

DID YOUR BUSINESS RECEIVE A PG&E PUBLIC SAFETY POWER SHUT-OFF NOTICE? DON'T BE IN THE DARK ABOUT EMPLOYEE PAY DURING POWER OUTAGES

Last week PG&E alerted customers to a preemptive power shut-off due to fire risk from dry, windy weather. The shut-off ultimately went into effect in at least 33 counties. Although power has now been restored, unfortunately, last week's shut-off is unlikely to be an isolated event.

One of the many inconveniences of last week's outage was the lack of clarity about which areas would be impacted and how long the power would be down. Unsure of their ability to open for business, employers may have wondered:

- Is it okay to tell employees to report to work even if we may be unable to open due to the power outage?
- If employees are required to report, but must be sent home, are they entitled to be paid?
- If so, how much should employees be paid?

The answers depend on whether your employees are exempt or non-exempt. Here's a quick rundown of the rules:

Non-Exempt Employees

Reporting Time Pay/Call-Back Pay:

Ordinarily, if a non-exempt employee is required to report, but not put to work or given less than half their normally scheduled hours, the employee would be entitled to reporting time pay.

An employee entitled to reporting time pay receives pay equal to at least half of the employee's pay for their normally scheduled hours, with a minimum of two hours' pay and a maximum of four hours' pay.

This rule does not apply in the case of a power outage. In a power outage, non-exempt employees need to be paid only for the time they actually worked and are not entitled to reporting time pay if work cannot occur or is interrupted due to failure in public utilities. Employers are also exempt from call-back pay (when employees are required to make a second reporting in a single day) in the event of public utility failure.*

Standby or On-call Pay:

- Non-exempt employees required to stay at or near a worksite on standby to see if the power will be restored are entitled to be paid for their standby time.
- Non-exempt employees required to be "on-call" to see if the power will be restored may be entitled to compensation for "controlled standby" time if being on-call limits an employee's movement or ability to use their time as they wish.

Exempt Employees

Exempt employees who work part of a work week must be paid their full weekly salary, even if the business is closed for part of the week due to a power outage. If your

business is closed for a full work week, exempt employees who perform no work for that week do not need to be paid.

Employers with 25 or More Employees

Even if your business is not directly affected by a power outage, your employees' day care providers or schools might be. If your business has 25 or more employees, parents are entitled to up to 40 hours of unpaid leave annually to address "child care provider or school emergencies." Such emergencies include closure or unexpected unavailability of a school or licensed child care provider. Employers may require employees to use existing vacation or PTO before using School and Child Care Leave.

If you need clarification or have other questions, please contact any member of Donahue Fitzgerald's employment group.

*A caveat: Signatories to collective bargaining agreements may be subject to different rules and should adhere to the terms of their CBAs.

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