



A Littler Report:

Operating Through Emergencies & Natural Disasters

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer or attempt to address the numerous factual issues that arise in any employment-related dispute.

No matter how much advance warning is provided or experience garnered, employers and employees are often caught off guard by the devastation and uncertainty natural disasters create. Whether wildfires, hurricanes, tornadoes, earthquakes, flooding, or even global pandemics, disasters have the capacity to disrupt ordinary life for the short and long term. Employers often need to address several employment-related concerns when such emergencies arise. While not all-encompassing, this Littler Report highlights some common workplace issues natural disasters generate.

WAGE AND HOUR IMPLICATIONS

There are several payroll-related concerns that can be triggered by a disaster or inclement weather event. We begin with a refresher on who must get paid when operations are shuttered. Employers should be aware that additional laws—particularly at the state and local levels—may be in play.

- **Non-Exempt Employees.** Under the FLSA, non-exempt workers must be paid only for the time they work. As a result, employers need not compensate non-exempt employees who are not working because of an emergency. It does not matter whether the absence is based on the employer's decision to close or the employee's decision to stay home or evacuate.

There may be exceptions during a weather or other natural event for waiting time, or on-call time. The FLSA considers employees to be "on call" if they must remain on the employer's premises and are unable to use their time for their own purposes. State laws may address this question as well. Florida, Georgia, and Mississippi, for example, do not have any additional on-call provisions. Other states—such as California, Massachusetts, Minnesota and New Jersey—have guidance on this topic that may be relevant.

Employers should remember that they must pay non-exempt employees for performing any work remotely, even if the employee did not have express permission to work from home. To help minimize risk, and to the extent they have not already done so, employers should implement and enforce a clear time and attendance policy that, among other things, requires non-exempt employees to accurately record all time worked. Employers in some states, including California, will also be liable for any expenses reasonably incurred in working remotely by both exempt and non-exempt employees.

- **Exempt Employees.** When an employer shuts down its operations because of adverse weather or other calamity for less than a full workweek, exempt employees must be paid their full salary. This rule also applies if exempt employees work only part of a day. If an employer deducts from the employee's salary in such situations, it risks losing the exemption applicable to that employee.

Barring any state law or overly restrictive company policy to the contrary, exempt employees may be required to use accrued leave or vacation time (in full or partial days) for their absences, including if the worksite is closed. While it might not be a popular move, an employer can direct exempt employees to take paid time off for the closure, pursuant to the employer's bona fide leave or vacation policy. If an employee does not earn or does not have any available leave time, the employee is entitled to their full guaranteed salary if the employer decides to close.

On the other hand, if an employer is open for business, an exempt employee who elects to stay home due to the disaster situation is considered absent for personal reasons. In lieu of paying salary, an employer with a bona fide leave or vacation policy may require the employee to use their accrued paid time off to cover the absence. If permitted by state law, leave time in this circumstance may be taken in full or partial days.

- **Potential Payroll Delays.** One possible consequence of a natural or other disaster is the delayed processing of employees' wage payments. This situation can cause employers to unintentionally run afoul of many state laws that govern: (a) the frequency of wage payments; and/or (b) notice to employees of changes in paydays or wage rates, etc. For example, Louisiana law requires payment of wages no less than twice a month for employees who are non-exempt under the FLSA in certain

Even in states (like Florida) that do not have specific laws on point, local payroll processing delays may affect employees in other jurisdictions as well. Employers should be mindful of requirements wherever employees are located and respond accordingly. For example, if the timely payment of wages to employees in California is compromised by a flood elsewhere, an employer may be subject to monetary penalties under California's labor code. Notice of any delays should be made in writing, as soon as practicable, and is warranted particularly where employees are on direct deposit and might otherwise write checks against anticipated deposits. Open and ongoing communication with employees about wages, scheduling, and related matters is recommended throughout the recovery. A sample **Notice of Payroll Delay** is included at the end of this Littler Report, within the Practical Materials section.

- Employers should take steps to properly document any pay advancements to avoid any future questions of deductions in future wages that may result from any advancements. The voluntary payment of wages should be reported and treated as wages for tax purposes.

LEAVES OF ABSENCE & RELATED ISSUES

Employees may need to take leave from work to deal with the ramifications of the natural disaster. While this section summarizes the more common types of leave and related topics, please be aware that additional laws—particularly at the state and local levels—may come into play.

- **Family and Medical Leave.** Employees who have suffered a serious injury or illness resulting from the disaster—or who have a family member who did—may be entitled to leave under the federal Family and Medical Leave Act (FMLA). State or local family and medical leave laws may also apply to certain employees. Even if not covered by federal, state, or local laws providing for time off for illness, an employee may qualify for sick or other leave under a company policy or collective bargaining agreement. As such, it is important to remind front-line managers and supervisors of governing policies on this subject and their possible application during this time period.
- **State and Local Leave Laws.** Many states and localities have their own paid and unpaid leave requirements. Some jurisdictions have extended existing leave entitlements to emergency situations. For example, San Francisco has in place a public health emergency leave ordinance that provides for leave in the event of a “public health emergency,” which includes an “air quality emergency.” Similarly, Oregon allows employees to use leave under the state’s paid sick and safe leave law when they are under an evacuation order or when the air quality index reaches a level that poses a risk to their health. Even if an employer’s worksite is not directly affected by a natural disaster, employees still may be able to take protected leave for related events. For example, Colorado allows employees to take paid leave if their child’s school or place of care is closed due to a natural disaster, or where their place of residence must be evacuated due to loss of power, heating, water, or other unexpected events. Moreover, state and local leave laws may prohibit employers from requiring employees to take unpaid leave in circumstances that qualify for use of their accrued paid leave. It is therefore important to review the local leave laws in all jurisdictions in which the company operates, as well as state declarations of emergency following a natural disaster.
- **Volunteer Emergency Responder Leave.** Over 30 states protect employees who serve as volunteer emergency responders and are called into action during natural disasters. These laws often cover volunteer firefighters, emergency medical personnel, or volunteer rescue workers, though some are limited in the specific volunteer responder services that they address. When faced with employee requests to take time off to assist with relief and rescue efforts, employers should take care to confirm whether the requested relief is related to volunteer first responder duties so that they can appropriately determine employees’ leave and reinstatement rights. In some states, employers may require documentation from the relevant department, certifying the need for the employee’s assistance. These laws also prohibit retaliation against an employee because of their absence due to serving as a qualifying emergency responder.



- **Uniformed Services Leave.** Employees absent from work to assist with relief efforts may separately qualify for protected time off under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Under USERRA—which applies to every public and private employer and has no minimum employee requirement—employees may take a leave of absence for service in the uniformed services. For purposes of disaster relief, “uniformed services” include specified service by members of the National Disaster Medical System, appointment of a member of the National Urban Search and Rescue Response System, members of the National Guard if called by the president of the United States, and any other category of persons designated by the president during a time of national emergency. USERRA protections have also been extended to Federal Emergency Management Agency (FEMA) reservists who deploy to major disaster and emergency sites, even if they do not provide notice of their absence from work due to deployment. Relatedly, uniformed services leave may be a requirement under state law, even in locations unaffected by a natural disaster. For example, New York requires employers to reemploy any employee who is a member of the national guard and leaves their job because they are activated by the governor of any other state.
- **Leave-Sharing Programs.** A popular, and altruistic, employee benefit that some employers provide in a time of crisis is a leave-sharing program. An employer-sponsored leave-sharing program allows an employee to donate accrued hours of paid vacation, or personal and potentially sick leave for the benefit of other employees who are in need of taking more leave than they have available. As with any employer-provided benefit, there are specific requirements and tax consequences associated with a leave-sharing program.

What leave can be donated may vary from state to state. For example, different states have different rules regarding an employee’s right to different kinds of leave—whether accrued, earned or unearned, or whether vacation pay, sick pay or generic “paid time off.” Thus, what may be donated to a leave-sharing plan may also vary from state to state. To the extent an employer provides only sick leave to benefit employees who are sick and does not provide for cashing out of sick leave upon termination, an employer will probably want to limit donations from available sick time to avoid claims that “unvested” sick leave is effectively vested.

Generally, the employee seeking to draw from the leave bank must provide the employer with a written application describing the need for such leave. Once the employer approves the application, the employee is eligible to receive additional leave, usually paid at their normal compensation rate, once their own accrued leave has been exhausted. In an IRS-eligible leave-sharing plan, special tax treatment applies to leave donors, recipients, and the employer.





- **Leave-Based Donation Programs.** In addition to the leave-sharing programs summarized above, the IRS may designate special treatment of leave-based donation programs in the event of a “qualified disaster.” Under leave-based donation programs, employees forgo leave time to which they are otherwise entitled and authorize their employers to make donations, in the amount of the cash value of the time donated, to assist the victims of a qualified disaster. Donations must be directed to charitable organizations as described in section 170I of the Internal Revenue Code for this purpose. When the IRS announces this special status, it explains that leave-based donations will not constitute gross income or wages if made to appropriate charities and by a specified date. Employees, however, may not claim a charitable deduction.
- **Voluntary Employer Leave.** Even if applicable leave laws and employer policies and practices do not provide for non-medical leaves of absence, the circumstances of a natural disaster will probably present extraordinary circumstances that may allow an employer to grant the time off to employees directly or indirectly affected by the disaster. While strict adherence to leave policies is the conservative and prudent management approach for employers in normal operating circumstances, when a disaster strikes employers should be flexible and considerate by expanding or at least temporarily relaxing otherwise restrictive existing leave policies. In making exceptions, employers must remain mindful of local, state, and federal antidiscrimination laws, and ensure that such exceptions are based on legitimate, non-discriminatory reasons and are applied consistently across the workforce. Inconsistent application of workplace rules and policies are often relied upon by employees raising claims of discrimination. For a sample **Natural Disaster Leave Request Form**, please refer to the Practical Materials section of this Littler Report.
- **Reasonable Accommodations.** Employers must be mindful that civil rights laws will not be suspended during or after a natural disaster. In particular, employers should be prepared to handle employee requests for accommodation following a natural disaster, which might include a request for leave or to work remotely. The Americans with Disabilities Act (applicable to employers with 15 or more employees) and related state and local antidiscrimination laws require employers to provide reasonable accommodations to qualified employees with disabilities. Because employees who are physically or emotionally (e.g., post-traumatic stress disorder) injured by the impact of the natural disaster may be entitled to reasonable accommodation, employers should take all such inquiries seriously. Moreover, depending on the nature of the disaster, employees with mobility issues might not be able to travel to the work site. Allowing such employees to work remotely might be a viable option. Within the Practical Materials section we have included a brief Remote Work Program Checklist that flags important considerations for employers in instituting a temporary remote work program.

An employer-sponsored leave-sharing program for major disasters must comport with the following requirements:

1. The plan must allow a leave donor to deposit unused accrued leave in an employer-sponsored leave bank for the benefit of other employees who have been adversely affected by a major disaster. An employee is considered adversely affected if the disaster has caused severe hardship to the employee or family member that requires the employee to be absent from work.
2. The plan does not allow a donor to specify a particular recipient of their donated leave.
3. The amount of leave donated in a year may not exceed the maximum amount of leave that an employee normally accrues during that year.
4. A leave recipient may receive paid leave from the leave bank at the recipient's normal compensation rate.
5. The plan must provide a reasonable limit on the period of time after the disaster has occurred, during which leave may be donated and received from the leave bank, based on the severity of the disaster.
6. A recipient may not receive cash in lieu of using the paid leave received.
7. The employer must make a reasonable determination of the amount of leave a recipient may receive.
8. Leave deposited on account of a particular disaster may be used by only those employees affected by that disaster. In addition, any donated leave that has not been used by recipients by the end of the specified time must be returned to the donor within a reasonable time so that the donor may use the leave, except in the event the amount is so small as to make accounting for it unreasonable or impractical. The amount of leave returned must be in the same proportion as the leave donated.

A sample **Disaster Leave Sharing Policy** is included within the Practical Materials section.



BENEFIT & TAX IMPLICATIONS

Disaster response can involve numerous benefits and tax-related issues. Programs intended to benefit employees affected by the storm can be implemented by employers and/or may require employers to undertake administrative duties. While this Littler Report briefly addresses certain programs regulated by federal law, state laws may affect these options as well.

- **Qualified Disaster Payments.** Internal Revenue Code § 139 permits an employer to make a payment to an employee that constitutes “a qualified disaster relief payment,” without any income or payroll tax withholding or consequences. Such payments include any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a “qualified disaster,” or to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or its contents. A “qualified disaster” is generally declared by the president of the United States.
- **Employer-Sponsored Public Charities.** Under [IRS rules](#), employers can create their own public charities, which generally may “provide a broader range of assistance to employees than can be provided by donor advised funds or private foundations.” Certain requirements must be met to ensure that the charity does not impermissibly serve the employer. Specifically:
 1. The class of beneficiaries (the “charitable class”) must be a large and indefinite group;
 2. Recipients must be chosen “based on an objective determination of need;” and
 3. Recipients must be chosen “by an independent committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental and tenuous.”

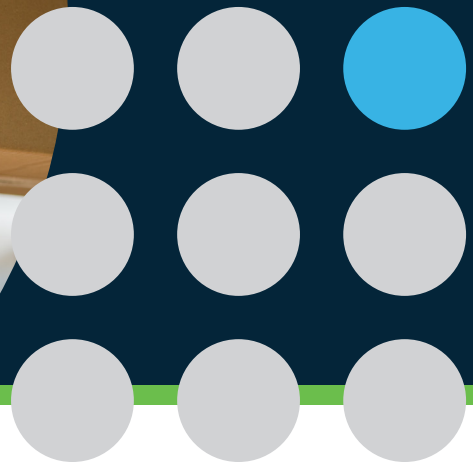
If those criteria are satisfied, the charity’s payments to the employer-sponsor’s workers and their families are treated as charitable and are not deemed compensation to the recipient-employee.





- **Employer-Sponsored Private Foundations.** Employer-sponsored private foundations also can assist employees and their families, but they may provide direct help only in the event of a “qualified disaster,” as defined earlier. Such private foundations cannot make payments for “non-qualified disasters or in emergency hardship situations.” Similar procedural requirements apply here as with employer-sponsored public charities, above.
- **Loans or Hardship Distributions from Employer-Sponsored Retirement Plans.** The IRS may elect to temporarily relax limitations on employee hardship distributions and loans from tax-qualified employer retirement plans (i.e., 401k and 403(b) plans) during natural catastrophes. For example, when this relief applies, the retirement plan can permit a victim to take a hardship distribution or to borrow up to the specified statutory limits from the individual’s account, even if certain procedural plan requirements are not met. Relief would be limited to the areas affected by the specific event, as set forth in the pertinent IRS announcement. Following any natural disaster or similar event, employers should keep an eye out for this type of IRS announcement.
- **Tax & Retirement Plan Duties.** Employers are obliged to remit collected payroll taxes and complete reports to the state and federal governments. The IRS has the authority to ease these requirements as to federal obligations. The IRS commonly extends the deadlines for tax returns and tax payments following natural disasters. Late-deposit penalties for federal payroll and excise tax deposits also may be waived. Similarly, the IRS routinely announces extensions for deadlines associated with retirement plan obligations in the event of a major storm. For example, the IRS (with the Department of Labor and the Pension Benefit Guaranty Corporation) may elect to extend funding deadlines for affected single- and multi-employer plans and may also waive penalties for late contributions. States also frequently offer extra time for employers to file payroll reports or deposit taxes due to various, localized emergency situations. Again, employers should stay tuned for such announcements.
- **Benefits Continuation.** In a disaster, employers may be required to decide whether they will maintain benefits for employees—especially where the employee, or the business, may at least temporarily not be working or operating. Should an employer decide to continue coverage, it should contact its benefits vendors to determine how life, health, and disability coverage can be maintained. If a business closes indefinitely, a key issue to employees will be the status of the company’s benefit plans and whether employees can continue to participate. COBRA (or other notice requirements) may be triggered if an employee loses eligibility or if the employer elects to terminate benefit plans.

Going forward, companies renewing insurance policies of all kinds should confirm the availability of benefits for natural disasters and or other catastrophic events, including what benefits or coverages are excluded.



MASS LAYOFF NOTIFICATIONS

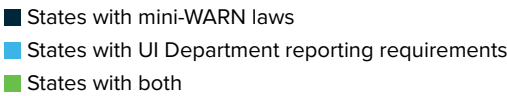
Employers that decide to close a facility or implement a mass layoff due to the effects of a natural disaster must evaluate whether notice will be required under the federal Worker Adjustment and Retraining Notification Act (WARN) or similar state laws (“mini-WARN” statutes). These notice requirements can be hyper-technical, and the failure to comply with them can be costly, so employers are encouraged to consult with counsel should the need arise.

- **Federal WARN Notices.** The WARN Act requires a covered employer (100 or more employees) to give 60 days’ notice prior to a plant closing or mass layoff. A plant closing occurs when a facility is permanently or temporarily closed and 50 or more full-time employees suffer a job loss. A mass layoff occurs when either of the following suffers a job loss: (a) 500 or more full-time employees at a facility; or (b) 50 or more full-time employees at a facility constituting at least 33% of the workforce. A job loss includes a layoff of six months or more but does not include resignations or terminations for cause. When required, WARN notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state’s dislocated worker unit, and the local government where the closing or layoff is to occur.

While WARN provides some leeway in the case of a natural catastrophe, the exception is quite limited. Employers may give shortened (or retroactive) notice if the disaster was a direct cause of the job losses. Thus, the DOL takes the position that indirect economic consequences of a natural disaster do not justify shortened notice under the natural disaster exception. An employer may be able to rely on the “unforeseeable business circumstances” exception if the employer suffered disruption of business operations as an indirect consequence of a disaster. Nonetheless, employers are not relieved completely of their WARN notice obligations. They must give “as much notice as is practicable” (even if that is retroactive notice), and they must state why they were unable to give notice earlier.

- **State WARN Notices.** Employers must comply with both the federal law and state laws that impose notice obligations. Some state mini-WARN statutes are particularly stringent. For example, some state mini-WARNs do not include natural disaster or unforeseeable business circumstances exceptions; have longer or shorter notices periods, do not limit job losses to single locations, and/or cover smaller layoffs. In addition, aside from mini-WARN notice, some states require employers to notify a particular state agency—typically the unemployment department—if the employer is implementing a mass separation or plant closing. Notice to affected employees may or may not be required, depending on the particular state law.

Mini-WARN Laws and UI Department Reporting Requirements



- **Unemployment Benefits.** Employees who are displaced from their positions due to a disaster may be eligible for unemployment compensation (or reemployment assistance) from the relevant state agency. The amount and duration of unemployment benefits varies widely by state. In Florida, for example, benefits run for up to 12 weeks, while they often can last for up to 26 weeks in other states.

- **Safety & Retaliation Concerns.** Recovery from an inclement weather or other catastrophic event is often costly, messy, slow – and sometimes dangerous. Under the federal Occupational Health and Safety Act, employers have a legal duty at all times to provide employees with a safe workplace, free of known health and safety hazards. Where necessary, employers may be obligated to provide employees with training and PPE. Depending on the business, additional industry-specific regulations may apply.

A Littler Report: Operating Through Emergencies & Natural Disasters | 11



Both the OSH Act and state-law counterparts prohibit retaliation against workers who exercise their rights under the law. Thus, an employer cannot retaliate against an employee who reports an illness, injury or unsafe condition, requests an inspection, or participates in an OSHA proceeding.

Moreover, depending on the situation, employees are protected from retaliation for refusing to work under certain hazardous conditions. According to OSHA, an employee's refusal to perform a particular task is protected if each of these four conditions are satisfied:

1. Where possible, the employee has informed the employer of the danger and requested a remedy, but the employer failed to eliminate the danger;
2. When employee refused to work "in good faith," meaning that they genuinely believe that an imminent danger exists;
3. "[A] reasonable person would agree that there is a real danger of death or serious injury;" and
4. Due to the urgency of the situation, there is no time for the hazard to be remedied "through regular enforcement channels, such as requesting [an OSHA] inspection."

Employers should include protocols in their emergency action plan regarding any potential natural disaster emergencies that employees may encounter due to the scope of their job tasks.

- **EAPs.** Many employers have EAP programs, which frequently can provide individual or group counseling and support. These programs can be very effective when employees in a workplace have experienced a traumatic event. When an entire region has suffered a disaster, employers should consider offering the services of outside grief counselors, if necessary or requested by employees, to help employees cope with emotional issues. Employers that do not yet have an EAP program in place may wish to consider implementing one as soon as possible. Employers may also inquire of their insurance companies of the availability of EAP services.
- **Workers' Compensation.** If an employee suffers an injury at work during the disaster or ensuing cleanup, an employer may face a workers' compensation claim. Employers should monitor the pertinent unemployment agency website(s) to remain informed of new or revised policies addressing issues created by a disaster.
- **Death Benefits.** Employers that have lost employees as a result of a disaster should promptly review any applicable policies for coverage, including life insurance, accidental death and dismemberment, and workers' compensation. Information and forms should be communicated as promptly as possible to the next of kin. Employers in this unfortunate situation also should be aware that many states have specific statutes governing the distribution of final paychecks and death benefits, which may apply in those circumstances where a deceased employee has more than one beneficiary.



FUTURE PREPAREDNESS

The impact of a local or regional catastrophic event on both employers and employees can be reduced with advance planning and implementation of disaster procedures. To prepare, employers may elect to establish or periodically revisit emergency procedures. These protocols are often quite detailed, and employers may wish to work with counsel and/or consultants to devise procedures that suit their operations.

- **General Recommendations.** Both the U.S. Department of Homeland Security (DHS) and OSHA offer specific suggestions on how to prepare for all types of emergency situations, including natural disasters. [OSHA's website](#), for example, includes information on how employers can prepare for and respond to hurricanes, tornadoes, earthquakes, floods, wildfires, and winter weather. Meanwhile, DHS—via its [www.ready.gov](#) site—covers both household and [workplace preparedness](#), for [disasters and emergencies](#) ranging from landslides and power outages to extreme heat and nuclear explosion.
- **Emergency Response Plans.** Employer emergency policies require significant thought and are often developed by a committee over a period of time. In developing an emergency response plan, [DHS recommends the following steps](#):
 1. Review performance objectives for the program.
 2. Review hazard or threat scenarios identified during the [risk assessment](#).
 3. Assess the availability and capabilities of [resources](#) for incident stabilization including people, systems and equipment available within your business and from external sources.
 4. Talk with public emergency services (e.g., fire, police, and emergency medical services) to determine their response time to your facility, knowledge of your facility and its hazards, and their capabilities to stabilize an emergency at your facility.
 5. Determine if there are any regulations pertaining to emergency planning at your facility; address applicable regulations in the plan.
 6. Develop protective actions for life safety (evacuation, shelter, shelter-in-place, lockdown).
 7. Develop hazard and threat-specific emergency procedures using the [Emergency Response Plan for Businesses](#).
 8. Coordinate emergency planning with public emergency services to stabilize incidents involving the hazards at your facility.
 9. [Train personnel](#) so they can fulfill their roles and responsibilities.
 10. Facilitate [exercises](#) to practice your plan.

- **Communications.** As part of their plan, employers should establish a command center to serve as the central source for decision-making and communication. A command center allows a company to act quickly and communicate accurate information to outside authorities, employees, their families, and the media. Emergency plans should also consider naming second and third alternative locations in the case of a widespread event.

Employers should ensure that employee contact information is up-to-date and that employees know how to get information from the employer in an emergency. Employers might distribute useful information in advance of an incident for employees to store at home, such as information about company policies (leaves of absence, for example), general preparedness, and EAPs. Employers might set up a phone tree, a protected page on the corporate website, or an email or text alert system. Employers could also establish a “check in” system, where employees can confirm they are okay in the event of a disaster.

- **Information about a Pending or Unfolding Disaster.** In the event of a relatively predictable event—i.e., a hurricane as opposed to an earthquake—federal and state agencies (such as FEMA and NOAA, and their state equivalents) will release forecasts and other information specific to the natural disaster as it approaches and progresses. Employers may wish to monitor the websites and/or social media accounts of these agencies and, moreover, may want to pass on helpful information to employees.

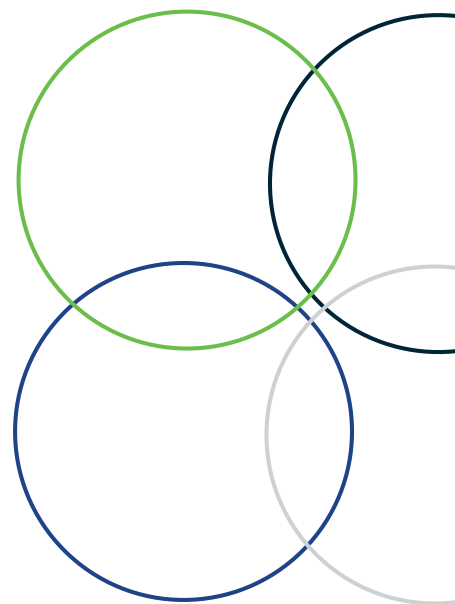
Such information may include, for example:

- [Hurricane-specific guidance](#), also available in [Spanish](#);
- [The FEMA Mobile App](#);
- A link to the state emergency management department (i.e., [Florida Division of Emergency Management](#)); and
- A list of FEMA social media accounts, including handles such as @fema and @FEMAespanol.

PRACTICAL MATERIALS

As this Littler Report illustrates, there are several workplace-related issues that employers may need to address in the face of natural disasters. In an effort to further assist employers with such issues, we also include the following templates/guidance:

- Sample Letter to Employees Regarding Payroll Delay
- Natural Disaster Leave Sharing Policy
- Donor Form: Disaster Leave Bank
- Request Form: Natural Disaster Leave Bank Transfer
- Natural Disaster Leave Request Form
- Remote Work Program Checklist



SAMPLE LETTER TO EMPLOYEES REGARDING PAYROLL DELAY

Customize accordingly.

Date

Company Name

Company Address

Subject: Delay in Payment of Wages

Dear [*Recipient's name*]:

Due to the impact of [*insert information on the natural disaster*], there has been a delay in processing employee paychecks for this pay period. Therefore, paychecks will not go out on [*date*] as anticipated. Rather, employees can expect the paychecks to be deposited on [*date*].

Thank you for your patience and understanding. We greatly value your hard work and efforts on behalf of our company. Please contact us if you have any questions about this issue.

Sincerely,

[*Sender's name*]

Note that payroll delays can result in violations of state laws that govern (1) the frequency of wage payments, and/or (2) notice to employees of changes in paydays or wage rates, etc. Employers should be mindful of requirements wherever employees are located and respond accordingly. Please reference the state map within the Natural Disasters Littler Report for more information.

NATURAL DISASTER LEAVE SHARING POLICY

1. Purpose

The purpose of this Natural Disaster Leave Sharing Policy (“Policy”) is to facilitate employees of the Company in their efforts to assist one another in times of need caused by certain major natural disasters. This Policy creates a Leave Bank that allows employees to donate **unused sick or vacation time** that other employees who have exhausted their paid leave can use when certain major disasters require them to be absent from work.

Note that many paid sick leave laws are silent as to whether a leave donation program is permissible – as such, there’s at least some risk in integrating these leave sharing programs with paid sick leave in jurisdictions where there’s not explicit permission within the law. Please consult with a Littler attorney for more information on such risks.

2. Eligibility and Terms

2.1. General Eligibility. All current, active employees—both full-time and part-time—employed by the Company [*for a minimum of X months/years*] are eligible to participate as a Leave Donor or Leave Recipient under this Policy. Contractors, interns, and other non-employees are not eligible to participate.

If the Company instead maintains a PTO program, revise language accordingly here and throughout policy.

2.2. Leave Donors. Employees may deposit accrued leave in an employer-sponsored Disaster Leave Bank for the use of other employees who have been directly affected by a natural disaster. Leave Donors may not specify a recipient, and the amount of sick and/or vacation time an employee may donate in any given year must not exceed the maximum amount of leave that they normally accrue during the year. Additionally, disaster leave donations are limited to **50 percent** of a Leave Donor’s existing accrued but unused sick or vacation time at the time of the donation. Leave Donors may only make donations in full hour increments, with a minimum donation of [*four*] hours.

Customize orange text accordingly.

An alternative to a percentage is to specify a set number of hours that an employee must maintain for their own use, e.g. 40 hours.

2.3. Leave Recipients. To qualify to receive donated leave, the employee and/or their family member(s) must have been affected by a major disaster as declared by the president of the United States under § 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170 (“Stafford Act”), which has caused severe hardship to the employee and/or their family member(s) and requires the employee to miss work. For purposes of this Policy, a “family member” includes a child, including an adopted or step-child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, registered domestic partner, or **other qualifying person covered under the Company’s [sick/vacation/PTO] policy.** The recipient employee qualifies to receive donated sick or vacation time after they have exhausted all available sick time, vacation time, and personal time of their own.

Customize accordingly, as some jurisdictions require “family member” to encompass broader classifications of people (e.g., cohabitants or a designated close friend).

2.4. Company Determinations. Based on the severity of the disaster, the amount of time following the disaster in which employees may donate leave or use donated leave is subject to reasonable limits, to be determined by the Company. The Company will also make a need-based reasonable determination regarding how much leave each recipient may receive under this Policy.

3. Procedure

3.1. Requesting Disaster Leave. A Disaster Leave Recipient must submit a Disaster Leave Bank Transfer Form to [\[Human Resources\]](#). A Disaster Leave Recipient can request a maximum of [\[40 hours\]](#) per major natural disaster.

3.2. Review of Requests. [\[Human Resources\]](#) will review all Disaster Leave Bank Transfer Forms and have sole discretion to grant or deny any requests, in whole or part, based on the amount of available time in the Disaster Leave Bank and other pending or anticipated requests. Any approved Disaster Leave Bank Transfer will be paid to the recipient at their regular rate of pay at the time of the Leave Bank Transfer Form is submitted with the next regular pay period after approval. [Approved Disaster Leave Bank Transfer shall only be used for absences from work necessitated by the natural disaster.](#)

4. Miscellaneous

4.1. Leave deposited for one major natural disaster may be used only by employees affected by that disaster. Leave deposited in the bank that is not used by the end of the specified period may be returned to donor employees. A Disaster Leave Recipient may not convert any Disaster Leave Bank Transfer received under this Plan into cash in lieu of using the leave.

4.2. The Leave Donor under this Policy may not claim an expense, charitable contribution, or loss deduction for any leave donated. Also, the payments to the recipient under this Policy are treated as the recipient's "wages" for purposes of FICA, FUTA, and tax withholding, unless otherwise excluded under the Internal Revenue Code. It is the intent of this Policy to comply with all IRS guidance regarding leave sharing plans, including but not limited to IRS Notice 2006-59. If any part of this Policy is found to be improper, it shall be struck from the Policy and the remainder of the Policy will remain in effect if doing so will make the Policy compliant with existing law.

4.3. All leave donations will be treated as confidential. The recipient will not know who made the donation.

4.4. The Company reserves the right to amend or terminate this Policy at any time without advance notice.

4.5. Nothing in this Policy is intended to create any right to employment or benefits, nor alter the at-will nature of employment or alter any contract of employment.

Customize orange text accordingly.

Note that some paid sick leave laws explicitly indicate how employees may use donated paid sick time. For example:

- The **Oregon** statewide paid sick leave law indicates that employers can set up a shared leave program with their statutory paid sick bank "if the other employee uses the donated sick time for a purpose specified in this section." [Or. Rev. Stat. § 653.616\(5\)](#)
- The **Washington State** administrative code indicates that employers can set up a shared leave program with their statutory paid sick bank which "specifies that an employee may donate accrued, unused paid sick leave to a co-worker for purposes authorized under RCW 49.46.210 (1) (b) and (c)." [WAC 296-128-710](#).

Note that employers should be mindful of their reporting obligations in setting up a leave donation program (e.g., notifications for paid sick leave reductions since last notification, which needs to include paid sick leave donated to a co-worker through a shared leave program).

DONOR FORM: DISASTER LEAVE BANK

Customize accordingly.

I wish to donate _____ hours to the Disaster Leave Bank in light of [*name of disaster*]. Please deduct _____ from my accrued but unused [vacation/sick/PTO] balance. I understand that my Disaster Donation is irrevocable and I shall not have a right to reclaim or use any donated time, but some portion of my time may be returned to me if there is sufficient unused leave remaining in the bank. I further understand that donated hours are dispersed to Disaster Leave Recipients requesting leave under the Disaster Leave Sharing Policy at the sole discretion of the Company. I also understand that my Disaster Donations shall not be considered wages to me. I acknowledge that I made this donation voluntarily and with understanding of its consequences.

Employee Signature: _____

Date Signed: _____

HR Signature: _____

Date Signed: _____

REQUEST FORM: NATURAL DISASTER LEAVE BANK TRANSFER

Customize accordingly.

I wish to request a Transfer of _____ hours from the Disaster Leave Bank due to the effects of [*name of disaster*]. I understand that I may request a maximum of [*X*] hours. I also understand that a Disaster Leave Bank Transfer shall be made at my regular rate of pay at the time the leave is transferred, will be treated as taxable wages, subject to all payroll taxes, authorized or required deductions and paid at my next regular pay period.

I further understand that approval of my request is not guaranteed, and that donated hours are transferred at the sole discretion of the Company. I also understand that my request may be granted for fewer hours than requested. Moreover, I acknowledge and understand that approval of my request is not a guarantee of continued employment.

Employee Signature: _____

Date Signed: _____

HR Signature: _____

Date Signed: _____

NATURAL DISASTER LEAVE REQUEST FORM

Note that some jurisdictions' leave laws only allow employers to request documentation for absences of certain lengths or allow affected employees to submit documentation after their leave has already begun.

Complete and submit this form to your HR department, along with supporting documentation, **if applicable**, before taking leave or as soon as practicable. You must also follow all other standard notification procedures with respect to your supervisor or manager as applicable.

Name:

Employee ID Number:

Leave Start Date/Time:

Leave End Date/Time:

Check the appropriate box below for the relevant reason for request:

- ☐ I need to evacuate according to an order from a local, state, or federal authority and will be unable to work.
- ☐ I need to stay home according to an order from a local, state, or federal authority.
- ☐ Other (Explain):

If you would like to donate unused, accrued leave to the Company's Disaster Leave Bank, or if you would like to request a transfer of hours from the Disaster Leave Bank to cover your leave, please contact Human Resources to obtain the correct forms.

By signing below, I attest that I am requesting my leave be used for the reason selected above. I understand that making a false claim may result in disciplinary action. I will notify my Human Resources office and my manager/supervisor as soon as my circumstances change. I understand that Human Resources may request additional information and/or documentation to support my need for leave.

Employee Signature

Date

Make sure to provide any relevant supporting written documentation, along with this completed and signed written notice, to your HR office.

REMOTE WORK PROGRAM CHECKLIST

This checklist provides a high-level overview of legal obligations and implementation issues to consider when instituting a temporary remote work program. Prior to implementing any remote work program, employers should evaluate existing employment agreements and law in the applicable jurisdiction(s) to determine whether and how they will be impacted.

- **Scope:** Will remote work be available to full-time and part-time employees?
- **Participation Criteria:**
 - Will remote work be available to all employees affected by the natural disaster?
 - Will remote work be available only as a reasonable accommodation under the American with Disabilities Act (ADA) and/or applicable state and local law?
- **Wage & Hour:**
 - Remote timekeeping for non-exempt remote workers.
 - Accurate timekeeping (can the current time keeping system be used?), requirements for clocking in and out, preventing off-the-clock work.
 - Expense reimbursement obligations: Many states have specific states statues requiring reimbursement for necessary, out-of-pocket expenses incurred by employees to perform their work.
- **Work Equipment:** What equipment does employee need to conduct their work?
 - Consider: Reimbursement requirements to secure company property, stipends, a process for handling requests.
- **Privacy & Information Security:** Do you have a robust data security policy that provides for employee use of confidential information at their remote work location?
- **Work Location:** If employees will be working remotely for a sustained basis in states or cities other than where their offices are located, employers must evaluate their compliance obligations and tax considerations (for unemployment, workers compensation and other state payroll taxes).
 - Other prominent considerations if the employee is changing their state or city:
 - Minimum wage laws
 - Paid sick leave laws
- **Periodic Review:** How long will remote work program last? What are the criteria for the termination of the remote work program? Will the company retain the discretion to approve or disapprove telework from jurisdictions from which it does not already employ people?
- **Workplace Culture:** Consider how providing (or failing to provide) the option of remote work and who may participate in remote work may affect company culture.

