

Attorney talks employer responsibilities in Sandy's wake

BY PATRICK GALLAGHER
pgallagher@westfairinc.com

With businesses and individuals still recovering from Hurricane Sandy, Bridgeport attorney Stuart M. Katz and the Business Journal recently discussed employers' responsibilities in the event of major storms or natural disasters.

The following is an excerpt of the conversation:

BUSINESS JOURNAL: For businesses whose operations and employees were impacted by Hurricane Sandy – or who are affected by any major storm, for that matter – what are the employer's primary legal responsibilities with regard to their employees?

KATZ: "Connecticut employers must adhere to wage and hour laws at all times, even in the wake of natural disasters. These obligations become complicated when businesses are forced to close unexpectedly. Generally, if salaried employees worked any part of the week in question, and were available to work for the remainder of the week, they should be paid for the full week. If, on the other hand, the employee did no work during the week, the employer is not obligated to pay the weekly salary.

Employees who are paid hourly only are entitled to be paid for hours that they actually work, so if the business is closed, paychecks need not be issued. Connecticut's unemployment compensation system does provide some relief to workers in these situations, allowing employees to collect at least partial unemployment benefits in the event of a storm-related closing."

Other than the wage and hour laws, what factors should employers consider?
"Employers must pay attention to their existing policies and procedures. If a company handbook addresses unexpected closings, the business must adhere to its own policy or risk the assertion of legal claims. Also, the impact on employee morale in extraordinary situations should not be ignored."

For employees who are unable to return to work immediately due to storm damage to their property or neighborhoods, are there allowances that need to be extended by the employer?

"Unanticipated time out of the office may be treated in a variety of ways. Some

employers may grant a limited number of paid days off, without requiring employees to use vacation or other 'paid time off.' Some may require employees to utilize those days. Although an employer may be sympathetic to the employee's challenges, absent a company policy imposing a contrary obligation, employees generally will have to use available time off in order to receive compensation in such circumstances."

Are there situations where an employee's pay could be in jeopardy due to time out of the office that is the result of storm-related damage?

"If an employee has exhausted all available paid time off, the employee may be forced to take additional time on an unpaid basis. I heard a news report after Hurricane Sandy that one of the Atlantic City casinos wasn't even allowing employees to use vacation time for the forced days off; it was requiring that the days be taken without pay. Prolonged absences exceeding the employer's allotment for paid or unpaid time off can lead to disciplinary measures and termination in some cases. Again, employers need to consider the impact on employee morale, but the letter of the law rarely requires this consideration."

Are employers responsible for making arrangements for their employees to work from home if need be?

"Employers have no affirmative obligation to make such arrangements, although it may be something beneficial to both the company and the employee. The mixed blessings of modern technology make it easier than ever for certain employees to work from home, connecting to company computer networks and communicating with co-workers and customers via smartphone seamlessly.

Typically, any time hourly employees spend working – including sending and receiving emails and text messages – is considered compensable time, for which employees must be paid. Recording employee work hours for work performed off site is complicated, both when it occurs on a regular basis and when it arises unexpectedly. Employers should proactively establish procedures for handling these situations, so that employee expectations can be addressed, and so that the employer can avoid running afoul of Connecticut's applicable wage laws."

Stuart M. Katz is a principal of the law firm Cohen and Wolf PC and chairs its Employment and Labor Group.

