



## **Holiday Shutdowns: 3 Key Legal Rules**

Many companies are planning temporary shutdowns for the upcoming holidays. Here's a quick review of the three key legal rules governing holiday shutdowns.

First, as to salaried exempt employees, holiday shutdowns must coincide exactly with a full payroll workweek. This is because overtime exemption requirements generally require that exempt employees be paid their full weekly salary if they perform any work in the workweek. Because this rule comes from both California and federal laws, it applies to employees inside and outside of California. Employees should be instructed not to perform any work during the workweek (including the weekday and weekend days in the workweek) unless requested to do so in writing. In contrast, as to non-exempt employees, the law permits partial week shutdowns because the "salary" requirement does not apply to them.

Second, the California Labor Commissioner has issued a written memorandum stating that employers must provide reasonable notice as far in advance as possible before requiring any employees (whether exempt or non-exempt) to use accrued vacation (or paid time off) on particular dates. The Labor Commissioner's memorandum states that this notice generally must be the greater of either 90 days or one full fiscal quarter. If an employer has not provided such advance notice as to the upcoming holidays, then the employer should provide employees with the option to either use accrued vacation or to take off without pay during the shutdown (with the exception of any company-paid holidays).

Third, the California Labor Commissioner has published multiple written opinions (that have received surprisingly little attention) on the length of temporary shutdowns (these rules are also applicable to both exempt and non-exempt employees). These opinion letters state that, if the shutdown exceeds a maximum period of time, the shutdown may be construed as a "termination" of employment requiring payment of all earned wages to the employees on the last day of work before the shutdown (including all regular wages, accrued vacation, and all other earned wages!) And, the risk of noncompliance would include waiting time penalties of up to 30 days additional pay per affected employee. Making matters worse, the Labor Commissioner has issued conflicting opinion letters in attempts to define the maximum duration of a shutdown. Some opinion letters state that the maximum length is 10 days, and others state that the employees must be scheduled to return to work on a date within the same pay period. Further, the Labor

Commissioner has responded inconsistently to inquiries regarding whether the 10-day rule refers to calendar days or working days. If an employer is planning a shutdown in which one or more employees will not return to work within 10 calendar days or the same pay period, legal counsel should be consulted to assess risk and to explore possible solutions.

We recommend that employers communicate holiday shutdown plans to employees with carefully written announcements that are reviewed by legal counsel to ensure compliance with all legal requirements.

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