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Client Alert

California Fires: HR Guidance for Employers

As wildfires continue to spread across Southern California, we understand the significant personal and professional challenges these events can bring.

The following information includes general guidance on how employers can safely continue operations and simultaneously fulfill their various legal responsibilities. Clients are also strongly encouraged to monitor information and guidance about active fires from their local emergency management agencies.

California Workplace Safety

Employers have a duty to provide a safe and healthy workplace, including protecting their employees from wildfire smoke, and should be familiar with California's wildfire smoke standard. Some of these obligations include monitoring the air quality when workers are exposed to outdoor air during wildfires, notifying employees of harmful air quality and the protective measures being implemented, training employees on the hazards of wildfire smoke and how to protect themselves, and implementing control measures to reduce exposure.

For more detailed information, employers can refer directly to the Cal/OSHA regulations and guidance on wildfire smoke protection.

Wage and Hour Issues: Non-Exempt and Exempt Employees

Non-exempt employees must continue to be paid for all hours spent working during emergencies and natural disasters. On-call or standby time must be fully compensated, even if an employee is not performing any work because they are still subject to the employer's control. If you close for business and do not provide work to employees due to a natural disaster, you are likely not required to pay non-exempt employees if they have not reported to the worksite or performed any work during the closure.

Exempt employees, on the other hand, must generally be paid for the full week of wages if the employee works at any point in that workweek. Accordingly, employers will likely be required to pay exempt employees' full salary if the worksite is closed due to natural disasters for less than a full workweek.

For more detailed information, employers can refer directly to the California Labor Commissioner's FAQs on important employment issues when employees or worksites are impacted by wildfires.

Emergency Conditions Protections

A law that took effect in 2023 prohibits an employer, in the event of an emergency condition, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe. The law also prohibits an employer from preventing any employee from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to confirm their safety. Prior to taking disciplinary action against an employee who left work or refused to report to work, clients should consult with their Engage HR partner/contact.

Protected Leave

• **California Paid Sick Leave ("PSL"):** Employees may use available PSL for wildfire absences if their absence falls under a qualifying reason; i.e., caring for their own illness or a sick family member.

• **California Family Rights Act ("CFRA")/Family and Medical Leave Act ("FMLA"):** Both the federal FMLA and California's counterpart, CFRA, may apply if the employee meets the eligibility criteria; i.e., the employee or an eligible family member develops a serious health condition. If you have additional questions, please contact your HRC for more information.

• **Emergency Responder Leave:** Eligible employers must allow employees who are volunteer emergency responders (i.e., firefighters, reserve peace officers, or rescue personnel) up to 14 days of temporary leave in the event of a qualifying emergency. If you believe this applies to one of your employees, please contact your HRC to discuss.

• **Uniformed Services Employment and Reemployment Rights Act ("USERRA"):** Employees may also be absent from work due to their role in the relief efforts. USERRA provides protection for relief workers and applies to all public and private employers who have 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.

• **Americans with Disabilities Act ("ADA") and California's Fair Employment and Housing Act ("FEHA"):** Employees may be entitled to use leave time or require reasonable accommodations to cope with the aftermath of this fire. Employers should be prepared to engage in the interactive process with their employees to discuss their requests for reasonable accommodations.

As always, Engage is available to assist with any questions during these challenging times. For more information, please contact a member of your Engage team.