Engage PEO Client Alert: California

Hurricane Hilary HR Guidance for Employers

The following is general HR guidance to assist businesses that may be impacted by what is currently termed Hurricane Hilary in California and other impacted areas.

Your Engage team is here to help. If you have questions or concerns, please contact us at 1-888-780-8807.

Safety First / Workers' Comp

In the wake of hurricanes and natural disasters, employers face a new host of employee safety issues.

If your employees continue to work either in relief or recovery efforts that support your business, they still fall under the protections afforded by workers' compensation insurance; safety must remain a top priority.

If employees choose to work remotely, they also remain covered by workers' compensation. **The most important safety tip employers can provide to employees is to be aware of their surroundings.**

Awareness of the environment and changing conditions are critical. Consistently conduct quick hazard assessments and never take any excess or unnecessary risks (e.g., driving in flooded areas).

Office Closures - OSHA Rules

Regarding whether the employer must close for business - according to OSHA, any "substantial threat" posed by an imminent natural phenomenon would entail a judgment by the employer and involve OSHA's General Duty Clause to enforce issues concerning the weather. Under the clause, employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that **an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous**.

Wage and Hour Issues: Non-Exempt and Exempt Workers

If you decide to close for business and if you are unable to provide work to employees due to a natural disaster, you may be required to pay Non-Exempt employees during the closure, but only for the time spent working during the storm; if the Non-Exempt employees have not performed any work duties during the storm, then payment is likely not required. The exception to this is if an employee is "on call" on the employer's premises and unable to use his/her time for non-work-related purposes.

For Exempt employees, an employer will likely be required to pay the employee's full salary if the worksite is closed or unable to reopen due to inclement weather or other disasters for less than a full

workweek. However, an employer may require exempt employees to use allowed paid time off for this time.

Additionally, Exempt employees that work remotely and are unable to perform their job functions as a result of storm damage impacting their broadband or internet connection or other means of accomplishing their work-related duties may also be paid in accordance with these guidelines.

If you are open for business and an Exempt employee chooses to stay home because of weather, the Department of Labor considers an absence caused by transportation difficulties experienced during weather emergencies as an absence for personal reasons. Under this circumstance, an employer may place an Exempt employee on leave without pay (or require the employee to use accrued paid time off) for the full day that he or she fails to report to work. It is important that the employer applies this policy consistently and uniformly among all employees.

If an employee is absent for one or more full days for personal reasons, the employee's exempt status will not be affected if deductions are made from a salary for such absences. However, a deduction from salary for less than a full day's absence is not permitted under these circumstances. Again, consistent application of the policy is vital.

In general, absences due to a business temporarily closing as a result of severe weather emergencies and road closures should not affect an employee's absence limit or be considered misconduct. If the business is open and an employee is unable to come to work due to severe weather, the employer should speak with the employee and give them the opportunity to present their circumstances for not being able to come to work. Prior to taking disciplinary action, the employer should consult with their Engage HR Consultant.

Finally, employers should set clear expectations with employees about whether work is expected to be performed remotely, what that work should consist of, and the mechanism for how employee time or production will be tracked. Additionally, employers should clearly explain to employees their protocols concerning office closures and office re-opening following the storm.

Other Considerations

Declaration of a State of Emergency

In the event the State government declares a "State of Emergency," the employer's obligations generally do not change. Employers are encouraged to be flexible and considerate with employee requests when it comes to restrictive attendance and leave policies. In these circumstances, it would be acceptable to temporarily relax or make exceptions to these policies, so long as these measures are not implemented in a discriminatory manner.

Unemployment Benefits

In rare circumstances, employees may be entitled to collect unemployment benefits if they are displaced or out of work for a prolonged period due to severe weather.

Protection for Relief Workers - USERAA

Employees may also be absent from work due to their role in the relief efforts. Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which effectively applies to every public and private employer and has no minimum employee requirement, employees may be entitled to a leave of absence for service in the uniformed services. This applies to employees who are members of the Uniformed Services or National Guard and are activated under orders of the President for disaster relief and emergency assistance.

Employers may not discharge or otherwise discriminate against an employee for leaving company premises to participate in a general public evacuation ordered under an emergency evacuation order. An emergency evacuation order is a statement from a governing body recommending the evacuation of all or part of the population of an area stricken or threatened with an emergency or disaster.

Other Leave

Employees may be entitled to use leave time or require reasonable accommodations to cope with the aftermath of this storm. Managers should be aware of their leave policies to include leave provided under the Family Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) for employees affected by Hurricane Ian.

Also, employees may have property that is damaged, may live in an area that makes it more difficult to come to work, or may expect your business to be closed. Therefore, **if you are considering staying open, you may need to allow exceptions to attendance policies**.

Please contact your Engage HR Consultant with any questions or concerns.