

WEATHER REPORT : SNOW DAYS AND YOUR SALARIED EMPLOYEES

The weather outside is frightful, so you have hung the “closed” sign on the office door and told all your employees to go home. You know you’ll pay your hourly (or nonexempt) workers only for the time they’ve worked this week – but what about your salaried (or exempt) workers? What are you legally required to pay them for the day you closed up shop? What if you had stayed open that day but an exempt employee called in and said the weather was too awful for him to venture outside? Two recent opinion letters from the US Department of Labor (DOL) help clarify your foul-weather salary obligations to exempt employees under federal wage and hour law.

Warming up to what the FLSA Says

First, remember what “exempt” means when you’re talking about salaried workers. It means they are exempt from the rules of the Fair Labor Standards Act (FLSA) that require you to pay workers a minimum wage and overtime. The salaried folks don’t receive overtime because – except in very specific situations – they’re paid the same salary regardless of variations in the quantity (such as hours above or below 40 per week) or quality of their work.

So, whenever you cut exempt workers’ salary because of the number of hours worked, it makes them look more like hourly workers. If you treat an exempt employee like an hourly worker – for example, by making improper deductions from her salary – you can forfeit her exempt status and have to pay her for overtime worked.

You say “Go Home”

Say there’s a blizzard. You send everybody home one day and keep the office closed the next day. The general rule is that if an exempt employee is ready, willing and able to work, you can’t reduce her salary for times when work isn’t available. The key word is salary. You can’t reduce salary, but you may require your exempt employees to apply vacation or paid time off (PTO) toward the time the office was closed and they couldn’t work. You can do that because nothing requires you to give employees vacation time or PTO in the first place, so you can make the rules about how they use it – so long as they receive their full salary amount for the time period in question.

For example, Josephine, your internal auditor and an exempt employee, earns \$52,000 per year (\$1,000 per week) in salary and has five days – 40 hours – in her PTO bank. You sent the troops home two hours into the day on Tuesday and told them to stay home on Wednesday. You can make Josephine use 14 hours of PTO to cover the lost time on Tuesday and Wednesday. She still

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will receive a check for \$1,000 for that week, and that's what matters. Making her take PTO for the snowstorm won't create any questions about her status as an exempt employee. Here are some other key points:

- What if Josephine doesn't have any PTO left? You must pay her full salary.
- What if she has some PTO left but fewer than 14 hours? You can apply what she has to the blizzard days, but you still must pay her a full week's salary.
- What if you don't offer employees PTO or vacation? You must pay her full salary.

They say "We're snowed in"

What if Josephine never arrived on Tuesday when you closed the office for part of the day? She claims she was driving to work when you called her cell phone and told her the office was shutting down. What if you suspect she was home, not really willing and able to work? Give her the benefit of the doubt and pay her the same as you would have if she had showed up on Tuesday.

Now, what if you didn't close down the office at all and Josephine called on Tuesday to say she wouldn't be able to come in because of the snow? Absences for inclement weather are considered absences for personal reasons under the FLSA. You may deduct full-day "personal" absences from an exempt worker's salary without jeopardizing her exempt status – it's one of the exceptions to the rule that exempt employees get paid a full week's salary regardless of variations in quantity or quality of output that week. So in Josephine's case, you may deduct one day's pay from her salary for the week of the snowstorm because she was absent for personal reasons. If she has PTO available, you may require her to take that for her snow day but if she's out of PTO, you may deduct a day's pay from her salary without worrying about her status as an exempt employee.

What if Josephine straggled in at 3:00 P.M., blamed the snow, and worked for two hours that day? If she had anything in her PTO bank, you could require her to apply that to the personal time she took off because of the snow. If she didn't have any PTO, you'd have to pay her salary for the whole day because you can deduct only full days of "personal" absence from an exempt worker's salary.

To err is human

What if you've made a mistake in how you've paid – or not paid – exempt workers during inclement weather? FLSA regulations say that isolated or inadvertent deductions don't result in loss of the exemption if you reimburse the employees for the improper deductions. The regulations also say that if you have a clearly communicated policy against improper deductions that (1) includes a complaint procedure, (2) reimburses employees for improper deductions, and (3) makes a good-faith commitment to comply in the future, you won't lose the exemption unless you willfully violate the policy by continuing to make improper deductions after employees complain.

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RISK SERVICES

NDIRF LIABILITY AND AUTOMOBILE COVERAGE CHANGES

Automobile Change:

Effective September 1, our Automobile Memorandum of Coverage was modified to include \$2,000 coverage for damage to property in a covered party's care, custody, or control. For coverage to apply, you or the permissive user of your auto must be legally liable for the damage to such property. This change is found on page 6 of 26 in the Automobile Memorandum of Coverage.

This coverage is provided to all NDIRF Member's auto coverage on claims for such damage that occurs on or after September 1.

Liability Changes:

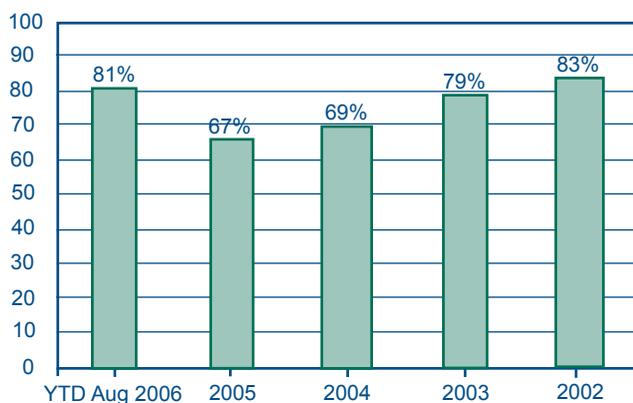
The Liability Memorandum of Coverage has been modified in two ways. These modifications take effect on all Liability Memorandums of Coverage with a coverage effective date of October 1 and thereafter. The changes are:

Liability Assumed Under Contract: This coverage has been significantly reduced from our prior coverage. This change was necessary to allow our underwriters to adequately understand the liability exposures our members are accepting. This is especially necessary for the liability exposures added covered parties are accepting under a member's liability coverage. In the past, liability coverage forms provided for

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FINANCIAL INSIGHTS

COMBINED RATIO



The combined ratio is the sum of NDIRF's loss and expense and indicates the profitability of NDIRF's operations without investment income. A ratio greater than 100% means that losses and expenses exceed premium income. Regulatory guidelines state that a company's combined ratio should be less than 96%. As the graph shows, NDIRF's combined ratio has been consistently below that guideline. ■

FROM THE CEO

Seasons change. Ask any Minnesota Twins fan. As this is written, the Twins have won their 90th game with 11 left to play in the regular season. If you had told me last April 1st they would be playing to this level in mid-September with a pitching staff including three starters only the most ardent Twins fan (guilty) could name, I'd have accused you of attempted April Fools Day trickery. Most thought that the Twins would go only as far in 2006 as a good veteran starting pitching staff would carry them. Instead, it's been outstanding performances from some players who weren't around on Opening Day. That's baseball, I guess.

Another season coming up soon is the 2007 North Dakota Legislative Session. As things look now, a healthy state budget surplus should make everything go smoothly and the gavel will thump down early this time – right? Well, as in baseball, experience tells us things can happen once the fun starts and they don't always turn out as expected. You can be assured, however, that the NDIRF will be following the scoreboard closely regarding issues of common interest with our members. That's politics, I guess. ■

RISK SERVICES

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liability (personal injury or property damage) of another party assumed under contract. Now the automatic coverage for liability assumed under contract is limited to the new definition of a “covered contract” found in the definition section. This reduction in coverage does not mean the NDIRF will not provide the necessary coverage. It just means our underwriters need to be apprised of the added exposure and, if necessary, make a cost adjustment.

Review pages 4 of 15 and 11 of 15 of your Liability Memorandum of Coverage for the scope of this coverage modification.

Your Work and Your Product Exclusions: These are standard insurance industry exclusions that, in the past, were not included in NDIRF liability coverage forms. The addition of these exclusions to the NDIRF liability coverage was necessitated by the exposure presented by the increasingly large number of added covered parties' activities that we receive requests to cover.

These exclusions and attendant definitions are found on pages 6 of 15, 14 of 15 and 15 of 15 of our Liability Memorandum of Coverage.

The Automobile Memorandum of Coverage and Liability Memorandum of Coverage discussed above are available on the NDIRF website. www.ndirf.com

If you have any questions on this information, please contact Elaine Markwart (Liability), Brenda Flesness (Automobile), or Ross Warner in NDIRF's Risk Services Department. ■

Mark Your CALENDAR

October

27-28: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

December

7: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

Fred Bott, Devils Lake Steve Cichos, Jamestown Burdell Johnson, Tuttle Mark A. Johnson, Bismarck Shawn Kessel, Wahpeton
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Mr. Shawn Kessel recently joined the NDIRF Board of Directors, representing “City” members of the Fund, upon his appointment to serve the remainder of a term left open by the retirement of Robert Frantsvog. Mr. Kessel is currently employed as the City Coordinator for Wahpeton, ND and just completed service this past September as President of the North Dakota League of Cities for 2005-2006.

Shawn is a lifelong North Dakota resident, born in Dickinson and raised, as he says, continuing along Interstate 94 in Jamestown. He is a graduate of Moorhead State University (Bachelors Degree in Social Work) and the University of Mary (Masters in Business Administration).

Having competed in triathlon events, Shawn also lists the three R’s (racquetball, reading and running) and spending time with his wife Tina and children Dallas (24), Austin (22) and Braden (9) as favorite activities.

Mr. Kessel believes an advantage offered by NDIRF is that it allows members to focus their efforts more on providing effective services to residents by keeping rates reasonable, sponsorship of training activities and, last but not least, the conferment of benefits program. Shawn describes his vision for the NDIRF as offering comprehensive liability coverage at reasonable rates for all covered entities with a view toward branching into other areas of related insurance needs. ■