

But what about my job?

Frequently Asked Employment Questions in the Aftermath of the Fires:

1. Am I entitled to be paid if I haven't worked due to the fires?

If you are a non-exempt employee (i.e., generally paid hourly and entitled to overtime and meal and rest breaks) under California and federal law, an employer is only required to pay you for hours that you have actually worked. In other words, employers are not required to pay non-exempt employees if they are not working. (Some employers may choose to continue paying wages to their non-exempt employees even if they are not working as a gesture of goodwill, but they are generally not obligated to do so.)

2. What if I was required to work from home because of the fires?

The fires may have made it difficult for you to come into your workplace, even if your business was open, due to road closures or downed power lines. If you worked while away from your workplace (for example, you were taking phone calls or working remotely using a computer), you are entitled to be paid for that work time even if it was done away from the office.

3. What if I am an exempt worker?

Exempt employees must be paid on a salary basis and earn a regular full-day's pay when they work any part of the day, and they earn a full week's pay if they worked any part of that week. If, however, the business is closed for an entire workweek, the employer does not need to pay you for that time—in other words, the employer is allowed to reduce your pay by the amount you would have earned in that week at your regular salaried rate.

4. What if my employer asks me to be on call as the business is getting back on its feet?

If you are required to remain on call at the worksite or close to it, the employer may be required to pay you for all of this time. For example, if IT employees are asked to remain at the workplace as it is recovering from a power outage in the aftermath of the fires in case they are needed to deal with the issues that come up with the computer system as it comes back on line, these employees must be paid for the time they are there even if they simply remain on call and do not perform any work. If, however, when you are on call, your movements are not restricted significantly (that is, you are free to engage in your own personal activities while on call), you might not be eligible to be paid unless you are actually called in to work—in which case you would be paid for the work you performed. It's not always a clear-cut issue. Factors considered are the degree of the restriction on your freedom, the geographical restrictions placed on you (i.e., how close do you have to stay to the workplace), how quickly you need to respond to a call, and any other restriction that limits your ability to use your time as you would otherwise choose to do. Keep in mind that a requirement that an employee call in at specific times or carry a cell phone, so the employer can contact him or her if necessary does not necessarily render the time that you spend carrying the cell phone compensable, since you may still be essentially free to do what you wish to do with your time.

5. What if my employer calls me in to work, and I need to wait at the workplace to see if there is work to be done?

For example, if you are required to come to work to wait for the power to be turned back on as the workplace is recovering from the fires, you must be paid for that time spent waiting. If you are called in to work, and then sent home, you are entitled to be paid for at least half a day's work.



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6. Can I take a leave of absence?

If your employer has at least 50 employees within 75 miles of your worksite, and you have worked for your employer for at least 12 months, and have worked at least 1,250 hours within that 12 month period, you may be eligible to take unpaid leave under the Family and Medical Leave Act (FMLA) or California's Family Rights Act (CFRA) for your own serious health condition caused by the fires—or to take care of a child, spouse, or parent who has a serious health condition. Keep in mind that FMLA and CFRA leave is generally unpaid. FMLA and CFRA generally provide that your job remains protected while you are on leave. FMLA provides up to 12 weeks of time off—this can be taken all at one time or intermittently. You may also have rights under California leave laws. The intersection of the FMLA, CFRA and California leave rights are very complicated and dependent on the specific facts of the situation. If you have any questions about whether you are entitled to leave you should speak to an attorney experienced in employment law.

7. Can I receive unemployment assistance?

If you were laid off due to a lack of work caused by the fires, you may be entitled to unemployment insurance benefits. To file a claim, call the Employment Development Department (or EDD) or apply online (phone numbers and website listed below). In addition, if it turns out you are not eligible for unemployment insurance benefits under California law, the Federal Emergency Management Agency (or "FEMA") has a program, the Disaster Unemployment Assistance program (or "DUA"), which is available to state and local governments after the president has declared an event a disaster. DUA provides unemployment benefits and some reemployment services to people who have become unemployed as a result of a disaster and who are ineligible for regular state unemployment insurance (see below). To be eligible for DUA in the aftermath of the fires, individuals must:

- a) Not be eligible for regular, state unemployment insurance benefits;
- b) Be unemployed as a result of the fires—that is, the fires caused you to lose your job;
- c) Be able and available for work (unless you were injured as a direct result of the disaster);
- d) File an application for DUA within 30 days of the date of the announcement of availability of DUA. (Here, that means you need to file the application for DUA before November 16, 2017 if you were working in Butte, Lake, Mendocino, Napa, Nevada, Orange, Sonoma or Yuba counties.
- e) Have not refused an offer of employment in a suitable job.

Note: To be considered for DUA, you must also provide identification and prove citizenship.

In addition to the eligibility requirements identified above, one of the following conditions of unemployment must have occurred as a direct result of the fires:

- a) You have had a week of unemployment after the fires began;
- b) You are unable to reach your place of employment as a result of the fires;
- c) You were scheduled to start work, and the job no longer exists;
- d) You became the person who needed to support the household because the head of the household died as a result of the fires;
- e) You cannot work because of an injury caused by the fires; or
- f) You lost most of your income because the employer's business was damaged or destroyed.



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How long do the DUA benefits last? These benefits can last for up to 26 weeks, as long as your unemployment continues to be a direct result of the fires. Note that the DUA also covers self-employed individuals, owners of farms and ranches, farm workers and ranch workers.

How do I apply for DUA or Unemployment Insurance benefits? You can file for benefits online, by phone, by mail, or by fax.

Website: <https://eapply4ui.edd.ca.gov/>

Phone: 8:00am-12:00pm Monday through Friday

English: 1-800-300-5616

Spanish: 1-800-326-8937

Cantonese: 1-800-547-3506

Mandarin: 1-866-303-0706

If you are a migrant and seasonal farm worker, EDD has a Migrant and Seasonal Farm Worker (MSFW) program that provides services statewide. According to the EDD's website, the MSFW program focuses on issues facing agricultural employers and workers classified as migrant, seasonal, or migrant food-processing workers. Through the MSFW Outreach Program, the EDD provides a full range of employment services to farmworkers who otherwise would not have access to services through the normal intake process within the America's Job Center of California network. For additional information, you can contact your nearest America's Job Center of California. For your nearest center, call America's Service Locator at 1-877-872-5627.

ABOUT US

Northern California Fire Lawyers is coalition of Bay Area law firms committed to helping North Bay residents rebuild their lives and their communities in the devastating aftermath of the Tubbs, Atlas, Nuns, and surrounding fires. The materials above are for informational purposes only and not for the purposes of providing legal advice.

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