

A satellite image of a hurricane, showing a clear eye and a well-defined eye wall. The storm is centered in the upper-middle part of the frame, with its spiral bands extending outwards. The surrounding ocean is a deep blue, and the landmasses are visible in shades of green and brown. The text "Holland+Knight" is overlaid in the top left corner.

Holland+Knight

"HR" = "Hurricane Ready"?

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GTBACP--March 26, 2008

Agenda

- Discharge/Leave Issues
- Wages/Payment Issues
- Unemployment
- COBRA/Benefits/HIPPA
- "Call-up" Issues
- Workers' Compensation
- OSHA/Safety Issues
- Miscellaneous
- A Plan



Discharge/Leave Issues

Can employees be fired for failing or refusing to work?

- **“At will” is the law**
 - Governor’s evacuation orders not enforceable
 - Normal exceptions to “will”
- **Non-medical leaves not required unless . . .**
- **FMLA leave may be required**
 - Employees get FMLA if . . .
 - FMLA certifications—flexibility?
- **ADA: leave/accommodation?**
- **Public relations**



How do I avoid discharges and prepare for leaves?

- Announce in advance any “you must work” policy
- Solicit volunteers to work
 - Enhance pay/benefits (if so, document)
- Consider discharge alternatives:
 - Transfers to functional sites (“mutual aid” agreement?)
 - Telecommuting
 - Cross-training + leaves
- Leaves
 - Identify ADA/FMLA-eligible workers
 - Develop policy re “disaster” leaves
 - Re-consider PTO policies
- Consider union and severance/rehire issues



Wages/Payment Issues

Must I pay for work during storm?

- **“Non-exempt” employees:**
 - No work = no pay (unless contract)
 - No “free” work
 - Beware of “hours worked”
 - Must pay overtime
 - Record “hours worked”
- **“Exempt” employees:**
 - Business closed: less than a week = full pay
 - Business open: “Bad weather” = full day deduction
 - Generally may decrease salaries
 - Can charge PTO (even for partial days) if policy allows



How do I minimize pay problems?

- **If employees will live on-site:**
 - Set guidelines re “work”/“not work”
 - Arrange times/locations for “not work”
- **Review salary deduction/PTO policies**
- **Plan for recordkeeping**
- **Consider paycheck issues:**
 - Deceased employees
 - Unclaimed wages



Unemployment Benefits

Do workers get unemployment?

- **Employees get U/C if otherwise qualify**
 - “Federal Disaster Unemployment Assistance”
 - U/C likely is reduced by vacation pay
 - U/C likely is not reduced by certain employer aid



COBRA/Benefits/HIPAA

How about COBRA?

- **COBRA (and mini-COBRA):**
 - **Employees not working may lose coverage**
 - **Exceptions to “hours of service”**
 - **DOL suspended many COBRA deadlines after Katrina**
 - **If no suspension, send COBRA notices**
 - **Failure to pay premiums = loss but:**
 - **COBRA’s 30-day grace**
 - **Employer may advance**
 - **Carriers may extend deadline**
 - **May have substitute networks/waiver**



How about Benefits/HIPAA ?

- **ERISA/401(k):**

- Contribution deadlines may be extended
- IRS may ease 401(k) loan



- **HIPAA:**

- Employers can disclose data to government to locate employee, notify of condition/death, etc.
 - Confirm identity and purpose of inquiry
- Govt waived portability deadline for Katrina

How to minimize benefits issues?

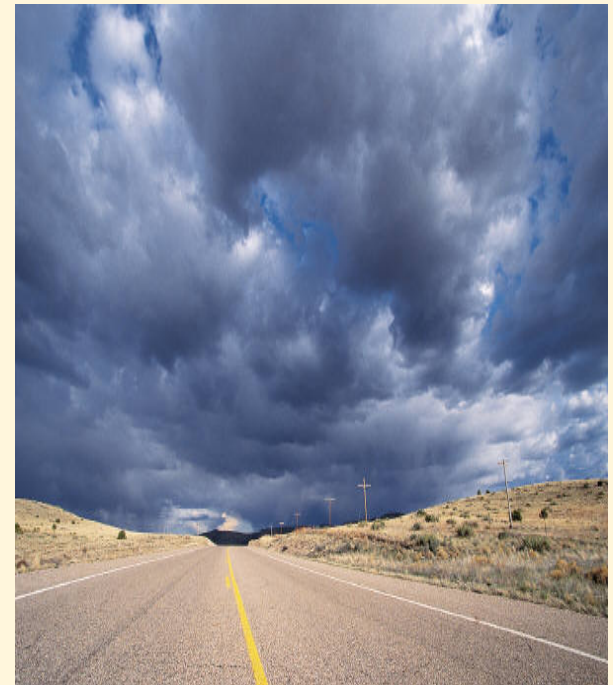
- **COBRA:**
 - Understand your obligations
 - Contact group medical carrier re:
 - “Hours of service” / exceptions
 - Substitute providers
- **401(k):**
 - Look at “hardship” loans
- **EAP**



“Call Up” Issues

What about people called for duty?

- **USERRA applies to non-military call-ups:**
 - “National Disaster Medical System”
- **Employers must:**
 - Give job-protected leaves
 - Reinstatement--unless impossible
 - Not discriminate
- **Employees must:**
 - Actually be called up
 - Provide notices to employer



Workers' Compensation

Will we have workers' comp coverage?

- **Workers' comp coverage is critical**
- **W/C protects employers unless employer:**
 - **Intended to injure the employee or**
 - **Knew of risk virtually certain to cause injury, worker didn't know and employer concealed it**



What to do to minimize claims?

- **Assess safety issues**
- **Check with W/C carrier:**
 - Preventative measures by you
 - Assistance by it
 - Claims reporting
- **For dangerous work:**
 - Hire professionals
 - Ask for volunteers and get signed releases
 - Provide personal protective equipment



OSHA/Safety Issues

Must we comply with OSHA?

- OSHA standards ARE in effect
- OSHA doesn't specify "safe to return"
 - Risk of imminent danger
- OSHA allows employee "walk-offs"
- NLRB: "protected concerted activity"



How do we minimize OSHA issues?

- **Similar to W/C:**

- Anticipate safety issues
- Use professionals
- Provide PPE and first aid



- **Beware most likely violations:**

- Exposure to chemicals/electricity/heat
- Lack of water/toilet/handwashing facilities

- **Consult OSHA**

Miscellaneous

Should we use unpaid volunteers?

- **Volunteers useful but dangerous:**
 - “Volunteers” = “employees” = problems
 - P.I. liability (not covered by W/C)
 - Uncertain competence/integrity
- **If using volunteers, consider:**
 - Limiting activities
 - Getting waivers (which I.D. risks)
 - Follow advice for W/C + OSHA issues
- **BUT controlling + paying volunteers . . .**



What else?

- **WARN/plant closing:**
 - Notices required if shutdown of “operating unit”
 - Possible exemptions due to storm:
 - Shorter notice may be allowed
 - “Direct” result
 - “Indirect” result
 - Very fact specific



What else?

- **Union/management issues:**
 - Unilaterally changing schedules/duties is risky
 - If business/plant closes, “effects” bargaining
 - If close but relocate, maybe bargaining at new site
- **Providing shelter:**
 - Additional liability
 - Business interruptions
 - “no good deed goes unpunished”
- **Litigation:**
 - Courts/agencies may extend deadlines
 - Statutes of limitation may be extended



A Plan

How do we know what goes in the “HR/employment” plan?

- **Examine overall corporate plan:**
 - Identify critical business functions
 - Pre-storm shut-down
 - Protocols for operating during storm
 - Reactivation after storm
 - Succession plan
 - Communications
 - Materials acquisition



What goes in “employment” plan?

- **Plan for discharges/transfers/leaves:**
 - Accessible off-site personnel data
 - Criteria in light of:
 - Policies + contracts
 - Laws
 - Severance obligations
- **Plan for “work during storm”:**
 - Announce plan
 - Identify workers and pay/benefits



Plan contents (cont'd.)

- Plan for wages:
 - Plan to determine and record “hours worked”
 - Plan re salary deductions/PTO use/payment
 - Back-up pay mechanism
- Plan for benefits:
 - Plan re benefit supplements
 - Plan re non-monetary benefits
 - Plan re COBRA notices



Plan contents (cont'd.)

- Plan re “call ups”:
 - Identify persons subject to call and communications protocol
- Plan re safety/health:
 - Policies for clean-up procedures
 - Ensure availability of PPE/first aid/first responders
- Plan re “shelter”:
 - Anticipate logistics
 - Get legal + insurance advice
- Plan re labor relations
- Plan re communications



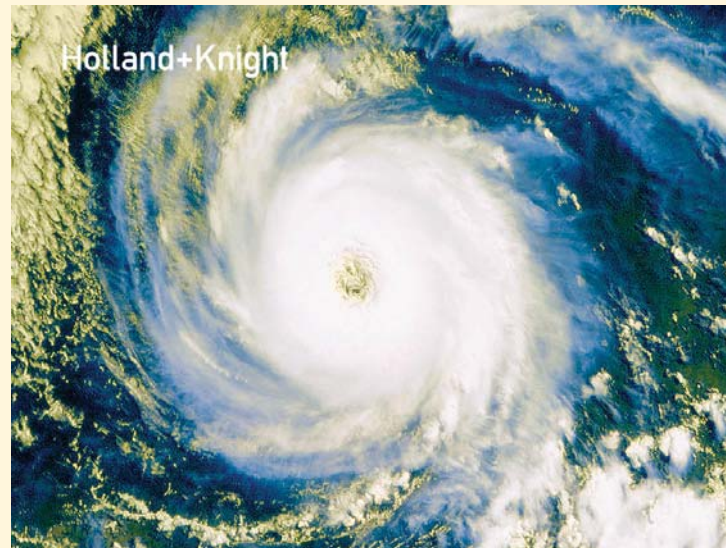
Top Ten Reasons Hurricane Season is Like Christmas

10. Fixing up the house
9. Digging out boxes not used since last year
8. Last-minute shopping in crowded stores
7. Regular TV pre-empted for “specials”
6. Family comes to stay
5. Friends call from out-of-state
4. Buying unusual foods—in huge quantities
3. Time off work
2. Candles!
1. Sooner or later you’ll have a tree in the house!

Q & A

Important notice:

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