

## **Frightful Weather and Delightful Holiday Bonuses Give Rise to Wage and Hour Issues**

December 2, 2012

Snow, ice and Hurricane Sandy are enough motivation to make us review some workplace compliance issues like time off from work, workplace safety issues and end of the year bonuses.

**In deciding whether to compensate employees for time off from work due to weather related conditions, employers must focus their analysis on the employee's Fair Labor Standards Act (FLSA) status, i.e., exempt or non-exempt.** If the workplace is closed for bad weather, for a day, exempt workers should be paid while hourly non-exempt workers have to be paid for actual working time unless a contract or policy requires otherwise. If the office is closed, however, for a week, exempt workers need not be paid for "any workweek in which they perform no work." (Wage-Hour Opinion Letter, April 30, 1975). If the office is open and an exempt worker cannot make it in due to bad weather, his/her pay may be docked if no work is done at home or otherwise.

**Employers must also keep the FLSA in mind when awarding bonuses.** If you distribute a non-discretionary bonus to a non-exempt employee, that bonus must be included in the computation of pay for overtime purposes. "Non-discretionary" means a bonus that is agreed to, promised or contracted, such as for a signing bonus, attendance bonus or one that is part of a collective bargaining agreement. To avoid DOL violations, it is important for employers to review employee handbooks, employment agreements and collective bargaining agreements prior to the issuance of bonuses in order to determine the discretionary status of the bonus.