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# LEGAL ALERT

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## Don't Let Employees Get Hurt As You Dig Out

In the midst of finding childcare for children unexpectedly home from school, coping with business disruption, power outages, and dangerous streets, we often forget that winter storms, like hurricanes, pose special workplace hazards especially when employers begin to clean up and restore business. Many fatalities, injuries, and OSHA citations occur as employees perform non-routine tasks after the storm eases.

Falls--employers with flat roofs may send contractors or employees on their flat roof to remove accumulated snow before the roof collapses. Unfortunately, this may be a non-routine task for employees, and they may not be aware of applicable fall protection requirements, which are even more important during and after winter storms. In addition, many buildings have skylights whose covers will not meet OSHA's requirements or they lack guardrails, and employees often fall through these skylights as they unknowingly step on the covers buried under snow. Also, do not neglect OSHA requirements for ladder safety, and the use of manlifts, scissor lifts and buckets.

Electrocutions--we all appreciate the diligent service of the utilities and contractors who labor around the clock to repair fallen lines and downed poles and transformers. However, those contractors must still adhere to the detailed OSHA requirements for electric distribution and construction, as well as ensure that adequate employees accompany each truck. Now is not the time to send out inadequately trained employees, cut corners on briefings and instructions, or neglect training for non-routine tasks. Generator use presents special issues, as does electric backfeed.

Personal Protection Equipment (PPE)--even in emergency situations, employees must perform a Job Safety Analysis (JSA) to evaluate the PPE needed and train employees accordingly. This evaluation and training must be documented (certified) as set out in 1910.132(d). Be aware of what PPE must be provided at no cost to employees. Under OSHA regulations, employers are required to pay for most personal protective equipment (PPE), but ordinary clothing, skin creams or other items, used solely for protection from the weather (i.e.,

winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats) are not required to be paid for by the employer. On a practical level, do not overlook footwear; a special focus of OSHA.



Hazard Communication--employers must ensure that employees are adequately trained before exposing them to new chemical hazards, and should ensure that they provide training and necessary PPE for using de-icers and other chemicals.

Equipment Operation--employees must be evaluated and trained to operate most powered equipment, and this duty generally includes when previously trained employees are assigned to new or different equipment. This process can be done simply and efficiently in emergency situations, but may not be neglected. Be especially careful in assigning employees to use chain saws, chippers and comparable equipment.

Roadside Protection/Struck-by's--not only road construction workers but all workers who may work or operate vehicles on roadsides or construction sites have

increasingly faced hazards from being struck by automobiles or run over by dump trucks or equipment whose blind spots prevented the operators from seeing the worker. Employers must be aware of OSHA's different requirements for telecommunications workers, electric distribution, and general construction for warnings, as well as requirements under 1926.20 and 21 to evaluate a site and determine means to avoid hazards. Employers operating bucket trucks, vans, and even delivery vehicles should ensure they have prepared for roadside hazards.

Exhaustion and other health-related issues--tired employees make bad judgments and are the first to be injured. Even in an emergency situation, monitor your employees for exhaustion, stress, exposure and other physical problems, including existing physical conditions exacerbated by unusual exertions. Frostbite occurs when skin tissue actually freezes. It normally occurs when the temperature is below 30° F but wind chill effect can result in frostbite occurring above freezing. Hypothermia occurs when body temperature falls to a level where normal muscular and cerebral functions are impaired. Trench foot is caused by long, continuous exposure to a wet, cold environment or actual immersion in water. Ensure the use of layers of warm clothing and gear, water, hot beverages and food, and frequent breaks. See OSHA's

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[cold weather instructions](#) or discussion of emergency response and [clean up](#) on their website.

Federal Motor Carrier Safety Concerns--if drivers may have to exceed hours worked limitations either to handle the snow fall or to pick up trash, deliver fuel, or undertake other necessary work, you must seek the proper local, state, or federal exemption.

Wage-Hour and Independent Contractor considerations--while not strictly a safety issue, ensure that even during an emergency and when electronic timekeeping systems may be unavailable, that employees, including those working from home or unusual places, record and are paid for all hours worked, including overtime if so required. Ensure that temporary employees are properly classified and paid, as well as trained.

Much of this is common sense; however, winter storms, and catastrophic events such as Hurricane Katrina show the necessity of developing plans in advance which contemplate far more than fire and evacuations. Clean up may well be the most dangerous stage.

If you need help with any question on OSHA's requirement for providing your employees with the appropriate personal protective equipment (PPE) or what PPE OSHA requires employers to pay for, please contact the Fisher & Phillips Workplace Safety and Catastrophe Management Practice Group at 404.231.1400 (Ed Foulke at 404.240.4273 or Howard Mavity at 404.240.4204) or the Fisher & Phillips attorney with whom you regularly work.

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