

When Disaster Strikes

Managing the HR and Payroll Consequences of Natural Disasters

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HR for Humans



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AGENDA

Setting the stage

Two Acts – FMLA and WARN

OSHA

Remote Work and Resources, Publication 976

Major Disasters - Case Studies

What is a Qualified Disaster?

- A federally declared disaster
- A disaster that results from a terrorist or military action
- A disaster resulting from any event the Secretary of the Treasury determines to be of a catastrophic nature
- A disaster that is determined by a federal, state, or local authority to warrant assistance from the federal, state, or local government



Who is an Affected Taxpayer?

- According to the IRS, anyone whose tax records are located in a federally designated disaster area is considered an “affected taxpayer”.
- Affected Taxpayers can be:
 - Individuals
 - Business owners, Entities and Sole Proprietors
 - Any shareholder in an S Corporation



Family Medical Leave Act (FMLA)

Family Medical Leave Act (FMLA)

- FMLA signed into law in 1993
- 12 weeks of job-protected leave for employees
- Covers:
 - Birth and care of the newborn/adopted child
 - Care for a spouse, child, or parent with a health condition
 - Leave for one's own serious health condition
 - Spouse, son, daughter, or parent being called into military service



Potential Issues

- **Complications:** If employee or loved one suffers from a condition made worse.
- **Collateral Damage:** If power outage or flooding requires you to care for loved one.
- **Post-Traumatic Stress Disorder (PTSD):**
Qualifies as serious physical and mental condition under FMLA.



Office Closures and FMLA

- **For those already on leave, does a closure count against their 12 weeks?**
 - If an employee is on FMLA leave for the whole week, a closure counts against their 12 allotted weeks.
 - If the employee's leave only takes place for part of the week (e.g: Tuesday-Thursday), then the office closure does not count as leave.

USERRA

- Uniformed Services Employment and Reemployment Rights Act (USERRA).
- USERRA forbids discharging or retaliation against employees for serving.
- Employees who are part of emergency services organization (like the National Guard) may be entitled to job-protected leave in emergencies.



(Non-FMLA) Leave Sharing

- In the event an Employee is unable to work as a result of a disaster due to:
 - Lack of transportation
 - Branch closing
 - Office in unworkable condition, etc.
- Leave-sharing program gives employees not affected by disaster a chance to help
 - Employees can donate accrued leave to co-workers who need paid time off

(Non-FMLA) Leave Sharing

Example: The dollar value of the donated leave can be contributed to the leave bank as follows, one hour of leave donated by a \$60.00/hour employee equates to 3 hours of leave granted to a \$20.00/hour employee.

Sorry Donors! Donor cannot claim a tax deduction for the donated leave

Donated time is fully taxable to recipient

Workplace Safety

OSHA Overview

- Purpose: to assure "every working man and woman in the Nation safe and healthful working conditions"
- Empowers workers to self-report unsafe working conditions
- Fines range from \$5,000 to \$70,000 for "willful" violations



During the Disaster

- 2013 Memorandum: Employees need adequate workplace escape routes, or “continuous and unobstructed path of exit travel from any point within a workplace to a place of safety.”
- Most employers need to maintain written workplace emergency action plan (EAP) and designated meeting place for emergencies
- If applicable, monitor the forecast, road conditions, and federal and state declarations (e.g., snow emergencies, “stay off the road” orders)

After the Disaster

- Potential Workplace Risks:
- Downed power lines, broken water mains, gas leaks
- Weakened structure or scaffolding
- Air quality issues, including black mold or smoke
- Hazardous road conditions



WARN Act

WARN Act Overview

- The Worker Adjustment and Retraining Notification Act (WARN)
- Requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs.
- Covered: Most employers with 100 or more employees

“Employment Loss”

- WARN Pertains to “employment loss,” meaning:
 - An employment termination, other than a discharge for cause, voluntary departure, or retirement;
 - a layoff exceeding 6 months; or
 - a reduction in an employee's hours of work of more than 50% in each month of any 6-month period.

WARN and Natural Disasters

- Employers partially exempt from the 60-day requirement in cases of natural disasters
- Must give “as much notice as is practicable.”
- The law makes no mention of disasters related to terrorist or military actions
- “The employer bears the burden of proof that the conditions for the exception have been met.”

Remote Work

Workplace Flexibility

- IT infrastructure need to support remote workforce.
- Smaller companies should consider running Continuity of Business (CoB) testing.
- Ask department heads to make sure all employees are safe and accounted for.



Remote Work Overtime

- Remind non-exempt employees to account for all hours worked while remote
- If you still use physical time clocks or punch cards, consider investing in time tracking software that employees can access on their laptops or mobile
- **Risk:** Checking emails after-hours counts as hours worked under the FLSA.



Contingency

Payday and you can't process?

- Run the last payroll
- Payroll Provider contingency
- Remote Staff
- Adjust pay data after
operations are restored



More Contingency

More payday considerations

- Printed Checks
- Payroll Records/Storage
- Offsite processing




Publication 976


Publication 976 - Disaster Relief

- 976 explains special tax law provisions to help taxpayers and businesses to recover from the impact of qualified disasters.

- Updated regularly with (any) legislative effects available online: [IRS.gov/Pub976](https://www.irs.gov/pub976)
- List of Qualified Disasters

2017 Examples: California Wildfires, Hurricane Irma

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What About Tax Preparers?

- Disaster relief does apply to tax preparers who are unable to file returns or make payments on behalf of a client because of the disaster.
- **They qualify for relief if:**
 - The preparer is located in the disaster area.
 - The preparer is unable to file or pay on your behalf.




What About Tax Preparers?

- **To get the postponement:**
 - Call Disaster Assistance Hotline: 1-866-562-5227
 - Explain that your records are located in a disaster area
 - Provide the FEMA Disaster Number of the county where your tax preparer is located



Internal Revenue Code 139

IRC § 139

- *Gross income shall not include any amount received by an individual as a qualified disaster relief payment*
- *Qualified Disaster* 
- *Qualified Disaster Payment?*



Disaster Payments

- Employer's disaster relief payments to employees *may* be tax-free
 - **The payments are used to reimburse employees for expenses they incur as a result of the disaster**
 - *Payments cannot be compensated for by insurance*
 - *Expense Examples: medical, temporary housing, transportation, etc.*
 - **Payments are not intended to compensate all disaster-related losses**
 - Cannot reimburse for the cost of nonessential items, luxuries or services

Disaster Payments

- **If those conditions are met...**
 - Employer payments are considered qualified disaster relief payments and they are excluded from the gross income of the employees.
 - Not subject to federal, social security, Medicare, or FUTA tax

Hurricane Disaster Zone (HDZ)

- **Employee Retention Credit (2017 – Irma, Maria, Harvey)**
 - The credit is equal to up to 40 percent of wages paid by the employer to eligible employees (capped at \$6,000 per employee)
 - The date the business resumes “significant operations”
 - January 1, 2018

Hurricane Disaster Zone (HDZ)

Example: A business closed a location (in an eligible disaster zone) for 10 business days and paid 5 employees in that location for each working day that the office was closed. If the total wages paid to eligible employees for that period was \$10,000, then the employer can claim 40 percent of wages paid, or \$4,000, as a tax credit. This would be filed with the 2017 federal income tax return.

NOTE: A similar credit was available for victims of Hurricane Katrina, Rita and Wilma

Case Studies

Cold Case: Frozen Trucker

- Driver gets caught in sub-zero temperatures during a blizzard
- The truck's brakes lock up
- Around midnight, the heat stops working
- After his feet and torso went numb, driver unhitched trailer and drives off



Cold Case: Frozen Trucker

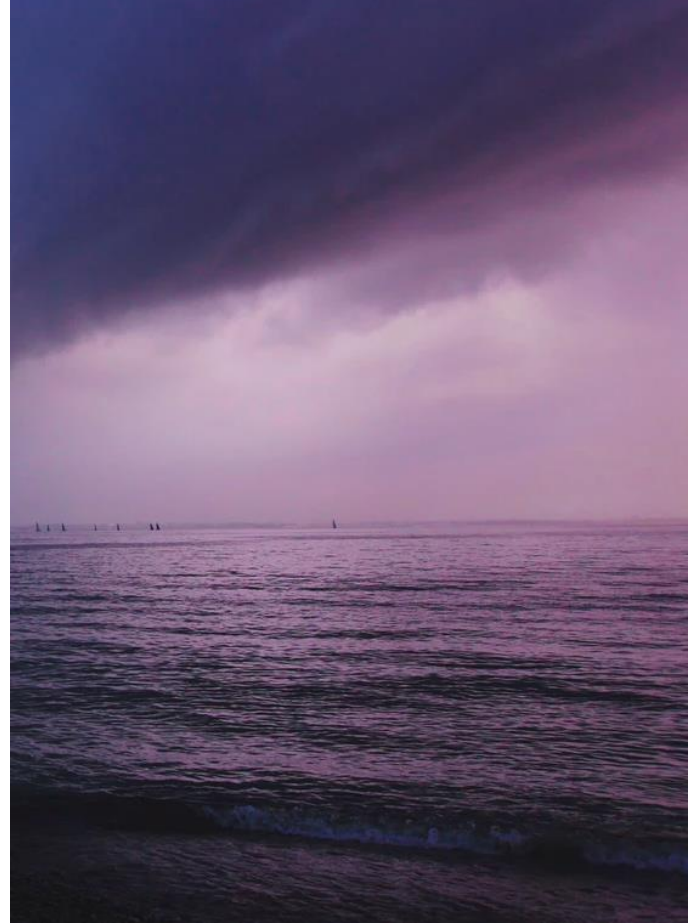
- Driver is fired
- Subsequently files OSHA complaint
and takes employer to court

Result: Court rules in favor of
employee



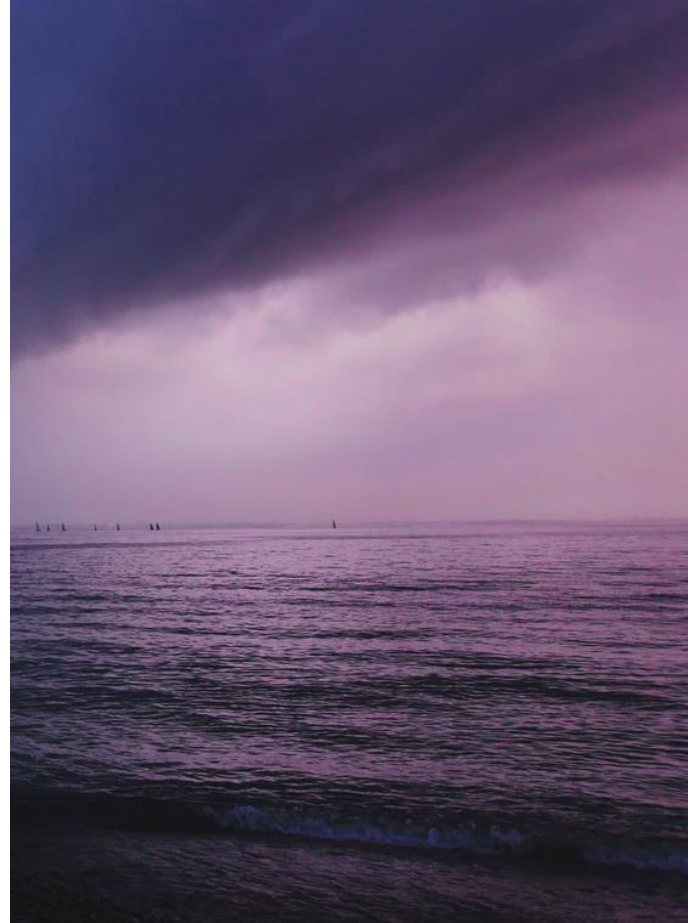
Harvey Case Study

- Hurricane Harvey was a Category 4 Hurricane and considered the 2nd most costly hurricane in US history (125 billion in Damages)
- Affected companies (or those with an address of record located in the disaster area) received an extension until Jan. 31, 2018, to file Q3 - 941 form.



Harvey Case Study

- The IRS waived late-deposit penalties for payroll tax deposits that were due on/after Aug 23 and before Sept 7, if those deposits are made by Sept. 7, 2017.
- Benefits extended to those who helped with relief efforts (as long as they were with a recognized government or philanthropic organization)
- 40% of businesses affected never re-opened
- Unemployment more than doubled after the storm



**irs.gov/charities-non-profits/
tax-exempt-organization-search**

Questions?

Thank you!

