U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

September 2005

Employment & Wages under Federal Law during Natural Disasters & Recovery

The Wage and Hour Division (WHD) of the U.S. Department of Labor enforces a variety of worker protection laws, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). WHD is furnishing answers to some basic questions to ensure that in this critical time individuals are paid properly for work they perform.

The FLSA is the federal law of most general application concerning wages and hours of work. The FLSA requires employers to pay covered, non-exempt employees no less than the federal minimum wage of $5.15 an hour for all hours actually worked and overtime at the rate of at least one and one-half times an employee's regular rate of pay for all hours actually worked in excess of 40 in a week. These requirements are not subject to waiver during natural disasters and recovery efforts.

1. Many employees worked during the week prior to the storm, but businesses are now closed and many records are destroyed. How do those employees receive their last paycheck and how much must they be paid under federal law?

The FLSA requires payment of at least the full minimum wage and overtime compensation due a covered employee for the hours that the employee worked. If a last paycheck has been delayed because of Hurricane Katrina and an employee has questions about the FLSA, the employee should call the WHD toll-free help line at 1-866-4US-WAGE (1-866-487-9243).

2. How many hours is an employer obligated to pay an hourly-paid employee who works a partial week because the employer's business closed as a result of the storm?

The FLSA generally applies to hours actually worked. It does not require employers who are unable to provide work to employees due to a natural disaster to pay non-exempt employees for hours the employees would have otherwise worked.

3. Can workers receive unemployment compensation while they are out of work?

For information about unemployment insurance and disaster unemployment assistance, call the Department of Labor's Employment Training Administration at 1-866-4-USA-DOL (1-866-487-2365) or visit America's Service Locator at **www.servicelocator.org/hurricane_katrina_info.htm**.

4. If individuals volunteer to a public agency, are they entitled to compensation?

Individuals who volunteer their services to a public agency (such as a state, parish, city or county government) in an emergency relief capacity are not considered employees due compensation under the FLSA if they:

- Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. The volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services; and,

- Offer their services freely and without coercion, direct or implied; and,
- Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

5. If individuals volunteer to a private not-for-profit organization, are they entitled to compensation?

Individuals who volunteer their services in an emergency relief capacity to private not-for-profit organizations for religious or humanitarian objectives, without contemplation or receipt of compensation, are not considered employees due compensation under the FLSA. However, employees of such organizations may not volunteer to their employers to perform on an uncompensated basis the same services they are employed to perform.

6. What can employers do to help their employees who wish to volunteer in disaster relief activities?

Employers may offer employees paid leave for time spent volunteering to assist with disaster relief efforts. Employers who maintain leave banks can also allow employees to donate leave to the leave bank and then award the donated leave to other employees who, in turn, use the leave to volunteer relief services. The FLSA does not regulate the provision or use of a leave bank.

7. If a governmental authority "calls up" workers from private businesses, who is responsible for paying those workers?

Individuals summoned to engage in national disaster rescue/recovery efforts by Federal, state or local governments pursuant to statutory authority are employees of such governments while so engaged. The employee's regular employer is not liable for FLSA minimum wage or overtime payments as a result of work performed for the government.

Where employers are requested to furnish their services, including their employees, for disaster relief under Federal, state or local general police powers, the employer's employees will be considered employees of the government while rendering such services. No hours spent on the disaster relief services are counted as hours worked for the employer under the FLSA.

8. As new workers are hired during the recovery, are employers required to verify an employee's work eligibility status and complete Form I-9, Employee Eligibility Form?

The Department of Homeland Security announced it will not sanction for 45 days after September 6 employers that hire Hurricane Katrina victims who are unable to provide documentation required for an I-9. Thus, if a person does not have the necessary required forms of identification as a result of Hurricane Katrina, an employer can still hire that person. Employers must still complete the I-9 with as much information as possible and note complete information is not available due to the hurricane.

ADDITIONAL INFORMATION

For more information regarding the Fair Labor Standards Act, visit the Wage and Hour Division Web site at **www.wagehour.dol.gov** or call our toll-free help line, available 8 a.m. to 8 p.m. eastern time, at 1-866-4US-WAGE (1-866-487-9243). The FLSA statute appears at 29 U.S.C. § 201 *et seq.*