempt under the Fair Labor Standards Act.

For exempt employees, the FLSA generally does not permit wage deductions for absences caused by the employer or by the operating requirements of the business.

Where employees are "ready, willing, and able" to work, employers may not make partial week deductions from an exempt employee's pay because the business is closed or because there is no work available. Where the business is closed or no work is available for a partial week, for whatever reason, the law presumes that an exempt employee would have been ready and able to work had the business been open and therefore the employer must pay its exempt staff accordingly.

Although an exempt employee must receive his full amount of pay for any week in which any work was performed, where business operations cease or no work is available for an extended period of time, as after a hurricane strike, employers are not required to pay an exempt employee when the employee has not worked at all during a given week.

When it comes to nonexempt employees, the FLSA does not require employers to pay employees for days when the business is closed or no work is available. Employers are only obligated to pay nonexempt employees for actual hours worked. Many employers have, however, forged a workable compromise with their nonexempt employees by allowing them to use accrued vacation or paid time off to makeup the pay that would have been otherwise lost due to the hurricane.

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