

## EMPLOYMENT LAW ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

### **Managing Employer Liability for Volunteer Efforts of Employees**

**May 6, 2010**

Following the historic flooding experienced by Middle Tennessee, many employers find their employees organizing efforts to assist those in need, often co-workers. Questions have arisen about potential liability for the employer associated with such organized efforts of employees. As long as an employee's participation in such an activity is completely voluntary and the activity is not associated with the work normally done by the employer, the employer should not have any liability under workers' compensation for any injury experienced during such volunteer activity. We would recommend that an employer monitor any email communications regarding such volunteer efforts and confirm that all communications are clear that the effort is entirely voluntary. Furthermore, employees should be required to use PTO, or other personal or vacation time in order to be paid for such activities (or take unpaid leave in the absence of such available time) rather than being paid by the employer as if they were at work (thereby increasing the opportunity to argue that the employer should be liable for the conduct of, or injury experienced by, the employees participating in these efforts). By enforcing these parameters, an employer will greatly minimize any exposure for injuries experienced by anyone as a result of the volunteer work of the employee. Those employers wishing to pay for such volunteer efforts by their employees but also avoid any associated liability may want to consider offering all employees an extra PTO day or extra days, with the communication that in light of the historic nature of the flood, the employer is awarding all of its employees the extra paid time, understanding that many are taking time off to either deal with personal circumstances or assist others in need.

On another but associated note, employers should also be mindful that an exempt employee (who must be paid on a salary basis in order to be exempt) will have to be paid for any workweek in which any work is performed by the employee, even if the employee's failure to work the remainder of the week was a result of the employer being closed due to "inclement weather." The Fair Labor Standards Act and associated regulations permit "docking" of the pay of a salaried employee's pay in certain circumstances without endangering the "salary basis" under which he is paid, including the missing of an entire day (or multiple full days) for personal reasons. However, a salaried exempt employee must be paid for the full week, if any work is performed during the week and the absences during the remainder of the week are a result of the business being closed due to the flood.

We know that many of you have heard that the parking garage of our new building experienced significant flooding and that the building has been closed this week due to electrical power

issues. Nevertheless, we remain "open for business." You may reach any of us by email, voicemail or cell phone. Do not hesitate to call us if we may be of assistance.

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