

Nonprofit & Small Business Employer Obligations with Respect to California Wildfires

As a small business or nonprofit employer, you may have certain workplace responsibilities in the wake of California's wildfires. Below are answers to several questions you may be considering as well as helpful resources to protect you and your employees.

1. How can I ensure that my workplace is a safe environment?

California labor law requires that you maintain a safe workplace environment. During wildfires, this means [protecting employees](#) against hazardous air quality and electrical dangers. To comply with the law:

- Conduct a hazard assessment before bringing workers back to the jobsite
- Consistently monitor the [Air Quality Index \(AQI\)](#) before and during work shifts for harmful, tiny particles called PM2.5 that are caused by smoke and soot. Communicate AQI levels to employees through text, email, signs, etc.
 - When the AQI for PM2.5 is over 150, you must provide N-95 masks to employees for their voluntary use. If the AQI rises to levels above 500, require your employees to wear N-95 masks.
- [Educate](#) employees about the effects of wildfire smoke and use of respiratory protection
- Move work tasks to locations with better air quality, if necessary
- Provide respirators upon request, even when the AQI does not reach 150 or above, as sensitive workers may still suffer from respiratory issues. Be prepared to accommodate employees when air quality is unsafe and/or unhealthy. Purchasing and installing portable air cleaners may help with workplace ventilation. Employees should be permitted to work in enclosed buildings with suitable ventilation systems.
- During power outages, comply with certain Cal/OSHA regulations before requiring your employees to work. Labor standards for certain workplaces, like warehouses or manufacturing facilities, may require adequate illumination for employees to work. Use generators to help prevent electrocutions and other electrical hazards that workplace power outages may cause. Inform workers of potential electrical hazards and their effects.
- You should document and maintain a sufficient emergency action plan tailored to your workplace environment. Any hazards must be communicated in all employees' native languages. This plan should include practices to reduce employee exposure to air and electrical risks, to allow for adjustments to employee work schedules, and to provide rest periods when necessary.

2. What additional rights do my employees have in emergency situations like wildfires?

California law protects workers who refuse to perform work in violation of occupational safety or health standards where such violation creates a real and apparent hazard. If your workplace is under a mandatory evacuation order, it may be illegal to require your employees to work. Any retaliation against employees refusing to work in evacuation zones or under unsafe conditions is prohibited.

Employees suffering from serious health conditions who qualify for accommodations under the California Fair Employment and Housing Act (FEHA), the California Family Rights Act (CFRA), and/or the Family and Medical Leave Act (FMLA) may be entitled to additional protections during wildfires. Some of these protections may include [leave from work](#), the opportunity to care for sick family members affected by wildfires, or changes to workplace arrangements. A number of local ordinances may also allow for employees to use accrued paid sick leave to care for family members affected by wildfire evacuations or related health issues. Under California law, parents and guardians working for larger employers also have the right to take up to 40 hours off per year to address a school or childcare emergency such as school closure or unavailable childcare due to wildfires or other natural disasters.

Offering remote work, if possible, may be a viable alternative.

Additionally, employees disabled prior to or because of the wildfire may be entitled to reasonable workplace accommodations. These accommodations must be provided unless they would create “undue hardship” for your organization. To learn more about your responsibilities as an employer under state disability laws, click [here](#).

3. What are my wage and hour obligations as an employer?

Workers must be fairly compensated for any time during which they are subject to your control as an employer. Even during emergencies, employers must pay workers according to regular payment schedules at normal compensation rates. If your workplace is forced to close, exempt employees are still entitled to their full salaries for any week during which they work. Non-exempt employees must only be paid for the hours they actually perform work. However, pay may be required if they report to work and are sent home due to wildfire-related closures. If your vacation or paid time off policy allows, workers may request paid sick leave. [Qualifying workers](#) must be granted time off. For more information on worker compensation and rights during wildfires, click [here](#).

4. How should my business or nonprofit navigate the Los Angeles Fair Work Week Ordinance?

The [Los Angeles Fair Work Week Ordinance](#) typically requires qualifying employers to announce work schedules fourteen (14) days in advance. The Wildfire Exception allows employers to continue making adjustments to schedules with shorter notice so long as changes are justified and documented. Employees generally must comply with these changes.

5. If I need to close my business or lay off workers, what notice must I give employees?

Generally, the WARN Act mandates that employers alert workers sixty (60) days before any mass layoff or workplace closure. California wildfires may be considered a “physical calamity” that permits an exception to this rule, except in the case of a foreseeable business circumstance. We recommend you consult with an employment attorney for specific advice on this issue.

6. What are my obligations if my employee gets hurt on the job while working during a wildfire?

Workers generally are not able to recover damages for injuries that occurred at work by filing a civil lawsuit against their employer. Rather, they must file workers’ compensation claims. Successful claims may provide workers with financial assistance for medical treatment or Temporary or Permanent Disability Benefits, depending on the impairment.

7. How can I provide assistance to my employees who have been affected by wildfires?

There are several ways to help employees who have been affected by California wildfires:

- **401(k) Plain Hardship Distributions.** If an employee’s primary home is located in a FEMA-designated disaster area, you can amend their 401(k) plan to cover losses and expenses related to the wildfire.
- **Leave-Sharing Programs.** Set up a reserve for employees to donate their unused paid time off or leave for disaster victims to use. Make sure this program is compliant with tax laws.
- **Direct Disaster Relief Assistance.** As long as it is not deemed additional compensation, you can provide assistance to employees affected by wildfires “to reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster.”¹ These expenses cannot be covered by insurance or FEMA assistance.
- **Charitable Foundations.** You can create a 501(c)(3) to support employees in their long-term wildfire recovery.

¹Internal Revenue Code § 139

8. Helpful Resources

- [California wildfires – FAQs on laws enforced by the Labor Commissioner’s Office](#)
- [Cal/OSHA Frequently Asked Questions – Wildfire Hazards](#)
- [Protecting Workers Exposed to Wildfire Smoke Fact Sheet](#)
- [Worker Safety and Health in Wildfire Regions](#)
- [Worker Safety: Wildfire and Evacuation Zones Infographic](#)
- [Training video Wildfire Smoke Safety](#)
- [CalFire incident tracking and resources](#)

If you have additional questions, Cal/OSHA encourages you to reach out by calling your local Cal/OSHA consultation office or contacting InfoCons@dir.ca.gov.

We recommend you review your employment and insurance policies, and ensure compliance with such policies and all applicable laws by consulting an attorney. If you need free legal assistance as a nonprofit or small business, please reach out to Public Counsel’s Community Development Project by calling 213-385-2977, ext. 200 or visiting us online at: publiccounsel.org/programs/community-development-project/get-help/.

This document provides general guidance only and should not be construed as legal advice. The information in this document may change over time. If your small business or nonprofit needs legal assistance, or if you have further questions about these topics, please contact Public Counsel’s Community Development Project at (213) 385-2977, ext. 200 or apply for our services online at: publiccounsel.org/programs/community-development-project/get-help/. The Community Development Project provides free legal assistance to qualifying low-income entrepreneurs and qualifying nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County.