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Employment Update: Wildfires, Smoke and Power Outages *Posted August 21, 2020*

General Information from EDD

The EDD has a very useful website to assist with answers and resources for disaster-related services. You can find it here:

https://www.edd.ca.gov/about_edd/disaster_related_services.htm. Generally, the Governor has declared the recent fires and extreme weather as a disaster, which means that there are some benefits attached to the situation. Mainly, there is no waiting period if employees are out of work due to the disaster and employers have up to 60-day extension to file payroll taxes.

Pay

Employers unable to furnish work to employees due to a natural disaster are not obligated to pay non-exempt employees. However, exempt employees still must be paid their full salary for weeks in which any work is furnished. If no work is furnished or completed by the exempt employee for a full workweek, then the employer does not have to pay the full weekly salary to those employees. Employers may choose to pay employees when out of work due to natural disasters or power outages, but subject to the conditions above, they are not required.

Leave

Unless an employee requires leave due to qualifying physical or mental injuries and illnesses or disabilities, to the employee or certain family members, there are no leave obligations for employers.

Provide a Safe Workplace

Employers remain obligated to furnish a safe and healthful place of employment and may not require or permit an employee to be in any place of employment that is not safe and healthful. Employers open during the fires and its aftermath should provide appropriate protective equipment, such as respirator masks, to employees to ensure their safety.

Wildfire Smoke

California employers must take steps to protect workers from harmful exposure if the air quality is unhealthy due to smoke from a wildfire. When wildfire smoke affects a worksite, employers must monitor the AQI for particulate matter in the air, known as PM2.5. If the AQI for PM2.5 is 151 or greater, employers must take the following steps to protect employees:

- Communication – Employers must communicate the hazards of wildfire smoke in a form readily understandable by all employees. Inform employees of the AQI for PM2.5 and the protective measures available to them.
- Training – Train all employees on wildfire smoke hazards, the protections available, and how to use respirators.
- Modifications – Implement modifications to the workplace, if feasible, to reduce exposure. Examples include providing enclosed structures or vehicles for employees to work in, where the air is filtered.
- Changes – Implement practicable changes to work procedures or schedules. Examples include changing the location where employees work or reducing the amount of time they work outdoors or exposed to unfiltered outdoor air.

- Respiratory protection – Provide proper respiratory protection equipment, such as disposable respirators, for voluntary use by employees. If the AQI for PM2.5 exceeds 500, respirator use is required.

More information on worker safety in wildfire regions can be found here:

<https://www.dir.ca.gov/dosh/Worker-Health-and-Safety-in-Wildfire-Regions.html>.

High Heat Requirements:

When temperatures reach or exceed 95 F, employers in certain industries, including agriculture, construction, and landscaping, must implement the following high-heat preventive procedures:

- Ensure that employees can contact a supervisor when necessary, whether in person or using a cell phone or other device as long as reception is reliable.
- Observe employees for alertness and signs or symptoms of heat illness using any effective means of observation, including: having supervisors observe and monitor 20 or fewer employees; mandatory employee buddy systems; or regular communication with one employee by radio or cell phone;
- Designate one or more employees on each worksite as authorized to call for emergency medical services, and allow other employees to call for emergency services when no designated employee is available.
- Remind employees throughout the work shift to drink plenty of water.
- Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.
- For employees employed in agriculture, the following also applies:
 - The employer must ensure that each employee takes a minimum 10-minute preventative cool-down rest period every two hours. The cool-down rest period can be provided concurrently with another meal or rest period. If the workday extends beyond 8 hours, an additional cool-down rest period is required at the end of the 8th hour of work and then every two hours thereafter until the workday concludes.

Additionally, all California employers with outdoor places of employment are required to take the following steps to prevent heat illness:

- Training: Train all employees and supervisors about heat illness prevention.
- Water: Provide enough fresh water so that each employee can drink at least 1 quart per hour, or four 8 ounce glasses, of water per hour, and encourage them to do so.
- Shade: Provide access to shade and encourage employees to take a cool-down rest in the shade for at least 5 minutes. They should not wait until they feel sick to cool down. If there is no natural shade available, shade structures must be erected when temperatures exceed 80F.
- Planning: Develop and implement written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard.

More information on heat illness prevention and high heat requirements can be found here:

<https://www.dir.ca.gov/DOSH/HeatIllnessInfo.html>.

Emergency Action Plan

Many of you have updated your Injury and Illness Prevention Program (“IIPP”) due to COVID. Natural disasters are another good opportunity to make sure your IIPP is up to date. Employers with 10 or more employees must have the emergency action plan in writing. Cal OSHA has guidance on developing this plan on its website: <https://www.dir.ca.gov/dosh/etools/09-031/index.htm>. Additionally, your workers’ compensation broker can provide you detailed assistance.

Communication During Emergencies

It is important to keep your employee cell phone and/or personal email lists up to date so that you can quickly and effectively communicate with employees during emergencies. Additionally, with evacuation orders coming fast this past week, a tool has surfaced that we have found helpful. You can create a Google Map with all your employee home addresses, phone numbers, email and departments so that you can determine when employees may be impacted by evacuation orders. Note, this map will contain confidential information. It should be shared only with those that need to have access. Here are the instructions for this:

GOOGLE Evacuation Map

Go to Google Maps> Your places> Maps> Create Map (at the bottom)> Import(CSV file with all the info you want listed)>Select Employee name to be the identifier. Name the Map.

Interaction with COVID

Finally, some employees may be impacted by both natural disaster and COVID issues. These situations will need to be addressed on an individual basis as each case will likely be different. We encourage you to consult employment legal counsel on these matters.