



EMPLOYEE LEAVES In the Event of a Natural Disaster

Are we required to provide time off for employees to attend to matters arising out of a natural disaster?

It depends. Hurricanes and other natural disasters raise questions about leave-taking from many different standpoints --- whether under the Family and Medical Leave Act, the Americans with Disabilities Act, or other company provided leave policies.

The law **does not require** employers to give employees time off to attend to **personal** matters arising out of a natural disaster, such as cleaning a flood-damaged basement, salvaging belongings, searching for missing relatives, or volunteering for community services. The decisions you make in this regard are discretionary. They can, however, affect morale and reflect on the culture of the company. Care for the well-being of the employee, concern for the operation of the business, and being fair, consistent, and non-discriminatory are all important considerations that must enter into the decisions you make.

Could FMLA be applicable to an employee in the event of a natural disaster?

Perhaps. An employee [working for a covered employer required to provide FMLA] would qualify for FMLA leave when, as a result of a natural disaster:

- the employee suffers a physical or mental illness or injury that meets the definition of a "serious health condition" that renders them unable to perform their job; or
- the employee is required to care for a spouse, child or parent with a serious health condition affected by the natural disaster; or
- for the reasons related to a family member's service in the military (active duty or reserves) resulting from a natural disaster.

Keep in mind that these conditions may arise at the time of the disaster or several weeks and months after the natural disaster hits.

How Do I Calculate FMLA Leave When a Workplace Closes?

Guidelines around calculating days taken during a leave when a workplace closes can affect leave time.

If the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks due to a work stoppage as the result of a natural disaster, the days the employer's activities have ceased do *not* count against the employee's FMLA leave entitlement. This applies even in situations where it is obvious the employee would not have been able to perform the duties of the job due to the nature of the employee's leave that was in effect prior to the time the business was interrupted due to the disaster.

Must I consider accommodation requests under the ADA for impairments related to a natural disaster?

Yes, in situations where an employee's impairments may be significant enough to rise to the level of disability, an employer may also have potential employer obligations under the Americans the Disabilities Act (ADA).

Military And Other USERRA Leaves:

We have employees who have been called upon to serve as relief workers to help with the hurricane devastation. Do laws such as USERRA protect them as they would National Guard members, reservists, and other members of the uniformed services?

Probably, yes. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a broad pro-employee statute, significantly restricting the treatment of employees who perform services protected by the statute.

What categories of workers might be protected by USERRA?

In addition to military active duty and reserves personnel who are assigned to serve in the federal response to the hurricane disasters, the Bioterrorism Preparedness and Response Act extended USERRA's protections to certain emergency workers dispatched to assist with national disasters, including those employees performing as intermittent disaster response appointees upon activation of the National Disaster Medical System (NDMS), even if they are not otherwise members of the uniformed services.

NDMS programs include DMAT (Disaster Medical Assistance Team), DMORT (Disaster Mortuary Operational Response Team), VIC (Victim Identification Center Team), NVRT (National Veterinary Response Team), NPRT (National Pharmacy Response Team), and NNRT (National Nurse Response Team), members of the commissioned corps of the Public Health Service (PHS), and any other category of persons designated by the President as "uniformed services" at times of national emergency.

Are employees covered by USERRA eligible for health care coverage and continuation?

Yes. The employer must maintain health benefits, seniority and pension benefits during the USERRA absence.

Consult your WCI Employment Law Guide (Chapter 14) – for additional details around an employer's and employee's protections, rights, and responsibilities under USERRA. The Employment Law Guide can be found in the "Resource Links" tab on the website.