

*Headquarters Office*  
1515 Clay Street, Ste. 1302  
Oakland, CA 94612  
Tel: (510) 285-2118 Fax: (510) 285-1365

MAILING ADDRESS:  
P. O. Box 420603  
San Francisco, CA 94142-0603

**Lilia García-Brower**

*California Labor Commissioner*

October 2019

**California wildfires – FAQs on laws enforced by the Labor Commissioner's Office****1. Is an employee entitled to compensation for reporting to work and being sent home due to power outages or wildfires?**

An employee may be entitled to reporting time pay, unless the power outages were caused by the utilities company or by an Act of God.

Section 5 of the Wage Orders provides: A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is failure in the public utilities or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

The intent behind subdivision (C) is that the employer is not liable for reporting time pay when the interruption is caused by factors beyond the employer's control, including power outages. Thus, if an employer suffers through a general, rolling blackout, that causes the employer to shut down production and send its workers home, the employer will not be liable for reporting time pay.

**2. Is an employee entitled to compensation for any other work interruptions caused by the power outages or wildfires?**

Employees are to be compensated for all hours worked. The term "hours worked" includes both "all time the employee is suffered or permitted to work, whether or not required to do so," and all "time during which an employee is subject to the control of an employer." Restricting employees to the employer's premises, or worksite, means that the employee is subject to the employer's control so as to constitute "hours worked ." See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, and *Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968. Under such circumstances, the employees must be paid their regular rate of compensation (which cannot be less than the minimum wage), or any overtime rate, if applicable.

If an employer facing a power outage requires its employees to remain on the premises and wait for the power to return so as to promptly resume operations once power is restored, the time during which the employees are restricted to the premises constitutes compensable "hours worked" within the meaning of the Wage Orders, and the employees must be paid at the regular rate for all such time. Same result if the employer allows the workers to leave the premises, but so significantly restricts their movement as to constitute "controlled stand-by time."

An employee may also be entitled to split shift premiums. The Wage Orders define a "split shift" as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods," and provide that "when an employee works a split shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." So if an employer facing a power outage sends its workers away from the premises, with instructions to return say 2 or 3 hours later, there may be split shift premium liability.

**3. If an employee is exempt, are they entitled to a full week's salary for work interruptions caused by the power outages or wildfires?**

The exempt employee is entitled to recover wages for the full week if that employee is suffered or permitted to work anytime within that workweek. (See discussion at Section 51.6.15 of [Enforcement Policies and Interpretations Manual](#)).

**4. Is an employee entitled to additional compensation for disruptions caused for power outages or wildfires when the employee's work schedule is subject to a bonafide Alternative Workweek (AWW) arrangement?**

If an employer facing a power outage is on an AWW, and the employer sends its workers home during a regularly scheduled workday, with instructions that the workers come in and work later in the week to make up their lost hours on a day that is not a regularly scheduled workday, the first 8 hours worked on the non-regularly scheduled workday must be paid at time and a half, and all hours worked in excess of 8 hours on the non-regularly scheduled day must be paid at twice the regular rate. However, if an employer on an AWW anticipates that it can reduce its exposure to power outages by occasionally shifting the scheduled days (say from a 4/10 Mon-Thurs to a 4/10 Thurs-Sun), and gives its workers at least a week's notice of the schedule change, the AWW remains valid, provided that this doesn't become an on-call system of employment characterized by frequent scheduled shifts. For enforcement purposes, DLSE will allow an employer to shift schedules up to 4 times in a year. More frequent changes will invalidate the AWW.

**5. Is an employee entitled to be paid for leave caused by power outages or wildfires?**

If there is a vacation or paid time off policy, an employee may choose to take such leave and be compensated provided that the terms of the vacation or paid time off policy provides for such leave.

Paid sick leave may apply if the employee is qualified to receive such leave and requests to take leave for a sick reason. The paid sick leave law provides that an employer **shall provide paid sick days for the following purposes:**

- (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
- (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

If the employee qualifies for sick leave and requests sick leave, the employer must provide such leave and must compensate the employee under [California Paid Sick Leave laws](#).

## 6. What are relevant retaliation considerations?

An employee may have a valid claim of retaliation if an adverse action results from an activity that is protected. For a list of retaliation codes and more information on how to file a claim, [click here](#).

For example, Labor Code section 98.6 protects an employee filing or threatening to file a claim or complaint with the Labor Commissioner, instituting or causing to be instituted any proceeding relating to rights under the jurisdiction of the Labor Commissioner, or testifying in any such proceeding, complaining orally or in writing about unpaid wages, or for exercising (on behalf of oneself or other employees) any of the rights provided under the Labor Code or Orders of the Industrial Welfare Commission, including, but not limited to, the right to demand payment of wages due, the right to express opinions about, support or oppose an alternative workweek election, or the exercise of any other right protected by the Labor Code. In addition to other remedies that might be available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation of Labor Code section 98.6. Also, protects an employee who is a family member of a person who has or is perceived to have engaged in any protected conduct.

## 7. Other information about California wildfires and the laws enforced by the Department of Industrial Relations

Wildfire smoke and cleanup presents hazards that employers and workers in affected regions must understand. Smoke from wildfires contains chemicals, gases and fine particles that can harm health. Hazards continue even after fires have been extinguished and cleanup work begins. Proper protective equipment and training is required for worker safety in wildfire regions.

Power outages can also present electrical and other hazards for workers. Proper installation and use of generators can prevent electrocution hazards. Workers must also be aware of the potential of electrocution or being injured by moving parts of machinery and other equipment when power is restored. Workers can also face health hazards from working without electricity in unventilated areas because ventilation systems are not working.

For more information on Worker Safety and Health in Wildfire Regions, [click here](#).