



Employer Advisory Council of Orange County, Inc.

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New Developments in Employment Law

Update

19-16

October 15, 2019

Employer Obligations in the Event of Closures Due to California Wildfires and Power Outages

By David Kang, Jonathan Judge, Scott K. Dauscher

Natural disasters are something that many don't think about until it's too late, particularly in the context of their business obligations, but as extreme winds, wildfires, and power outages continue to pick up in California, employers should consider what obligations exist as to their employees and employment law.

Sending Employees Home

Reporting time rules require that nonexempt employees who report to work but are given less than half of their usual day's work must be paid for half their usual day's work at their regular rate — at least two hours of pay (but no more than four hours of pay). However, reporting time requirements for nonexempt employees do not apply to certain events outside of the employer's control, such as when operations cannot begin or continue due to threats to employees or property; when public utilities fail to supply electricity, water, or gas, or if there is a failure in the public utilities or sewer system; or when the interruption of work is caused by an Act of God.

An exempt employee must be paid for the full day on a day that they perform any work. In addition, even if a business was shut down for an entire day, an exempt employee must still be paid for the week if they performed any work during that workweek, and was ready, able, and willing to work on the day of the shutdown.

Employees Unable to Come Into Work

If an employer is open for business, an exempt employee's absence caused by transportation difficulties during "severe weather" can be considered an absence for personal reasons. Accordingly, if an exempt employee does not work an employer may require an exempt employee to use accrued vacation or PTO for the full day that he or she fails to report to work. The employer may deduct an exempt employee's salary for the full day (i.e. leave without pay) from the exempt employee's wages only if the exempt employee is unable to get to work at all that day, performs no work at home, and the employee has exhausted all available vacation or PTO — even a partial day of work requires full payment to the employee, as discussed above.

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For nonexempt employees, they simply need not be paid for time they have not worked — if they are unable to come into work, they will not be paid.

Conclusion

This broad snapshot demonstrates that even though a natural disaster may be beyond your control, how your business reacts to it is not. If you have questions about your obligations as an employer, please contact David Kang at david.kang@aalrr.com, Jonathan Judge at jjudge@aalrr.com, Scott K.Dauscher at sdauscher@aalrr.com or all can be reached at (562) 653-3200.

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