

# HILL, FARRER & BURRILL LLP

## Labor & Employment Update

### Employers: Don't Get Burned, Take a Deep Breath Before Disciplining Employees

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On January 7, 2025, Governor Newsom declared a State of Emergency in response to the ongoing Southern California wind and fire emergencies in Los Angeles and Ventura counties. This triggered certain emergency-related legal protections for employees, and imposed obligations on employers. Employers should be particularly careful when making decisions to terminate or otherwise discipline employees while any State of Emergency remains in effect.

#### Workers' Rights in Emergencies Act

Under California Labor Code §1139, employees impacted by natural disasters are protected from being penalized by their employer for refusing to report to work and for leaving their jobsite early *if* they believe their jobsite is unsafe during the emergency. Employers also cannot prohibit employees from using their phones while the disaster declaration remains in effect. Here are the *key points* employers **must** consider:

##### Employee Discipline May Be Considered Employer Retaliation

- **DO NOT *threaten* or *actually*** terminate, demote, write-up, reduce scheduled working hours, or otherwise discipline employees who either: (1) ***fail to report to work***, or (2) ***leave work early*** because they report being afraid their workplace is unsafe due to the emergency or disaster.

##### DO NOT Restrict Cell Phone Use

- Employers **MAY NOT *prevent any employee from using their mobile phones*** if the employee is using the phone to seek emergency assistance, assess safety, or verify their own or others' safety while the disaster declaration remains in effect.

The law includes exceptions for certain types of employees, as well as definitions that may make the law applicable to certain employers but not others, despite being in the same geographic area. **Employers should consult their HFB attorneys** before taking any of the actions discussed above.

#### Wage Theft Protection Act – DON'T USE Outdated Forms

The Act (California Labor Code §2810.5), requires employers to provide non-exempt employees with written notice regarding their wages. The Labor Commissioner prepares forms that employers use that comply with the Act's requirements, form DLSE-NTE. While the Act requires employers to provide this form to new employees at the time of hire, the Act also

requires employers to reissue notices if any of the information in the form changes. Last year, the Act was amended and employers are now required to provide notices concerning emergency and disaster declarations on an ongoing basis.

#### Employers: DO NOT USE Outdated Forms

Effective January 1, 2024, ***employers must provide employees with notice of any “state or federal emergency or disaster declaration”*** issued during the 30 days before the new employees’ start date that applies to the county where the employee will work. The Labor Commissioner has issued an updated DLSE-NTE that complies with this requirement.

#### What Employers SHOULD DO

- Ensure your Human Resources personnel are ***using the updated DLSE-NTE (rev 11/2023)*** when onboarding newly hired employees.
- Ensure your company is ***notifying its employees*** of any state or federal emergency or disaster declaration that applies to the counties where those employees will be working. The notice must describe how the declaration may affect their health or safety.

#### Recently Issued Emergency and/or Disaster Declarations

- On January 7, 2025, Governor Newsom issued a Proclamation of a State of Emergency, applicable to Los Angeles and Ventura Counties.
- On January 8, 2025, President Biden approved a Presidential Major Disaster Declaration for Los Angeles County, effective as of January 7, 2025.

#### **Call Hill Farrer for Further Questions**

Please contact your Hill Farrer attorney or any member of our Labor and Employment department at (213) 620-0460 if you have any questions regarding how these laws affect your business. We are available to advise employers located in counties where emergency declarations are currently in effect to ensure that they comply with California’s employment laws related to emergency and disaster declarations.