

CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

Human Resources Hurricane Recovery Guide

Hurricanes Rita and Katrina have posed unique human resources challenges for employers with operations in the affected areas. No doubt, government agencies and philanthropic resources will be at the forefront assisting those most affected by the storm. Employers, however, will also have a significant role to play, as entire workplaces have been lost and companies both large and small will grapple with accommodating the myriad issues that will arise over the coming months.

The following is a list of the top ten issues that are likely to present themselves in the near future as employers adapt their policies and operations to circumstances that were never foreseen and certainly not planned for in employee manuals or benefit plans. Stay tuned for additional information, as both government agencies and legislatures are busily crafting new opinion letters and laws to address the issues facing employers during this difficult time.

1. ***Establishing Communication with Displaced Workers:*** Many displaced workers have found themselves in unfamiliar locations, without much more than the clothes on their backs. It might take some time before displaced employees can “check in” or otherwise establish communication with their employers. Many companies have created space on their web sites for employee communications or have otherwise established an avenue (such as a toll free number) for employees to make contact from any location. Some employers with operations in cities where evacuees have relocated might also consider establishing a communication center where employees can check in with local company officials.

2. ***Payment of Wages:*** Government aid may not be available immediately or in large amounts. Some employers have voluntarily chosen to continue paying their employees while others have made available fixed one-time payments to affected employees. Employers should clearly communicate the terms of such payments to avoid any confusion after the fact. For example, a charitable gift is different from an advance on future wages and should be clearly communicated as such. Moreover, employers in affected areas that have been unable to make payroll should be cognizant of state laws governing deadlines for the

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payment of wages (as well as taxes). Although employers may not know the whereabouts of all employees, employers should make a good faith effort to pay all wages owed.

3. ***Other Wage/Hour Concerns:*** Some employees in affected areas will no doubt be working long hours in situations where working time and off-duty time will blur together. Some employees may be temporarily living in employer housing, for example. Employers should be cognizant of the need to accurately record employee work time and keep in mind that any work done for the benefit of the employer (even ostensibly as charity) might be considered work time.

4. ***Transfer of Workers to Other Operations:*** It is rapidly becoming evident that thousands of people will either never return to the hardest-hit areas or will return only after an extensive rebuilding effort is completed. Employers should consider whether affected employees can be transferred to other operations in surrounding areas, so that valuable skills and experience are not lost. Once the rebuilding is complete, these employees will be an integral part of returning to the area and reestablishing operations. Employers with collective bargaining agreements governing transfers between operations should be cognizant of any restrictions contained therein and should also consider negotiating with the representative union for a one-time exception to these limitations.

5. ***Flexible Leave Policies:*** Most company handbooks make no allowance for the type of disaster that has befallen the Gulf Coast. For the most part, human resources personnel will be left with no choice but to improvise answers to critical questions such as how long to wait for employees to make contact before initiating termination. Obviously, flexibility and compassion should be the order of the day in this area. Moreover, it is important to note that many employees affected by the storm will qualify for leave under the Family and Medical Leave Act (FMLA), bereavement leave, or other types of leave provided under either company policy or federal and state laws. Employers should be aware that post-traumatic stress or depression resulting from the aftermath of the storm may qualify employees for medical leave under the FMLA or similar company policies. Extreme care should be taken before denying leave or terminating employees for a failure to return to work.

6. ***Medical Insurance Coverage:*** Many affected employees will be using medical insurance to assist with recovery after the disaster. Consider providing important benefit information on company web sites or through communication centers in cities providing shelter, so that employees are best able to address issues that might arise, such as using benefits in another state or outside of an HMO/PPO coverage area.

7. ***Employee Assistance Programs (EAPs):*** Most employers have EAPs either separately or as a part of their health insurance benefits. Employers should communicate the availability of such programs to affected employees and contact benefit providers to explore ways to facilitate the use of such programs, including making qualified counselors available on site or in areas to which a large number of employees have evacuated. These services are invaluable and may facilitate employees returning to normalcy, including the resumption of employment.

8. ***Immigration Issues:*** Many evacuees face not only the challenge of finding new employment but the secondary hurdle of doing so without the paperwork required to show that they can work legally in the United States. Fortunately, the government is making it possible for local employers to hire such individuals.

Specifically, on September 6, 2005, the Department of Homeland Security announced that, for the next 45 days, it will not seek civil sanctions from employers who hire hurricane victims who lack the documentation required to satisfy the Form I-9/Employment Eligibility Verification requirements. Nevertheless, employers still must have the employees complete Section 1 of the Form I-9, but they need not review the employees' documents if they are not available. At the end of this 45-day period, the department plans to review this policy and make further recommendations.

9. ***Donating Coworker Leave:*** On September 8, 2005, the IRS issued IRS Notice 2005-68, which permits an employee to donate unused paid leave in exchange for employer cash payments to a qualified charity providing relief to Hurricane Katrina victims. Across the country, citizens and coworkers have searched for ways to help their neighbors deal with the recent tragedy. Several large companies have made available opportunities for employees to donate accrued vacation leave or paid time off (PTO) to other employees within the company who may be in greater need of these benefits. Before implementing such programs, it is important for companies to establish procedures and guidelines for the implementation and take into account any potential legal and tax implications of the program.

10. ***Layoffs/Business Closures:*** Unfortunately, Hurricanes Katrina and Rita will likely force many business owners to make the difficult decision to lay off employees or relocate or cease operations in affected areas. These actions will have both legal and community ramifications, which employers should carefully consider. Most notably, certain employers may have notice obligations under the federal Worker Adjustment and Retraining Notification Act (WARN Act) if employees are laid off or suffer a significant reduction in work hours for more than six months. Although a hurricane may constitute the type of unforeseeable business circumstance warranting an exception to the WARN Act, employers are strongly advised to seek legal counsel in this area if layoffs or closings become necessary.

Literally thousands of companies and workplaces will never be the same. Once the essential needs of those affected are met, attention will turn almost immediately to reestablishing employment and dealing with the associated issues. Although there is no existing playbook for handling this type of catastrophe, the above tips should provide a starting point for managers and human resources professionals seeking to manage their companies' response to this great tragedy.

If you have any questions about these issues or any other developments in the aftermath of these devastating natural disasters, please contact **Victoria M. Phipps** at 713/750-3163, or vphipps@ebglaw.com, or **David L. Barron** at 713/750-3132, or dlbarron@ebglaw.com in our **Houston** office, or **Peter A. Steinmeyer** at 312/499-1417, or psteinmeyer@ebglaw.com in our **Chicago** office.

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