



California Wildfires: Managing Key Employment Issues Amid Emergencies

January 15, 2025

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2025 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2025 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Speakers



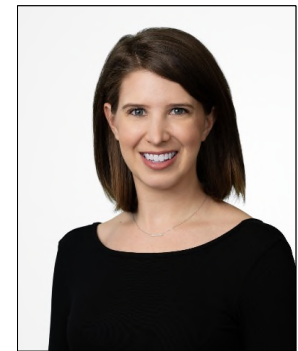
Ryan McCoy
Partner
San Francisco Office
Wage Hour
rmccoy@seyfarth.com



Ben Conley
Partner
Chicago Office
Employee Benefits
bconley@seyfarth.com



Ilana Morady
Counsel
San Francisco Office
Workplace Safety
imorady@seyfarth.com



Catherine Feldman
Associate
Los Angeles Office
Leaves of Absence
cfeldman@seyfarth.com

Ca/OSHA Protection from Wildfire Smoke

When Does It Apply?

- The current Air Quality Index for PM2.5 is 151 or greater, regardless of the AQI for other pollutants; and
- The employer should reasonably anticipate that employees may be exposed to wildfire smoke.

Exemptions

- Enclosed buildings or structures in which the air is filtered by a mechanical ventilation system and the employer ensures that windows, doors, bays, and other openings are kept closed, except when it is necessary to open doors to enter or exit.
- Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed, except when it is necessary to open doors to enter or exit the vehicle.
- The employer demonstrates that the concentration of PM2.5 in the air does not exceed a concentration that corresponds to a current AQI of 151 or greater by measuring PM2.5 levels at the worksite.
- Employees exposed to a current AQI for PM2.5 of 151 or greater for a total of one hour or less during a shift.
- Firefighters engaged in wildland firefighting.

Ca/OSHA Protection from Wildfire Smoke

What do you need to do if your workplace is covered?

- Monitor employee exposure (check air quality online or measure it yourself)
- Provide information to employees on current AQI and protective measures available; encourage employees to report worsening air quality or symptoms
- Provide training
- Hierarchy of controls: engineering, administrative, PPE

Employee Benefits Considerations

- Qualified Disaster Relief Payments
- Employee Assistance Fund
- Leave Sharing Programs
- 401(k) Loans/Distributions
- Deadline Relief

Wage Hour Issues

Compensation for hours worked

- Hourly/non-exempt employees – employers must pay for all hours actually worked, whether at the office or remotely.
 - Commute time generally not compensable, even if increased time due to fires, unless employer requires its employees to meet at a designated place.
 - Office closed or unable to get to the workplace.
 - Remote work arrangements require clear communication and tracking of hours worked to ensure compliance.
- Salaried/non-exempt employees generally paid entire week's salary, unless no work is performed that week.
 - Exempt employees who report to work but who are sent back home by their employer generally must receive their salary for that week.
 - Impact of working remotely even if office closed (checking email, making phone calls, etc.)
 - Exempt employees unable to report to work a day or two due to transportation difficulties are considered to be absent for personal reasons, if the office is otherwise open. Generally they do not have to be paid for these days they are unable to report to work, as long as they do not perform work remotely (in which case they need to be paid for time worked and the remainder of the day can be filled in with PTO – if the employee does not have PTO and works any part of the day, the employee must be paid for the full day).
 - Deductions for partial-day absences generally are not permitted.

Wage Hour Issues

Reporting time pay

- Hourly/non-exempt employees.
 - Generally entitled to reporting time pay.
 - Exceptions for “Acts of God or other cause not within the employer’s control” that interrupt the work, threats to employees/property, or when civil authorities recommend work not continue, and failure of public utilities.
 - Business closed at employer’s discretion.

Payroll records

- Generally required to maintain accurate records of hourly/non-exempt employee’s hours worked.
- Payroll records lost or destroyed.
- Reasonable estimate of employee’s hours worked (talk to employee or their manager, availability of electronic records such as card swipes or logging in/out).

Los Angeles’s Fair Work Week Ordinance

- Generally requires covered employees to provide employees with notice of schedules at least 14 days in advance of start of work period, and allows employees to decline hours if employer makes changes after the deadline.
- Store closures due to fires will be considered an exception to Ordinance.

Leave and Time Off for Emergencies

Leave Available During A California Natural Disaster

- **CFRA/FMLA Leave**

- Eligible employees may qualify for CFRA/FMLA leave if they, or a covered family member, have a serious health condition/medical emergency caused/exacerbated by a natural disaster.
- Leave will run concurrently for 12 weeks.

- **Paid Sick Leave**

- Employees may use their available PSL under certain health-related circumstances for themselves, covered family members, or a designated person.
- Effective Jan. 1, 2025, California's Healthy Workplaces Healthy Family Act expressly allows agricultural employees who work outside to avoid smoke, heat, or flooding conditions created by a local or state emergency, including when the employees' worksites are closed due to these conditions.

- **Vacation/PTO Time**

- Availability of PTO time will depend on the employer's policy. Employers should be consistent with all employees as they apply their policy.

Leave and Time Off for Emergencies

Leave Available During A California Natural Disaster

- **School And Other Child-Related Activities Leave**

- Qualifying employees are entitled to up to **40 hours of unpaid time** off each year in the event a natural disaster (including fire) that causes a child to be unable to remain in school or with a licensed childcare provider.
- Applies to employers with 25+ employees.
- Qualifying employees include parents to one or more children of the age to attend a licensed childcare provider, kindergarten, or grades 1 through 12.
- The employee must provide notice to the employer of the need for leave as soon as practical.

- **Emergency Service Leave**

- All California employers must provide **unpaid time off** to employees to perform emergency duty as a volunteer firefighter, emergency rescue personnel, or reserve peace officer.
- California employers with 50+ employees must also provide up to 14 days/calendar year for fire, law enforcement, or emergency rescue training.

Leave and Time Off for Emergencies

Workplace Accommodations

- Natural disasters may create or exacerbate employees' need for accommodations of medical conditions.
- Employers should engage in the same interactive process with employees as they would under other circumstances to handle requests and explore reasonable accommodations, including leaves of absence.

New Hire Notification

- Beginning Jan. 2024, employers' Wage Theft Notices must disclose the existence of a federal or state emergency or disaster declaration applicable to the county where the employee is to be employed, that was issued within **30 days before** the employee's first day of employment, that may affect their health and safety during their employment.
- Governor Newsom declared a state of emergency related to the LA County fires and windstorms on **January 7, 2025**.
- Current declaration must be disclosed to most employees hired between January 7 and at least February 6.



CLE: NEW PROCESS

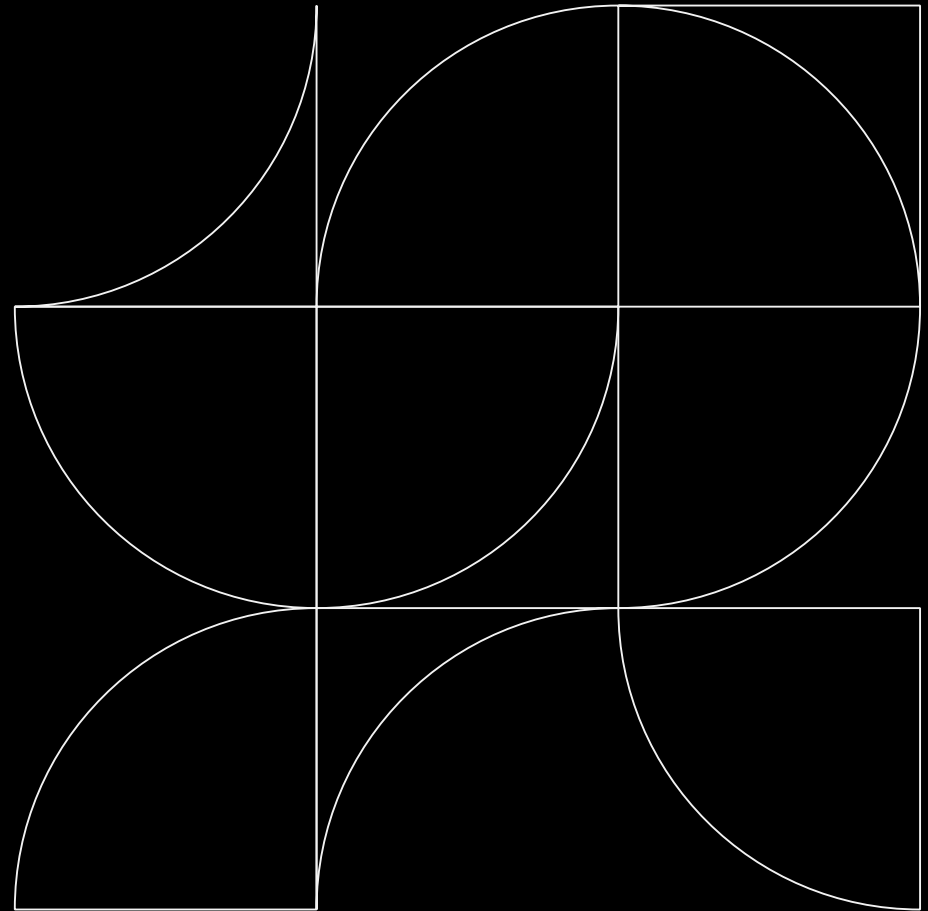
Please scan the QR code and complete the digital attendance verification form to receive CLE credit for this program.

You will need:

1. **Title:** California Wildfires: Managing Key Employment Issues Amid Emergencies
2. **Date Viewed:** 1/15/2025
3. **Attendance Verification Code:** SS_____

State-specific CLE credit information can be found in the form.

Questions?



**thank
you**

For more information, please contact:

Ryan McCoy

email: rmccoy@seyfarth.com

Ben Conley

email: bconley@seyfarth.com

Ilana Morady

email: imorady@seyfarth.com

Cathy Feldman

email: cfeldman@seyfarth.com