

# Hurricane Florence Disaster Recovery FAQ

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Our thoughts are with the individuals and businesses affected by Hurricane Florence. The Brooks Pierce team would like to help provide some peace of mind during this time of recovery. We hope the information below will be helpful to you as you work to rebuild. Please let us know if there is any assistance we can provide during this time.

## **Environmental:**

### **1. What should I do if flooding caused some environmental impact to my property?**

While significant flooding can lead to major releases of pollutants – e.g., coal ash or hog waste lagoons – smaller impacts can also occur, for instance a release from an above ground storage tank or a failure of a sedimentation control. To determine whether reporting and corrective action might be required, the amount and type of substance released should be considered.

### **2. What steps should I take if I believe my property has been impacted by a hurricane or other natural disaster?**

It is important to keep good records of the impact that occurred and any communications to and from governmental authorities. You should take and preserve photographs and/or videos of the impact to your property, and be sure to keep copies of any correspondence that you might receive from local, state or federal authorities. Depending on the severity of the impact and the potential liability, you may want to consult with a qualified attorney before responding to the authorities.

## **Real Estate/Corporate:**

### **3. What should I do if my company leases real estate that has been damaged by a storm?**

Typically, the burden is on the tenant to promptly notify the landlord of the damage, and the landlord may have the right to terminate the lease if the damage is substantial. The lease may provide for free rent during the restoration period, and if not, you should check to see if your company has business interruption insurance that might cover the rental payments under the lease.

### **4. What should I do if a storm affects my company's ability to perform under a contract?**

Your contract may include a force majeure provision that either excuses or allows more time for performance under such circumstances. In order to benefit from the contractual provision, you may need to give written notice of the force majeure event to the other contracting party and provide periodic updates regarding the progress of the force majeure event.

**Tax:**

**5. How do I calculate my tax deduction for losses sustained in Florence?**

Losses due to storm damage or other casualty are generally deductible to the extent they are not compensated by insurance or otherwise (e.g., by federal or state disaster relief payments). The deductible amount of a loss is determined by your basis in the damaged property, not by the property's fair market value.

**6. What are the tax implications of accepting disaster recovery aid, either state or federal?**

Payments from a federal, state, or local government or agency to an individual to cover reasonable and necessary personal expenses incurred as a result of a federally declared disaster are generally not subject to income tax. Likewise, insurance payments (including reimbursements for rent or living expenses) due to damage to your personal residence are generally not subject to income tax.

**Employment:**

**7. How do I handle employee payroll if I can't get to the office or access my systems? How do I handle payroll if my records/timekeeping systems were damaged?**

The North Carolina Wage & Hour Act requires employers to pay all wages owed on regular paydays. There is currently not an exception for storm damage, however there is a "good faith" exception for violations of the Act. Businesses should make efforts to pay employees for all time worked as soon as possible. If there will be a delay due to storm damage, notify employees of the delay, the length of the delay, and when employees can expect to receive their paychecks.

**8. Do my responsibilities toward my employees differ if they are exempt vs non-exempt?**

Employers must ensure that non-exempt employees are paid for all time worked in a work week, including overtime. Exempt employees must be paid for the entire work week if they work any time during the work week; however, the employer can require exempt employees to use paid leave for absences, such as vacation or PTO days, if there is an established paid leave policy.

**9. What unemployment benefits are available for workers while businesses in affected counties are closed due to storm damage?**

Workers in counties designated for disaster relief may be eligible for Disaster Unemployment Assistance. The North Carolina Department of Commerce has additional information for these benefits: <https://des.nc.gov/DES/Static?page=faqMain#DUA>

**10. If an employee is on FMLA, do the days the employer is closed for the storm count toward FMLA leave?**

FMLA regulations specify that if an employer is closed for less than a week, an employee's FMLA leave continues. However, if an employer is closed for a week or more, FMLA leave is suspended.

**You should check whether your County has been declared eligible for individual assistance from the Federal Emergency Management Agency (FEMA). This means that federal disaster assistance has been made available to the State of North Carolina to supplement recovery efforts in the areas affected by Hurricane Florence. Assistance may include grants for temporary housing and home repairs, low-cost loans to cover uninsured property losses and other programs to help individuals and business owners recover from the effects of the disaster. To begin applying, call FEMA at 1-800-621-FEMA (1-800-621-3362) or visit: <https://www.disasterassistance.gov/>**

If you have questions about legal needs you may have encountered as a result of a natural disaster, please reach out to your current Brooks Pierce contact or any of the authors of this list.