

# Civil Unrest & Protests

## The Impact on Employers and Employees



A more human resource.™

### Overview

Civil unrest and protests are an increasing concern for employers and we understand the risk that the potential unrest in the area could pose to your employees and your business. Many of our clients have asked for guidelines they can follow should a situation occur in their city. As a first step and as part of our commitment to helping ensure the safety of your employees and continuity of your business operations, we are providing you with key information in the following areas.

- Employee safety and welfare
- Paperless tools
- Employee participation in protests
- Worksite closures and frequently asked questions

### Keeping Your Employees Safe

We know that the safety and welfare of your employees are your primary concern. The law supports your concerns. OSHA's General Duty Clause states, "Each employer shall furnish to each of his employees employment and place of employment which are free from *recognized hazards* that are causing or are likely to cause death or serious physical harm to his employees." OSHA lists three ways in which a hazard qualifies as recognized:

- Employer recognition: This can be established by evidence of actual employer knowledge of a hazardous condition, such as workplace violence.
- Industry recognition: A hazard is recognized if the employer's industry is aware of the existence of the hazardous condition.
- Common sense recognition: "Hazard recognition can still be established if a hazardous condition is so obvious that any reasonable person would have recognized it."

The courts have interpreted OSHA's General Duty Clause to mean that an employer has a legal obligation to provide a workplace free of workplace violence that can result in death or serious physical harm to employees when there is a feasible method to abate the hazard.

An employer that has experienced acts of workplace violence, or becomes aware of threats, intimidation, or other indicators showing that the potential for violence in the workplace exists (such as close rioting or protests), would be on notice of the risk of workplace violence and should take steps to protect its workers.

The employer is required to implement all feasible controls to reduce the exposure to its workers at the workplace. The specific facts of each case will dictate the types of control that need to be implemented.

**Note:** Dependent on the situation, there are some actions you can consider to keep your workforce safe. The closing of the worksite and increasing security could be some possible methods to protect employees from potential violence as a result of protests. You can also remind employees on how to report incidents of workplace violence or potential threats of violence. Finally, you can communicate the steps that are being taken to protect employees.

## Employee Assistance Program

Your employees may be directly impacted by societal tragedies and related events and we want to help you direct employees to appropriate resources for assistance. The Employee Assistance Program is available to client employees and their dependents. The program, which is provided at no additional charge, offers face-to-face counseling with local, licensed, certified counselors and referrals to various resources for marriage/relationship, family, stress, grief and depression concerns.

## Keeping Your Employees Paid

We offer no-cost tools to mitigate risk of delivery delays and reports you need to run your business.

- Payroll - If your employees do not have a full electronic payment, we offer two forms of electronic payment to ensure your employees are paid regardless of any kind of delivery delay. We can expedite the set up for direct deposit and/or Aline paycard. Please let us know what method you prefer to always ensure that your employees are paid on pay day.
- Payroll Reports- Presented as online PDFs, iReports allows you to quickly and easily analyze your data without printing. iReports are the most convenient and secure way to view your payroll information anywhere from an Internet browser anytime you need it and you do not need to depend on delivery.

**Note:** In addition to the above products, if you need to reschedule your payroll, please call your dedicated Payroll Service Representative (PSR). Your PSR can review your scheduled changes, evaluate options for you, determine members of your team who do not have direct deposit, and facilitate the set-up of direct deposit, Aline, and iReports.

## Employee Participation in Protests

You may be concerned about employee involvement in protests when they are expected to be working. An employee's direct involvement in protests should be viewed on a case by case basis. In general, however, an employer's attendance policy should be equally applied to all employees who may be tardy, absent or unexpectedly and/or prematurely leave work.

The National Labor Relations Act gives employees the right to band together to address *terms and conditions of employment*. The Labor Board has also ruled that employees have a right under the NLRA to wear pins or other insignia to show support for coworkers or to signify their position on *workplace issues* unless there are special circumstances present. These special circumstances typically involve such things as an unreasonable interference with customer service, patient care, the employer's public image which is tied to employee appearance, threats to safety, or damage to equipment. Employee protests about terms and conditions of employment could constitute "protected concerted activity" under the NLRA. Generally, protests that do not tie into the terms and conditions of employment would not be protected under the NLRA.

## Frequently Asked Wage and Hour Questions about Worksite Closures

### How will this impact my non-exempt employees?

With respect to your non-exempt employees, there is generally no obligation under federal or state law to pay for time not worked. However, under some state laws (CA, CT, DC, MA, NH, NJ, NY, OR and RI), employers may have an obligation to compensate non-exempt employees under call-in/reporting pay laws, especially if the employees were not advised that they should not report to work by their employer and were denied work upon arrival at the workplace.

If you do wish to pay non-exempt employees to work during this time, the employer should advise these employees that they are prohibited from working during the worksite closure. If however, during a worksite closure a non-exempt employee performs any work, the employee must be paid for all hours worked.

### What is the impact on my exempt salaried employees?

As to salaried exempt employees who federal and/or state law mandates must be paid on a "salary basis," employers may not make salary deductions for absences that result from an employer's partial-week closing of operations, including closings due to protests, riots and state declared emergencies.

Accordingly, absent a permissible deduction, exempt employees must be paid their full salary if they perform any work in a workweek even if they miss work time due to the employer's closure of operations. Employees need not be paid if no work is performed due to closures of the employer's worksite for a full workweek. If the worksite is closed for a full workweek, the employer should advise exempt employees that they are prohibited from working if they do not want to pay their full salary wages for the workweek.

In addition, if you remain open and an exempt employee does not report to work for the full workday (and is not otherwise sick or disabled) then full day deductions from salary are permitted. That said, as a practical matter, please consider the employee relations impact of such a decision. If a salaried exempt employee leaves work early to avoid potential violence or rioting, then you are required to pay for the full day and no deductions are permissible.

### **How should we use of paid time off (PTO) and/or vacation during a worksite closure?**

The FLSA does not require employers to provide PTO or vacation time and therefore does not regulate their use. However, state laws and/or general legal principles may bar employers from forcing employees to use PTO or accrued vacation time during a worksite closure. Outside of California (where forced use is prohibited absent a 90 day / full quarter notice to employees), the law does not generally address the issue of forced use of vacation time and PTO. However, if your policy specifically provides for forced use then it will likely be permitted if the policy is followed appropriately. Again, the employee relations impact of such a decision should be considered.

However, should you have a vacation or PTO policy, we recommend that you examine the language contained in your policy to ensure you are not opening yourselves up to a claim that an express or implied contract limits the right to force an employee to use accrued vacation or PTO. Should you need assistance in reviewing and/or setting up your policy, please do not hesitate to contact your Relationship Manager.

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**Again, we stand ready to support you and your employees. Please contact your Relationship Manager if there is anything we can do to support you now or in the future.**