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## MEMORANDUM

**To:** All Houston Area Clients & Friends  
**From:** EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C.  
**Date:** September 17, 2008  
**Re:** Human Resources Guide to Recovery From Hurricane Ike

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Hurricanes have posed unique human resources challenges for employers with operations in Houston and the Gulf Coast Region. While many employers are working around the clock on recovery efforts from Ike, other employers find themselves unable to function for extended periods because of damage or loss of utilities.

Although one can never be fully prepared for such natural disasters, it is important to be aware of the federal and state laws that address such situations. This article outlines relevant Texas and federal state laws, as well as guidelines that can be used by employers in navigating through the legal and business implications created by events such as Hurricane Ike. In addition, the information contained below may be applicable to other disasters, such as fires, earthquakes and workplace violence.

### **TEXAS LABOR CODE CHAPTER 22—“Employment Discrimination for Participating in Emergency Evacuation”**

- A. Texas law prohibits an employer from discharging “or in any way discriminating against an employee who leaves the employee’s place of employment to participate in a general public evacuation ordered under an emergency evacuation order.”
1. Definitions:
    - (a) “*Emergency Evacuation Order*” is broadly defined to include orders that “recommend” evacuation, as well as orders that mandate evacuation.
    - (b) “*Employer*” means “a person who employs one or more employees.”

2. Liability: Employers violating this law may be liable for lost wages and employer-provided benefits. In addition, the employer may be required to reinstate the terminated employee to the same or equivalent position with “commensurate pay.
3. Section 22.004 contains an exemption for emergency services personnel and employees necessary for public safety. The statute provides as follows:
  - (a) Section 22.002 does not apply to individuals employed as emergency services personnel if the employer provides adequate emergency shelter for those individuals.
  - (b) This chapter does not apply to a person who is necessary to provide for the safety and well being of the general public, including a person necessary for the restoration of vital services.
4. There is no case law in Texas interpreting the statute or delineating exactly what types of employees would qualify as emergency services personnel, or persons necessary for the restoration of vital services. Given Houston’s past experiences, and the experiences related to Hurricane Ike, it is reasonable to assume that this statute would not only include the obvious employee classifications such as police, fire, or utility crews, but could also be construed as including gas station attendants, garbage pick up, grocery store employees, and others.

## **FEDERAL LAWS IMPACTING EMPLOYERS AFFECTED BY A NATURAL DISASTER**

### **II. The Fair Labor Standards Act (“FLSA”)**

#### **A. Compensation of Non-Exempt Employees**

1. Absences caused by office closures:
  - (a) General rule: the FLSA generally applies to hours actually worked. It does not require employers who are unable to provide work to employees due to a natural disaster to pay non-exempt employees for hours the employees would have otherwise worked.
  - (b) Exception: employees who receive fixed salary for a fluctuating workweek - Non-exempt employees who agreed to work an unspecified number of hours for a specified salary, must receive their full weekly salary for any week in which any work was performed.
2. On Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message

where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

3. **Waiting Time:** Whether waiting time is time worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, employees required to be at work to wait for the power to restart will be considered "working." These employees have been "engaged to wait."
4. **Volunteer Time:** Individuals who volunteer their services in an emergency relief capacity to private not-for-profit organizations for religious or humanitarian objectives, without contemplation of receipt of compensation, are not considered employees due compensation under the FLSA. However, employees of such organizations may not volunteer to their employers to perform on an uncompensated basis the same services they are employed to perform.

Employers should be cautious in having employees "volunteer" to assist the company during an emergency. Often, after the fact, these services can be argued as work time.

5. **Meal Time:** The FLSA does not require that meal periods be given to workers. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Therefore, if workers are eating while working because of a heavy workload, i.e. utility workers, all of this time is compensable.

6. **Breaks:** The FLSA does not require that break periods be given to workers. Rest periods of short duration, usually 20 minutes or less, must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished.

## B. Compensation of Exempt Employees

1. **Deductions Due to Weather-Related Absences**
  - (a) **Salary Basis Test: General Principles**

- (i) Section 13(a)(1) of the FLSA provides a complete overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity. An employee may qualify for exemption if all of the pertinent tests relating to duty, salary level, and salary basis are met. One element of the three-part test requires that an otherwise-exempt employee be paid on a salary basis. 29 C.F.R. §541.602.
  - (ii) The salary-basis test requires an exempt employee to regularly receive a predetermined salary on a weekly or less frequent basis. The regulations state that the exempt employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. 29 C.F.R. §541.118(a). This predetermined amount of compensation may not be reduced due to variations in the quality or quantity of the work performed by the employee. 29 C.F.R. §541.602(a).
  - (iii) If an employee is “ready, willing, and able to work, deductions may not be made for time when work is not available.” 29 C.F.R. §541.602(a).
- (b) Workplace Closed by the Employer Due to Weather
- (i) An employee will not be considered to be paid “on a salary basis” if deductions from the predetermined compensation are made for absences occasioned by the employer. 29 C.F.R. §541.602(a). If the employer closes the office due to inclement weather or other disasters for less than a full workweek, the employer must pay the employee’s full salary. This is applicable even if (1) the employer does not have a bona fide benefits plan, (2) the employee has no accrued benefits in the leave bank, (3) the employee has limited accrued leave benefits and reducing that accrued leave will result in a negative balance, or (4) the employee already has a negative balance in the accrued leave bank.
  - (ii) Docking Leave Time v. Docking Pay: An employer may, after giving vacation time, require that such vacation time be taken on a specific day. Employers that close their offices during inclement weather or other disasters can ask exempt employees to take vacation or leave but cannot insist on leave without pay. This is applicable to both full- and partial-day absences. Under these circumstances, employees receive an amount equal to guaranteed salary

either because the employer pays for the absence or the employee's leave bank pays for the absence.

(c) Employee Chooses to Stay Home Due to Weather

- (i) If the workplace is open but the exempt employee chooses not to come to work, the rules change. The DOL considers an absence caused by transportation difficulties experienced during snow or flood emergencies, even if the employer is open for business, an absence for personal reasons. Such an absence does not constitute an absence due to sickness or disability. Under this circumstance, an employer may place an employee on leave without pay for the full day that he fails to report to work. Thus, if an employee is absent for one or more full days for personal reasons, the employee's salaried status will not be affected if deductions are made from the employee's salary for such absences. 29 C.F.R. 541.602(b)(1). However, a deduction from salary for less than a full-day's absence is not permitted.

- C. Leave Donation: Employers may offer employees paid leave for time spent volunteering to assist with disaster relief efforts. Employers who maintain leave banks can also allow employees to donate leave to the leave bank and then award the donated leave to other employees who, in turn, use the leave to volunteer relief services. The FLSA does not regulate the provision or use of leave banks.

### III. The Family and Medical Leave Act ("FMLA")

- A. Overview: Employees affected by a natural disaster are entitled to leave under the Family and Medical Leave Act (FMLA) for a serious health condition caused by the disaster. In addition, employees who must care for a child, spouse, or parent with a serious health condition may also be entitled to leave under the FMLA.
- B. To be eligible under the FMLA, an employee must:
1. work at a site with 50 or more employees (or for an employer who has 50 employees within a 75 mile radius); and
  2. have worked for the employer for at least 12 months; and
  3. have worked at least 1,250 hours during the previous 12-month period.
- C. To qualify for FMLA leave, the employee must have:

1. a “serious medical condition” (an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider) that renders the employee unable to perform the essential functions of his/her job; or
2. care for a spouse, child or parent with a serious health condition; or
3. need leave following birth, adoption or foster care placement of a child.

D. Applicability to Emotional Injury

1. An employee informing her supervisor that she was suffering from post traumatic stress disorder and depression was sufficient information from which the employer might conclude that plaintiff might want to invoke FMLA leave. *Xiangyuan Zhu v. Fed. Hous. Fin. Bd.*, 389 F. Supp. 2d 1253 (D. Kan. 2005)

E. Need to Care for Family Member

- F. Not all disaster-related leave will qualify under the FMLA. For example, where the leave requested by an employee was to make repairs to her home resulting from Hurricane Georges, the court dismissed her FMLA claim. *Davila v. Hilton Int'l of P.R., Inc.*, 165 F. Supp. 2d 94, 102 (D.P.R. 2001).

G. Continuation of benefits and job restoration:

1. FMLA regulations provide that if an employee is legitimately laid off during the course of FMLA leave, then an employer does not have to continue the FMLA leave, and may discontinue health benefits and may decline to restore the employee.
2. However, it is the employer’s burden to show that the employee would have been laid off (or terminated for lack of work) during the FMLA leave period, and therefore not entitled to job restoration.
3. The best approach is to treat the employee as you would any other employee in his or her job classification.

H. Issues Regarding Documentation

1. Medical certification: The FMLA allows an employer to require that an employee's leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. 29 C.F.R. § 823.305(a).
  - (a) FMLA regulations provide: “When the leave is foreseeable and at least 30 days notice has been provided, the employee should

provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts." 29 C.F.R. §823.305(b).

- (b) A natural disaster might allow an employee to assert that it was not practicable to furnish the requested certification.

#### IV. Americans With Disabilities Act (“ADA”)

- A. Overview of ADA: Protects employees who suffer from a physical *or mental* impairment that substantially limits one or more major life activities. Employers must reasonably accommodate disabled employees if such an accommodation is requested.
- B. Applicability to Emotional Injury: Mental impairments can include any mental or psychological disorder that substantially limits one or more major life activities. This would include Post-Traumatic Stress Disorder, major depression or panic disorders, all of which can be caused by the effects and aftermath of a natural disaster.
  - 1. The major life activities limited by mental impairments differ from person to person. There is no exhaustive list of major life activities. For some people, mental impairments restrict major life activities such as learning, thinking, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, or working. Sleeping is also a major life activity that may be limited by mental impairments. *See EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities.*
  - 2. To establish a psychiatric disability, an employee need not show that s/he is substantially limited in working. If the employee is limited in a major life activity other than working (e.g., sleeping, concentrating, caring for oneself), this will suffice to show that the employee is disabled. *Id.*
  - 3. An impairment is substantially limiting if it lasts for more than several months and significantly restricts the performance of one or more major life activities during that time. It is not substantially limiting if it lasts for only a brief time or does not significantly restrict an individual's ability to perform a major life activity. *See Hamilton v. Southwestern Bell Telephone Co.*, 136 F.3d 1047 (5th Cir. 1998) (temporary episode of post traumatic stress disorder not a disability under ADA).
  - 4. Whether the impairment is substantially limiting is assessed without regard to mitigating measures such as medication.

## V. Uniformed Services Employment and Reemployment Rights Act (“USERRA”)

A. Overview of USERRA: Protects job rights of and prohibits discrimination against past and present members of and applicants to the uniformed services.

1. Relief Workers: Employees who have been called upon to serve as relief workers are likely protected under USERRA.

(a) *Katrina Example* – military personnel and certain federal emergency workers (even those not members of the uniformed services – e.g. doctors, scientists, etc.) were protected under USERRA; any category of persons designated by the President would qualify for USERRA protection.

B. Employee Responsibilities

1. In addition to the requirement that the employee has a past or present relationship with the armed services, the employee must meet the following five conditions:

(a) Hold a civilian job and have a reasonable expectation that employment will continue indefinitely.

(b) Provide written notice or verbal notice that he or she intends to leave for service (or training, in some cases) with a qualifying program (such as the National Disaster Medical System or a Reserve Unit). In cases of emergency necessity, as well as circumstances where it is unreasonable to provide notice, failure to do so is excused.

(c) The employee must not exceed the 5-year cumulative limit of time spent in *active* federal service.

(d) The employee must be released *honorably* from the qualifying program.

(e) The employee must subsequently submit a timely application for reemployment or report back for work in a timely fashion.

C. Employer Obligations

1. Prohibition Against Discrimination – under USERRA, a person cannot be denied initial employment, reemployment, retention, promotion, or any benefit on the basis of his or her membership, application for service, or obligation for service in the armed forces.

2. Right to Reemployment – A returning service person has a virtually unfettered right to reemployment by his or her pre-service employer upon timely application for return to work.
3. Continuation of Benefits – USERRA requires employers to provide eligible employees with up to five years of unpaid leave during the time of their employment. Throughout this period, the employee's seniority, health care and pension benefits must be maintained.

**VI. The Worker Adjustment and Retraining Notification Act (WARN Act)**

A. WARN Overview: Imposes notice requirements on employers with 100 or more employees in times of plant closings and/or mass layoffs.

1. Plant Closing - A covered employer must give notice if an employment site (or one or more facilities or operating units within an employment site) will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period.
2. Mass Layoff - A covered employer must give notice if there is to be a mass layoff which does not result from a plant closing, but which will result in an employment loss at the employment site during any 30-day period for 500 or more employees, or for 50-499 employees if they make up at least 33% of the employer's active workforce.
  - (a) Employment Loss (defined):
    - (i) An employment termination, other than discharge for cause, voluntary departure, or retirement;
    - (ii) A layoff exceeding 6 months; or
    - (iii) A reduction in an employee's hours of work of more than 50% in each month of any 6-month period.

B. Exceptions for Natural Disasters

1. Applies where the closing or layoff is a direct result of a natural disaster, such as a flood, earthquake, drought, hurricane, or other storm.
2. The employer must provide as much notice as is practicable and the reasons for reducing the notification period in addition to the items required in the notice.
3. If the employer provides less than 60 days notice based on this exception, the employer bears the burden of proof that the conditions for the exception have been met.

4. Other exceptions:
  - (a) Faltering company – narrowly construed – covers situations where a company has sought new capital or business in order to stay open and where giving notice would ruin the opportunity to get the new capital or business – only applies to plant closings – does not apply to layoffs.
  - (b) Unforeseeable business circumstances – applies to closings and layoffs that are caused by business circumstances that were not reasonable foreseeable at the time notice would otherwise have been required.

C. Types of Notice Required

1. No particular form is required, however the notice must be in writing.
2. Any reasonable method of delivery designed to ensure receipt 60 days prior to the closing or layoff is acceptable.
3. Content
  - (a) Must be specific and indicate the following:
    - (i) Whether the planned action is expected to be permanent or temporary, and if a plant is being closed, a statement to that effect;
    - (ii) The expected date the plant closing or mass layoff will commence, as well as the anticipated date of layoff or termination (within a 2 week window);
    - (iii) An indication as to whether bumping rights exist<sup>1</sup>; and
    - (iv) The name and phone number of a company official who can be reached for further information.
4. If the employee resides in the immediate path of the hurricane, any attempt to notify him or her will be difficult at best, but the law suggests that notice may be effectuated through written correspondence to his or her last known address.
5. Union represented employees – notice need only be served upon the collective bargaining representative and contain the following information:

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<sup>1</sup> Involves complex seniority systems in both union and non-union represented facilities.

- (a) The name and address of the work site where the planned action will occur, and the name and phone number of a company official to be contacted for further information;
  - (b) Whether the planned action is expected to be permanent or temporary and, if a plant is to be closed, a statement to that effect;
  - (c) The expected date of first separation and anticipated schedule of layoffs are to occur on more than one date (within a 2-week window); and
  - (d) The job titles to be affected and names of workers currently holding those positions.
6. Simultaneous notice to the State Dislocated Worker Unit and to the Chief elected official of the local municipality in which the affected facility resides; such notice must contain the information that is required for union-represented employees (contained in 1-4 above) AND the name of each union representing affected employees and the name and address of the union's chief elected officer.
7. *Will WARN be enforced?* – It is unclear what the Department of Labor's position will be following hurricanes and/or other natural disasters. Penalties for non-compliance include up to 60 days of back pay and benefits, along with a civil penalty of up to \$500 per day.

## **VII. Employee Benefits Issues**

- A. Group Health Plan Administration – we don't know what the government will do in the future, but we know what agencies have done in the past
- 1. Extension of Compliance Dates – due to Hurricane Katrina – tolled dates with respect to the following situations:
    - (a) The time period (normally 63 days) during which an individual can go without group health coverage before his rights to credit for prior coverage under HIPAA are lost;
    - (b) The 30-day period under HIPAA to secure creditable coverage without pre-existing condition exclusion for certain children;
    - (c) The time within which to exercise HIPAA special enrollment rights in a group health plan, such as where coverage is lost (normally within 30 days of the loss);
    - (d) The time within which to elect COBRA continuation coverage (normally 60 days);

- (e) The time within which to make premium payments for COBRA continuation coverage;
  - (f) The date by which an individual must notify the plan of a “qualifying event” or determination of disability;
  - (g) The time frames relating to claim procedures for the determination and appeal of benefit claims; and
  - (h) The dates by which certain notices must be provided with HIPAA portability and COBRA continuation rights.
2. Hurricane Katrina hit the gulf coast on August 29, 2005 – the time frames above were tolled until February 28, 2006 (six months).

B. COBRA

1. Notification Requirements:

- (a) employees who are not actively working may be in danger of losing their coverage depending on what the insurance policies state;
- (b) if coverage is terminated, employers must send timely COBRA notices to the employees’ last known addresses;
- (c) don’t forget about the address where you have told employees to send COBRA payments... if the address no longer exists or no longer receives mail, you can go to the post office and fill out a business forwarding card or go to the post office website ([www.usps.com](http://www.usps.com)) to change the address online.

C. ERISA

1. 401(k) and other retirement plans

- (a) *What happens if the payroll system has been destroyed and the employer cannot make 401(k) contributions or 401(k) loan repayments?*
  - (i) You must make every reasonable effort to make contributions or loan repayments to the 401(k) trust as soon as they are deducted from an employee’s pay. If you cannot do so immediately, you must do so as soon as possible. Keep contributions separate from general assets, and if possible, set up a trust in favor of the plan at another financial institution and contribute there.

2. Action by Congress post-Katrina – again, you cannot anticipate how Congress will act, but this relief was enacted post-Katrina.
  - (a) Katrina Emergency Tax Relief Act of 2005 – provided for the following:
    - (i) No penalty for early qualified Hurricane Katrina distributions;
    - (ii) Tax free repayment of qualified Hurricane Katrina distributions permitted;
    - (iii) Special loan provisions – increased maximum from \$50,000 to \$100,000; waived the requirement limiting loans to no more than one-half of the present value of the nonforfeitable accrued benefit of the employee;
    - (iv) Due dates for repayment on loans may be delayed for one year (subsequent repayments and interest must be adjusted accordingly); five year maximum term of loan may be extended to accommodate the one year repayment extension.

D. Unemployment Benefits

1. Eligibility
  - (a) Most states – employee must be ABLE to work and AVAILABLE for work;
  - (b) Out of work through no fault of his or her own;
  - (c) Some states require a minimum salary.
2. Deductions from unemployment benefits
  - (a) Certain types of payments, such as wages, vacation pay, holiday pay, worker's compensation, sick pay and payments under the WARN Act may be deducted from unemployment benefits.
3. Federal Disaster Unemployment Assistance
  - (a) Employees not eligible for state unemployment compensation benefits may be eligible for federal aid under the Disaster Unemployment Assistance program. This is a federal program under the DOL and administered by the State. It provides financial assistance to individuals who have lost their job or business as a direct result of a major disaster declared by the President of the

United States and who are not eligible for regular unemployment compensation benefits.

## **VIII. The Immigration Reform and Control Act of 1986 (“IRCA”)**

### **A. General Provisions**

1. IRCA applies to all employers, regardless of size, including public employers.
2. IRCA prohibits hiring or continuing to employ an individual knowing that s/he is unauthorized to work in the United States, and it imposes an employment verification system.
3. An employer satisfies IRCA’s verification requirement by completing a Form I-9 for each employee at the beginning of employment and by reverifying an employee’s work authorization if the document presented by the employee evidences that work authorization will expire.

### **B. Receipts for I-9 Purposes –**

1. Generally, a receipt indicating that an employee has applied for a document listed in Lists A, B, or C cannot be accepted in lieu of the actual document.
2. Exceptions:
  - (a) Employer must accept receipt indicating employee has applied for a replacement document after the original was lost, stolen, or damaged. However, the employee must present the replacement document within 90 days from the date of hire;
  - (b) Employer must accept a Form I-94 arrival/departure record with a “Temporary I-551” stamp and photograph. This is a receipt for a Form I-551 green card. However, the employee must present an actual Form I-551 green card before the expiration date on the Form I-94, or if no expiration date, within one year of the Form I-94’s issuance;
  - (c) Employer must accept a Form I-94 indicating admission to the U.S. as a refugee. However, the employee must present the actual Employment Authorization Document or an unrestricted Social Security card within 90 days from the date of hire.

C. Document Abuse

1. The choice of documents supplied is the employee's alone, and the employer may not require additional or different documents if the documents are facially genuine.

D. Retention of I-9 and Underlying Documentation

1. The employer must keep Form I-9s for all current employees throughout their employment. The employer must continue to keep the Form I-9 for each terminated employee for a period of three years from the original date of hire, or one year after the employee is terminated, whichever is longer.
2. The employer is permitted (though not required) to make and keep photocopies of the underlying documentation supplied by the applicant. If copies are kept, the employer must keep copies for all employees, not just those of a particular nationality or immigration status.

E. Complying with IRCA During Natural and Other Disasters

1. Employers must safeguard their I-9s and any underlying documentation, as part of a general document retention program.
2. Employers must be prepared to deal with applicants who claim to have lost all forms of identification.

**IX. The National Labor Relations Act ("NLRA")**

A. Labor Union Issues

1. NLRA generally governs relations among employers, employees, and labor unions.
2. Collective bargaining is one of the keystones of the NLRA. The NLRA requires an employer and the representative of its employees to meet at reasonable times, to confer in good faith with respect to wages, hours, and other terms or conditions of employment, the negotiation of an agreement, or any question arising under an agreement.
  - (a) Following a natural or other disaster, the employer may be required to make certain changes in the workplace.
  - (b) Some collective bargaining agreements contain a "force majeure" clause, setting forth the employer's rights and duties in emergency situations caused by such things as unforeseeable forces of nature.

- (c) In some situations, a disaster may force an employer to go out of business completely. Generally, an employer has the right to cease operations and go out of business completely without first bargaining with the union over its decision, but must bargain over the “effects” of the decision to close.

B. Protected Concerted Activity

- 1. Section 7 of the NLRA states: “Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining *or other mutual aid or protection*, and shall also have the right to refrain from any or all such activities . . . .” (emphasis added).
- 2. Protected concerted activity sometimes includes employee conduct that has nothing to do with unions directly, as when employees act together to complain about their work place and their jobs.

X. **Occupational Safety and Health Act (“OSHA”)**

A. General Provisions

- 1. The purpose of OSHA is to “assure . . . every working man and woman in the Nation safe and healthful working conditions. . .” 29 U.S.C. §651(b).
- 2. OSHA applies to all employment performed in any workplace within the United States as long as the employer has one or more employees. 29 U.S.C. §653.

B. General Duty Clause

- 1. OSHA contains specific safety standards and a general duty to provide a safe working environment.
- 2. Section 5 of the Occupational Safety and Health Act (the General Duty Clause) requires that each employer:
  - (a) shall furnish to each of his employees employment and a 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;
  - (b) shall comply with occupational safety and health standards promulgated under this Act.

C. OSHA and Natural Disasters

1. Hurricanes and other disasters present obvious safety concerns, including vehicle accidents, slips and falls, flying objects, electrical hazards from downed power lines, exhaustion from working extended shifts, and dehydration.
2. OSHA has issued fact sheets, in both English and Spanish, setting out issues and hazards relating to recovery and cleanup efforts following hurricanes or other disasters. Specific topics include:
  - (a) General Cleanup Hazards
  - (b) Flood Cleanup
  - (c) Fungi
  - (d) Falls
  - (e) Electrical
  - (f) Chainsaws
  - (g) Heat
  - (h) Sun
  - (i) Tree Trimming

**GUIDELINES AND RECOMMENDED POLICIES**

**I. Policies Designed to Ensure Communications**

- A. Employers should establish policies designed to ensure the ability to communicate with workers and others
  1. employers should have full contact information for employees (home and cellular nos., addresses, and e-mail) and alternates;
  2. establish a telephone tree – two or three individuals with cell phones may agree to let others call them for updates;
  3. keep important telephone numbers (building security, management, maintenance) easily retrievable and accessible;
  4. establish toll free numbers for the employer;
  5. provide for electronic communications through e-mails or on password-protected section of website.

## **II. Policies Designed to Ensure Business Continuity**

- A. Internal policies should advise managers what to do if employees cannot immediately return to the workplace;
- B. Internal policies may provide instruction on transferring employee to another facility or transferring work to employees elsewhere.

## **III. Flexible Leave Policies**

- A. Employers should consider expanding or relaxing existing leave policies.
- B. In considering requests for leave, employers should consider the applicability of FMLA.
- C. In considering requests for leave, employers should consider the applicability of the ADA;
- D. In considering requests for leave, employers should consider the applicability of any other leave granted by the Company's employment policy (bereavement, etc.).

## **IV. Employee Assistance Programs ("EAPs")**

- A. If EAPs are available, remind employees and consider coordination of counseling sessions (individual or group);
- B. If there is no EAP program, consider hiring an outside grief counselor, if necessary or requested.

## **V. Insurance Coverage**

- A. Employers affected by evacuations should consult their insurance policies to ascertain whether they are covered for business interruptions caused by hurricanes.
- B. Employers must notify the insurance company immediately after the loss, in accordance with the notice provisions of the policy. In addition, many insurances policies require employers to submit a detailed proof of loss within 30 days or more.