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While the nation copes with the unprecedented devastation caused by Hurricane Katrina, there are many legal and business issues to consider in response. This ASAP offers guidelines for employers to follow not only in the wake of Hurricane Katrina but also in response to other natural and man-made disasters including steps to take to prepare for such calamitous events.

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Employers' Responsibilities In the Wake of a Natural Disaster

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As the home of jazz is inundated by the sounds of rushing water, hundreds of thousands of employees have fled their work and livelihoods following the wake of Hurricane Katrina. Likewise, thousands of employers face an uncertain future, including how to handle their displaced workers. The human and financial effect of Hurricane Katrina will undoubtedly impact businesses well beyond the region for months to come.

While the nation copes with the unprecedented devastation caused by the hurricane and tropical storms, the following is a brief synopsis of guidelines that can be used by employers to navigate through the many legal and business issues created by recent events. Many of these guidelines are applicable to other disasters such as earthquakes, terrorist attacks, fires and workplace violence, and may be consulted as a reference in the future.

Dealing with Employees Who Have Lost Everything

Between 500,000 and one million people have been displaced by Hurricane Katrina. Experts believe that it will take months, and upwards of a year, before people will get back to work in some areas. In the wake of this sort of unparalleled devastation, employers should be especially mindful of the emotional toll this places on employees. Unlike a train derailment or chemical release, the results of natural disasters tend to linger, because some consequences unfold over days, weeks, and months following the initial catastrophe. Many of the following suggestions are not required by law, but are optional action items which employers can implement to assist their employees.

Communication with Employees:

As a result of the complete destruction of telephone service in the devastated areas, callers are met with either a fast-busy or the ubiquitous "all circuits are busy" message. Any company with an operating website can create space on that website for employee communications. If a website does not have

password-protected communications already, consider adding that capability. For example, employees could use their name "," employee ID or Social Security number (if permitted by state law) to access and communicate private information. Where possible, an employer's website should set out, at least in an area of the website to which access is restricted to employees, the company's current and anticipated operating plans — for example, expected hours of operation, facilities being reopened, temporary alternative work locations, and company units which will resume operations. A company should consider candidly assessing on its website the possibility of furloughs, layoffs, payment arrangements, benefits, or even the closing of the business. While none of these steps are required, an employer can use its website to communicate information on topics such as:

Temporary Housing Some employers may choose to erect "tent cities" to house employees whose homes were damaged or destroyed. Like a massive mobile hotel, the tent city can provide full services, including water, catering, power, satellite communications, sewage treatment, medical services, bedding and laundry. Other companies are donating thousands of dollars for each employee whose home has been destroyed.

Continued Payment of Wages With government aid taking some time to become available, some employers may voluntarily choose to continue paying their employees. For instance, one nationwide employer reportedly will continue to pay its employees for 90 days. Another employer expects to pay employees through this week and is preparing to provide lodging for displaced employees for longer periods.

Providing Time Off Employers should be aware that in the event of a natural disaster of which there is some warning, such as a hurricane, many employees could use and would greatly appreciate time off in anticipation to prepare their families and their homes. After a disaster, employers can effectively help stave off

what may otherwise be crippling emotions by providing additional time off to employees who donate blood or who wish to take time away from work to participate in ongoing relief efforts.

Employee Benefits Since employees may be using medical benefits (including counseling), information on the status of benefits, who to contact regarding claims, and how benefits are to be maintained in the unique circumstances of the disaster, should be communicated via the company's website. Forms for COBRA and other benefits such as death and disability claims should also be available online on the website. Consider providing general notice regarding benefits through posting "legal notices" with newspapers of general circulation in the disaster area (many newspapers will publish electronically before they resume "hard copy" distribution), and in areas where employees may have relocated, including areas where government sponsored shelters are being maintained.

Utilization of Employee Assistance Programs (EAP):

Many employers have EAP programs, which are typically capable of providing individual or group counseling and support. These programs can be very effective when employees in a workplace have experienced a traumatic event. When an entire region has suffered a disaster, employers should consider offering the services of outside grief counselors, if necessary or requested by employees, to help employees cope with emotional issues.

Employers with the necessary resources that do not yet have an EAP program in place may wish to consider implementing one as soon as possible. Employers may also inquire of their insurance companies of the availability of EAP services, as many medical insurance policies cover counseling and other services similar to those provided by an EAP program.

Expansion of Leave Policies:

In times of disaster, with family members missing and communication methods gone, some employees may request leave time to go to the affected area to render aid or engage in search activities. Also, injuries sustained during the disasters may qualify employees for leave under the FMLA to care for themselves or a family member. Even if an employer's policies (or practices) do not allow nonmedical leaves of absence, the circumstances of a disaster will probably present extraordinary circumstances that may allow an employer to grant the time off to employees directly or indirectly affected by the catastrophe. While strict adherence to

leave policies is the conservative and prudent management approach for employers in normal operating circumstances, when a disaster strikes, employers should be flexible and considerate by expanding or at least temporarily relaxing otherwise restrictive existing leave policies. Even if a change or relaxation in policies may result in some operational inefficiencies or reduced revenues to an employer, companies should consider the value and propriety of the company's contributions as corporate citizens in assisting others during a time of great need — and employers should also consider the possible repercussions to the company's image in the community and as an employer if the company does exercise informed judgment on these issues. This is particularly true with respect to the duration of bereavement leaves, as well as military leaves pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) for those who may be called to duty in securing the damaged cities.

Americans with Disabilities Act (ADA) and Reasonable Accommodation:

Employees who are physically or emotionally (e.g., post-traumatic stress disorder) injured as the result of a catastrophe may be entitled to reasonable accommodation under the ADA or corresponding state laws.

Implementation of Telecommuting Policies:

In a widespread disaster such as that created by Katrina, resuming operations in the pre-existing place of business may not be an option. To accommodate these concerns, employers should consider whether it is feasible for employees work in cyberspace by telecommuting on a temporary basis either from home or from rented office space in another city or state.

Continuation of Employee Benefit Programs

In a disaster, the widespread closure of facilities and the wholesale displacement of employees, many of whom may have been injured, create unprecedented benefits issues. The recent tragedy will require employers to make coverage decisions such as whether they will maintain benefits for employees — especially where the employee, or the business, may at least temporarily not be working or operating. Should an employer decide to continue coverage, the employer should contact its benefits vendors to determine how coverage is to be maintained during this period.

For instance, ERISA-covered benefits such as life, health and disability coverage are the most likely employer-provided benefits that employees (and their dependents and beneficiaries) will be seeking to maintain in time of disaster. With respect to payments to insurance companies and HMOs, state insurance laws generally provide for a grace period of 30 days after premiums are due (typically first of the month) to pay a month's premiums. Therefore, most employers who intend to continue to maintain coverage will have at least 30 days to pay the previous month's premiums — but the existence of this option should be confirmed with local employment counsel or by checking the applicable state agency's website for updated information on premium handling during times of disaster.

Assuming that a business closes indefinitely because of a disaster, a key issue to employees will be the status of the company's benefit plans and whether employees are eligible to continue to participate in the plans. Most insurance policies require a minimum number of active employees for a policy to continue in effect. Also, health and life policies typically provide for conversion rights when policies terminate for other than non-payment of premiums, and where no replacement coverage is obtained.

In the case of a health plan, if an employee is no longer eligible for coverage under an ongoing plan because the employee is not working, then a COBRA-covered plan needs to notify its plan administrator (often the employer). In turn, that administrator will need to send COBRA packages to employees and their covered dependents. The DOL has taken the position that COBRA notices can be timely when sent up to 45 days from the COBRA "qualifying event." Thus, there is still some time to act. The general rule for all notices is that they need only be sent to an employee's last known address. Under these circumstances, when it is reasonable to assume that the last known address is uninhabitable, employee and other dependents are not there and the post office is not delivering, then notices sent are unlikely to be received. While the government may issue some guidance on this issue, in the case of COBRA notices, employers should allow time for mail delivery to resume and employees to provide new addresses. If the decision is to discontinue coverage and terminate any and all benefit plans, then this too needs to be communicated, technically within 30 days or less under most state's insurance laws.

Time sensitive elections and employee responses which may not have been extended by the

government, such as the allowable 60 days for employees to elect COBRA coverage, may be extended by a plan administrator/employer. However, such extension cannot be done unilaterally but will require the agreement of any affected vendor, and the adoption of a uniform extension “standard” with respect to employees in like circumstances.

Going forward, companies renewing insurance policies of all kinds should confirm the availability of benefits for natural disasters such as Katrina, and for, events such as a terrorist attacks (or “acts of war”) — and what benefits or coverages are excluded.

Addressing Operational Impact

State and Federal Relief Services:

For the Katrina disaster, federal and state authorities have websites and local and toll-free numbers for additional information:

FEMA Disaster Assistance:	800-621-FEMA
Department of Labor:	1-866-4-USA-DOL
New Orleans Missing Persons:	225-925-6626
Mississippi Missing Persons:	601-987-1430
Alabama Emergency Management Agency:	205-280-2200

http://www.firstgov.gov/Citizen/Topics/PublicSafety/Hurricane_Katrina_Recovery.shtml

Command Center:

As part of their emergency preparation plan, employers should establish a command center to serve as the central source for decision-making and communication to employees and others. A command center allows a company to act quickly and communicate accurate information to outside authorities, employees, their families, and the media. Unfortunately, many emergency plans do not name second and third alternative locations in the case of a wide-spread catastrophic event.

Workers' Compensation:

Many states, such as Louisiana, Mississippi and Alabama, require that employers have proof of adequate workers' compensation insurance, and promptly issue workers' compensation claim forms to those employees that appear to have been injured in the workplace.

Employers should monitor the state agencies' websites to remain informed of new or revised policies addressing problems created by the disaster. The websites for the affected state agencies in Louisiana, Mississippi and Alabama are:
Louisiana: http://www.l dol.state.la.us/bus_owca.asp

Mississippi: <http://www.mwcc.state.ms.us/>

Alabama: <http://dir.alabama.gov/wc/>

Unemployment Benefits:

It is estimated that Katrina will propel area unemployment rates now in the single digits to the double digits in coming months (even considering the employment gains from rebuilding efforts). Unemployment benefits normally run for 26 weeks. However, the government does have the power to expand the time limits. Here again, employers should periodically review the state agencies' websites for new information:

Louisiana: <http://www.l dol.state.la.us/>

Mississippi: <http://mdes.ms.gov/wps/portal/#null>

Alabama: <http://dir.alabama.gov/>

Death Benefits:

Employers who have lost employees as a result of Katrina, should promptly review the possibly applicable policies for coverage, including life insurance, accidental death and dismemberment, and workers' compensation. Appropriate information and forms should be communicated as promptly as possible to the next of kin. Employers should be aware that many states have specific statutes governing the distribution of final paychecks and death benefits, which may apply in those circumstances where a deceased employee has more than one beneficiary.

Property and Casualty Insurance:

Employers who suffer losses of any type are urged to notify their applicable insurance carriers as soon as possible. Not only will this expedite the processing of claims and receipt of necessary benefits, but many insurance policies have strict time limits for reporting losses. Companies should also check their policies to see if they have “business interruption” coverage or benefits in their policies.

Employment Tax Transmittal and Reporting Obligations:

Employers are obliged to remit collected payroll taxes and complete reports to the state and federal governments. The IRS has announced (IR-2005-84 (August 30, 2005) at http://www.irs.gov/newsroom/article/0,,id=147055_00.html) that employers will have until October 31, 2005, to file tax returns and submit tax payments with respect to those due August 29. Louisiana's Department of Revenue has also announced an extension that varies by type of report or tax and ends upwards to 60 days of additional time to file. See Louisiana Department of Revenue's website at <http://www.rev.state.la.us/sections/katrina/faq.asp>. Alabama has indicated it handles matters

on a case by case basis. See Alabama Department of Revenue's web site at http://www.revenue.alabama.gov/prdocs/hurricane_KATRINAextension.pdf. As of publication, Mississippi has not issued any guidance. See Mississippi State Tax Commission's web site at <http://www.mstc.state.ms.us/index.html> for further updates.

Avoiding or Minimizing Business Closures

Following are some options an employer may consider in deciding whether to cease operations. These measures may have significant legal and social ramifications. Additionally, unionized employers may have separate obligations to notify and bargain with the union before taking such measures. Moreover, the legal impact of the implementation of these options will vary from state to state. Formal legal advice should be obtained prior to the implementation of any of these measures.

Layoffs and Reduction of Work Hours:

Disasters may force some employers to implement the unpleasant task of laying off some employees to counteract diminished revenues, and to maintain overall commercial viability. This option may trigger the notice obligations of the federal Worker Adjustment and Retraining Notification Act (“the WARN Act”). Similarly, significant reductions in employees' work hours, such as reductions of more than 50% each month for at least six months, may also trigger the advance notice obligations of the WARN Act. See the DOL's press web site at <http://www.dol.gov/compliance/laws/comp-warn.htm>. While one could certainly argue that events such as Katrina constitute a sufficient exception to the WARN Act, certain preexisting circumstances may void the application of the exception. In addition, some states, like Louisiana, have statutory requirements requiring that wages due be paid within 15 days. See the Louisiana DOL's web site at http://www.l dol.state.la.us/job_laborlawfaq.asp?Portal=WRK. Employers should not initiate layoffs without careful consideration of the consequences, and alternatives to layoffs.

Furloughs and Temporary Office/Plant Closures:

While some employers may impose temporary furloughs for certain employee classifications, others might consider temporary office or plant closures to help recover. Failure to execute either option could result in significant legal liability. See the DOL's web site at <http://www.doleta.gov/lay->

[off/employers01.cfm](#). In certain cases, employers must give the workers advanced notice of mass layoffs or plant closure. Applicable state laws should be consulted prior to the implementation of such extraordinary measures. The DOL's web site at http://www.dol.gov/esa/contacts/state_of.htm. To the extent that an employer is not going to continue to maintain health coverage for furloughed employees, then COBRA notice provisions are triggered.

Delayed Wage Payments:

One anticipated effect of a disaster is the delayed processing of employees' wage payments, such as by those companies directly affected by Katrina. Employers' wage payment obligations vary from state to state. For example, Louisiana labor law requires employers to pay employees no more than 10 days following close of the pay period. California law, on the other hand, requires that employees be paid not more than seven days after the close of the applicable pay period. Although some laxity may be afforded to those who experience significant difficulty meeting these types of obligations as a result of unforeseen disaster, including the inability of payroll services similarly affected by the disaster to process payrolls, the extent to which there will be any laxity in the enforcement of the wage laws remains to be seen.

Unionized employers are advised to review their collective bargaining agreements, some of which address this issue directly, or perhaps approach the union to address the delayed wage payment issue before unilaterally delaying any payments.

We also suggest that employers promptly notify their employees of any wage payment processing problems and advise them of when they can expect payment, particularly where employees are on direct deposit and might otherwise write checks against anticipated deposits.

The websites of the state agencies tasked with wage, hour and payroll administration of employees within their jurisdiction are:

Louisiana: <http://www.ldol.state.la.us/>

Mississippi: <http://mdes.ms.gov/wps/portal/#null>

Alabama: <http://dir.alabama.gov/>

New Legislation and Regulations

On September 1, 2005, Congress passed a \$10 billion disaster relief bill, and the details can be found at <http://www.c-span.org/capitolspotlight/index.asp>. In addition, the Department of Labor announced a \$50 million national emergency grant to create approximately 10,000 temporary jobs to assist Mississippi's Katrina

recovery efforts, and another \$4 million grant to Alabama. See the DOL's press release at <http://www.dol.gov/opa/hurricane-recovery.htm>. The DOL also extended the annual reports deadline for Alabama, Louisiana, and Mississippi. Under this relief, DOL Form 5500 series filings required to be filed between Aug. 29, 2005, and Oct. 31, 2005, are granted an extension until Oct. 31, 2005. See the DOL's press release at <http://www.dol.gov/opa/hurricane-recovery.htm>. Plan filers entitled to an extension of relief should check Part I, Box D, on the Form 5500 or Part 1 on Form 5500-EZ and attach a statement to the form in accordance with the instructions. See the IRS's press release at http://www.irs.gov/newsroom/article0,,id=141489_00.html. The DHS has announced that it will relax I-9 reporting requirements for 45 days for employers hiring those displaced by Hurricane Katrina. For additional information, see Littler's September 2005 ASAP *Department of Homeland Security Temporarily Relaxes I-9 Documentation Standards for Hiring Hurricane Victims* at <http://www.littler.com/nwsltr/DHSTemporaryI-9Documentation.htm>.

Recommendations for the Future

Most workplace losses are far less catastrophic than those created by Katrina. The impact of a local or regional catastrophic event on both employers and employees can be reduced with advanced planning and implementation of disaster procedures. For instance, simply distributing to employees a list of external resources and phone numbers (e.g., police, fire department, local hospitals, EAP, insurance carriers), could prove helpful, and might even save a life. Employees should be cautioned that, in the worst-case scenarios, they might be without food, water, and law enforcement protection for days.

The New National Standard for Disaster Preparedness (NFPA 1600)

Certainly since 9/11, an increasing number of employers have implemented plans to prepare for the dozens of catastrophic scenarios once believed "unthinkable," such as terrorist attacks or a Hurricane Katrina. However, much remains to be done. Disappointed by the dismal state of private sector emergency preparedness, the Department of Homeland Security (DHS) identified and endorsed a "national preparedness standard" known as NFPA 1600 prepared by the American National

Standards Institute. The NFPA is now the "National Preparedness Standard" for private businesses and offers a comprehensive process for establishing an emergency preparedness plan. A plain English version of the NFPA 1600 can be found at <http://www.nfpa.org/search.asp?query=1600>.

While NFPA 1600 is a voluntary standard, it is increasingly becoming the benchmark against which preparedness is measured. Employers should remain mindful that guidelines and recommendations can quickly evolve into legal requirements.

According to NFP 1600, an employer's disaster preparedness plan should consider the following:

1. Ensure that employees are properly, and periodically, trained on how to respond in emergencies. In some cases, it is useful to draft and publish a series of guidelines to help employees respond appropriately in disastrous situations.
2. Evacuation procedures should be published to every employee and evacuation drills (as well as fire drills) should be routinely conducted.
3. Maintain accurate emergency contact information to reach employees and next of kin.
4. Establish and publicize mechanisms (e.g., website, telephone chain, recorded announcement) through which the employer may apprise its employees of any pertinent developments.
5. Reassess the means and manner in which critical information is stored, both physically and electronically to prevent irreparable physical damage from crippling the company's operations.
6. Review existing property, casualty, business interruption, life, and other insurance policies, and to modify such coverage where necessary or prudent.

Additionally, employers have a legal duty to provide employees with a safe workplace, and we strongly encourage employers to conduct a workplace safety audit on these and other issues. We suggest a five-step audit, for which a company may want to retain an appropriate expert, on the following:

1. Emergency responsive procedures (discussed in more detail below);
2. Evacuation procedures;
3. Identification of all natural disaster possibilities, and reasonable control measures;
4. Evaluation of health and safety training programs; and
5. A review of written safety programs.