

## Updates

January 17, 2025

### LA Fires: Employer Considerations in Light of the Disaster



Companies with California operations affected by the continued devastation of the fires in the Los Angeles area should keep in mind applicable employment laws when responding to this natural disaster.

Employer actions may implicate several areas of employment law, including occupational health and safety regulations, antidiscrimination laws, wage-and-hour laws, and employee leave laws, among others. Below, we address some of the key topics relating to employers and the wildfire disaster. Because this disaster is an evolving situation, California employers should contact experienced counsel for the most up-to-date guidance specific to their business.

#### **1. Cal/OSHA Advisory on Wildfire Smoke Protection**

The California Division of Occupational Safety and Health (Cal/OSHA) has issued an important reminder to employers regarding the protection of workers from unhealthy air quality due to the ongoing wildfire smoke affecting Los Angeles County. Employers are required to monitor air quality and adjust work practices accordingly to ensure the safety of their employees. Specifically, the advisory mandates the provision of N-95 respirators for voluntary use when the Air Quality Index (AQI) reaches certain thresholds. This measure is crucial to mitigate the health risks associated with exposure to wildfire smoke. To protect workers, employers must monitor air quality, adjust work practices, and provide N-95 respirators for voluntary use. Cal/OSHA also requires training for workers on protection from wildfire smoke. For detailed information on the specific AQI thresholds and additional requirements, please refer to the full advisory on the Cal/OSHA website [here](#).

#### **2. Anti-Retaliation, Leaves of Absence, and Accommodation Obligations**

Employees may be protected under various California laws when they cannot or do not report to work during the wildfire disaster under certain circumstances, and employers should seek guidance from experienced counsel

before taking an adverse action against an employee. California law prohibits employers from retaliating against workers who refuse to work in certain unsafe conditions, which may include refusing to report due to a mandatory evacuation order. The California Labor Commissioner's Office has published [FAQs](#) that address whether workers can be required to perform services in an area under a mandatory evacuation order. The FAQs provide, in part, that "[r]equiring a worker to perform services in an area that is under a mandatory evacuation order may be in violation of certain Government Code sections, Penal Code sections and/or Labor Code sections. For purposes of enforcement of the Labor Code, an employer may not retaliate against employees that engage in a protected activity that may include following a mandatory evacuation order." Similarly, opposing unsafe work conditions may, in certain circumstances, be considered protected activity under the National Labor Relations Act or other state laws.

In addition, employees may need to take leaves of absence for reasons under either the federal Family and Medical Leave Act or the California Family Rights Act, such as a serious health condition or to care for a family member with a serious health condition. California Labor Code Section 230.3 also requires most employers to allow employees to take leave to perform emergency duties as a volunteer firefighter or emergency rescue personnel. Military personnel called to serve in response to the wildfires may also be eligible for leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Some employees may also have a need for accommodation under the federal Americans with Disabilities Act or California's Fair Employment and Housing Act, including for respiratory conditions or mental health conditions. Employers should follow their standard processes regarding leaves of absence and accommodations and should engage in the interactive process.

### **3. California State Sick Leave, Vacation, Paid Time Off, and Time Off for Child-Related Activities**

Affected employees may use accrued sick leave under California state law (and applicable local ordinances, such as those for Santa Monica, Los Angeles City, or West Hollywood) for absences related to the wildfire disaster if the need arises from a qualifying reason (*i.e.*, relating to a health condition of an employee or a qualifying family member). Additionally, affected employees may use their vacation or paid time off if permitted under their employer's policy. Employers should apply their policies consistently with all employees in a nondiscriminatory manner.

Additionally, employers should consider that California Labor Code Section 230.8 generally provides that employees who work at a location with 25 or more employees may take up to 40 hours of unpaid leave per year in certain circumstances, including closures or unexpected unavailability of school or daycare for any reason. Employers should also recognize that employees may continue to face childcare issues or other challenges with the disaster that make working more difficult. An open, continuing dialogue with employees remains important for legal and employee-relations reasons.

### **4. Optional Leave for Employees Affected by the Disaster**

Employers may also consider providing paid or unpaid leave to employees affected by the disaster. Providing such leave should be done on a nondiscriminatory basis. Employers should develop written policies and procedures related to any such optional leave during the disaster.

### **5. California Wage-and-Hour Considerations**

Companies may face a variety of wage-and-hour issues in connection with the disaster. These may include:

- **Exempt employees.** Generally, exempt employees must be paid their standard salary for the workweek if they perform any work during a workweek. Accordingly, if an exempt employee worked the first day of the workweek but was unable to work for the rest of the workweek, the employer must pay the employee's entire salary for the week. However, if the exempt employee performs no work during the workweek, the employer is not required to pay the employee's salary for that week. Employers should also check any written agreements with exempt employees regarding pay.
- **Nonexempt employees.** Employers must pay nonexempt workers for all hours actually worked. In the case of business closures and reduced hours, employers should make sure to pay nonexempt employees for all hours worked, noting the reporting-time-pay and split-shift considerations discussed below.
- **Los Angeles' Fair Work Week Ordinance.** Retail businesses within the city of LA with at least 300 employees globally (including franchises) are subject to rules regulating how employee work schedules are set and altered ([City of Los Angeles Ordinance No. 187710](#)). Employers in Los Angeles city should note that closures caused by the wildfires are likely considered an exception to Los Angeles' Fair Work Week Ordinance, as employers' operations are arguably "compromised pursuant to law or force majeure."
- **Reporting time pay.** California law generally requires employers to pay [reporting time pay](#) each day an employee reports for a scheduled day's work but is provided less than half of the employee's usual or scheduled day's work. However, reporting-time obligations may not apply when a work interruption "is caused by an Act of God or other cause not within the employer's control," which may include wildfire conditions.
- **Split shifts.** Generally, when nonexempt employees work in a workday in periods that are interrupted by nonworking time periods, a [split shift premium](#) of no less than the minimum wage rate likely needs to be paid. Employers who are implementing split shifts should consult with experienced legal counsel to address any pay-related topics.
- **Remote work.** Companies may consider remote work during the disaster. For nonexempt employees, employers should ensure that they are reporting and being paid for all hours worked. Employers should also ensure that nonexempt employees are still provided compliant meal and rest breaks while working remotely. In addition, companies should consider whether there are any obligations related to the reimbursement of reasonable and necessary business expenses in connection with remote work.

## 6. Unemployment Insurance

As the California governor has issued an emergency proclamation relating to the wildfires, employees who lose income because of the wildfires may be eligible for unemployment insurance benefits through California's Employment Development Department (EDD). The EDD has [announced](#) that the typical one-week waiting period for such claims is waived for areas affected by the emergency proclamation.

## 7. Other Business Considerations

Companies may be affected by the disaster in multiple ways and may need to temporarily pause or permanently cease operations or otherwise address staffing. Companies considering furloughs, reductions in force, or other staffing changes should consult with experienced legal counsel to make sure that such changes are appropriately addressed, including with respect to any obligations under the federal or California state Worker Adjustment and Retraining Notification Acts.

## 8. Providing Disaster Assistance to Employees

As employees are affected by this disaster, employers may want to consider providing some disaster assistance to their directly affected employees. Internal Revenue Code (Code) Section 139 allows employers to provide

employees certain tax-free assistance attributable to a federally declared disaster (*i.e.*, qualified disaster relief payments). Qualified disaster relief payments include, among other things, payments made to (or for the benefit of) an employee to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the federally declared disaster, so long as such payments are (1) not compensated for by insurance or otherwise and (2) not intended to replace or supplement wages. Limited guidance from the Internal Revenue Service (IRS) indicates these expenses may include medical, temporary housing, and transportation costs.

On January 8, 2025, President Joe Biden approved a major disaster declaration for California's fire-affected areas, making qualified disaster relief payments made in connection with these fires eligible for tax-free treatment under Code Section 139. California's Revenue and Tax Code Section 17131 aligns with the Code and excludes from California state income qualified disaster relief payments excluded under Code Section 139. Employers should be able to provide tax-free assistance to employees affected by the fires in Southern California but should discuss with counsel on any such assistance that does not clearly fit within the categories of qualified relief listed above.

## **9. Disclosing Disaster Declarations in Hiring Notices**

Effective January 1, 2024, California Labor Code Section 2810.5 was amended to require employers to provide employees with additional information at the time of hiring. This includes information about the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed—and that was issued within 30 days before the employee's first day of employment—that may affect their health and safety during their employment. The California Labor Commissioner's Office has a Labor Code 2810.5 form, which can be found [here](#). Any nonexempt employees who begin employment from January 8, 2025, through February 7, 2025, must be informed in writing at the time of hire of the existence of the wildfire emergency proclamation if the emergency may affect their health and safety during their employment. Employers will also be required to disclose any subsequent federal or state declarations to new hires. Employers in Los Angeles and Ventura counties should consider disclosing the emergency declaration. The California declaration is located [here](#).

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