

Frequently Asked Questions for Small Businesses and Employers in the Aftermath of the Fires

As you begin to rebuild your business following the fires, you may face questions about your employees' pay, leaves of absence during the fires, and benefits that are available. We address some of these questions below.

1. Do I have to pay my employees if my business has been shut down?

Under California and federal law, you are required to pay your non-exempt employees only for those hours that the employees actually worked. In other words, in most circumstances, employers are not required to pay non-exempt employees if they are not working because, for example, your business was closed because of the fire or because of a power shutdown.

2. What if my employees worked from home because of the fires?

The fires may have made it difficult for some of your employees to come to your workplace, even if you were able to keep your business open. If they worked while away from your business (for example, they took phone calls from home or worked remotely using a computer), they are entitled to be paid for the time they spent working. If you would like some of your workers to work from home or remotely, you should keep in mind that not all employees have easy access to a computer or phone, especially in the aftermath of the fires.

3. Do I have to pay my exempt workers?

Exempt employees must be paid on a salary basis, and these employees earn a regular full-day's pay when they work any part of a day and earn a regular week's pay if they performed at least some work during that workweek. If you have exempt employees, you may be required to pay the full salary for the week if your worksite is closed for something less than a full workweek. In this instance, however, you might be able to require that the exempt employee use his or her available PTO for this time. If, however, you close your business for an entire workweek because of the fire (or a power shutdown), you may not need to pay your exempt employees for that time—in other words, in that instance, you can reduce your exempt employees' pay for the full week that the business was not in operation. Use caution if you choose to do this because your ability to do so may be affected by whether a seven-day period of non-operation straddled two different workweeks or pay periods.

4. As we clean up and recover from the fires, do we have to pay overtime to our employees?

Under California law, you will generally need to pay overtime to your non-exempt employees who work more than 8 hours in a day and more than 40 hours in a week. There is not an exception to or exemption from the overtime laws for fire or disaster-related incidents like this. The general rule is that if your non-exempt workers worked more than 8 hours in a day or 40 hours in a week, you must pay them overtime.

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5. My employees are not working because of the fires. Are they eligible for unemployment compensation?

Generally, yes. Unemployment compensation is paid when employees are out of work for reasons other than their own misconduct. They can seek unemployment insurance benefits using the following contact information:

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

Phone: 8:00 a.m. – noon, Monday through Friday: 1-800-300-5616

6. If Unemployment Benefits do not cover my employees' full pay, can I make up the difference?

Yes, you can do so if these “supplemental” payments made by you are not earned by the employee, and you do not otherwise have an obligation to make the payments—that is, you aren’t paying the employee for work they performed—then the unemployment benefits will probably not be reduced.

7. If my employees are not eligible for state unemployment benefits, are there other benefits available?

Yes, they may be eligible for federal aid under the Disaster Unemployment Assistance (DUA) program. This program may provide unemployment assistance to individuals who lost their job or business as a result of a major disaster and who for some reason are not eligible for regular unemployment insurance benefits. More information on the DUA is available at <http://workforcesecurity.doleta.gov/unemploy/disaster.asp>

8. Can my employees take family and medical leave because of the fires?

Employees requesting leave might be protected by the Family and Medical Leave Act (FMLA) or California’s Family Rights Act (CFRA) or other California leave rights to the extent they otherwise meet FMLA’s or CFRA’s requirements (FMLA leave covers employees who request leave to deal with their own medical issues or the medical issues of their spouse, parent, or child). Even if they don’t meet the FMLA or California state-law requirements, though, there is nothing preventing you from voluntarily extending an employee’s leave if you wish to do so. FMLA leave is generally unpaid, but under the FMLA, the job of an employee taking proper FMLA leave is protected while on leave.

9. What if my employees stay home to make repairs to their house caused by the fires or volunteer in their community?

If the business is open, and the employee chooses to attend to other issues, they can take vacation days or PTO days to do so. You may also place the employee on leave without pay, if you wish to do so.

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If the employee does not have accrued PTO time, you could allow employee to take an advance on accrued paid leave, and let the employee earn that leave in the future, according to your vacation or PTO plan. If a salaried employee does not have accrued leave, but they take leave, you are generally permitted to deduct their salary in full-day increments (though you may consider not doing so in order to encourage helping in the recovery efforts).

10. I need to hire employees. Where can I find them?

According to the following websites, if you are looking to hire, you can share job leads using the following Job Order form: <https://sonomawib.org/post-a-job/>. You can also contact Sonoma Workforce Investment Board (“WIB”) at: <https://sonomawib.org/jobfairs/>. Or you can post leads to Sonoma’s WIB’s Facebook group: <https://www.facebook.com/groups/1798913140150313/>

11. How can I help employees get through this difficult time?

To help your employees get through this challenging time in the aftermath of the fires, you should consider allowing employees to work from home, if that is feasible for your business. Be sure to continue to pay your employees on time. You can consider whether to allow your employees to take an advance on their PTO or their wages.

12. Can I ask my employees to “volunteer” to help out during an emergency?

The general rule is that if an employee is performing work that they would normally perform for the business, they must be paid for those services—even if they say they are happy to help out or say they are willing to volunteer to help. Employers should be careful about asking employees to come in on an unpaid basis to help the employer get the business running again—in those instances, the safer bet is to assume they must be paid for that time.

13. What if I have to lay off many people or close a worksite due to the fires?

The WARN Act (a federal law) and California’s version of the WARN Act generally require employers who have more than 100 employees to provide at least 60 days’ notice if they are closing a plant or laying off 50 employees or more. Because this is often hard to predict in the event of a fire, there is an exception when the closing or layoff is the direct result of a natural disaster. To qualify for the exception, though, you would need to show that the plant closing or mass layoff was a result of the fires. Even in that instance, you should give as much notice to your employees as possible.

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In other words, if you know you will need to lay off 50 people or more or close a worksite, give as much notice as possible to the employees you are laying off. If you are considering doing so, you should contact an attorney about the possible notice requirements to make sure you comply with the WARN and Cal-WARN Acts.

14. What about the safety of my worksite?

Keep in mind that under the Occupational Safety and Health Act (OSHA), and its state-law equivalent, Cal-OSHA, every employee is entitled to safe working conditions. As the employer, you are legally responsible to protect your workers from unreasonable hazards. In the aftermath of the fires, ask yourself whether the fires have made your workplace more hazardous because of structural damage to your facilities or electrical hazards from downed power lines.

15. Is OSHA or Cal-OSHA going to have more relaxed safety standards because of the widespread problems caused by the fires?

In short, no.

16. Where can I get more information about recovery and cleanup efforts following disasters? OSHA has information on its website: <https://www.osha.gov/OshDoc/cleanupHazard.html> How can I help employees get through this difficult time?

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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.

For free assistance in navigating your insurance claims, additional resources, and information about our upcoming events, visit:

NorCalFireLawyers.com

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