

Coping with the COVID-19 Pandemic

Frequently Asked Questions & Answers for School Districts and County Offices of Education

SECTION ONE: Background and Basics

What is novel coronavirus or COVID-19

It is a new virus that has not been previously identified. It is referred to as coronavirus, novel coronavirus or COVID-19 (the 19 refers to 2019, the year it was first identified.) It started in Wuhan City, Hubei Province, China and, because it is very contagious, it has spread rapidly throughout the world.

Is COVID-19 a pandemic?

Yes, on Wednesday, March 11, 2020 the WHO (World Health Organization) declared COVID-19 to be a pandemic, which is a global outbreak of a serious new illness, as opposed to an epidemic, which describes an illness affecting a more defined region.

This pandemic has dramatically changed everyday life across the U.S. and across the world and has dramatic consequences and effects in the workplace.

How is the virus spread?

This highly contagious virus is spread by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of nearby people and be inhaled into the lungs. The virus can also live up to three or four days on surfaces such as countertops, doorknobs, computer keyboards, etc. A person can be infected by touching a surface or object that has the virus on it and then touching their own face, but this is not thought to be the main way it is spread.

What is the best way to avoid the spread of the virus?

By practicing “social distancing,” which is defined as staying 6 feet apart from someone who has or may have been exposed to the virus, limiting or eliminating gatherings with other people, cleaning and sanitizing homes on a regular basis, and practicing frequent handwashing for 20 seconds at a time with soap and water. Anything a person can do that boosts their immune system is helpful. Things such as eating healthy, getting plenty of exercise, getting fresh air, getting plenty of sleep, and reducing stress and anxiety.

Can someone spread the virus without being sick?

People are thought to be the most contagious when they are actually symptomatic with the illness. Some people may spread the virus without actually having symptoms themselves, but this is not thought to be the main way the virus spreads.

What are the primary symptoms of coronavirus?

Although there may be other symptoms, the primary symptoms are fever, cough and shortness of breath.

What is quarantine or isolation with regard to COVID-19?

When someone has symptoms of the virus or has been in direct contact with someone who has the virus or has travelled from a country that the CDC has designated as being “high risk” (because of the high number of cases of the viruses in that region), that people should quarantine themselves until they no longer pose a risk of spreading the infection.

Quarantine is usually established for the incubation period of the communicable disease, which is the span of time during which people have developed illness after exposure. For COVID-19, the period of quarantine is 14 days from the last date of exposure, because 14 days is the longest incubation period seen for similar coronaviruses.

What are the current CDC guidelines for when it is ok to release someone from isolation after they have had the virus?

When they are fever free for 24 hours without the use of fever-reducing medications and when they are no longer showing any symptoms.

Who is at a higher risk for more serious complications from the virus?

Older adults (age 65+) and people who have underlying medical conditions such as autoimmune disorders, lung disease, cardiovascular disease, diabetes, cancer, etc.

Is there a vaccine to protect against COVID-19?

Not yet. Medical researchers are working hard to develop one as quickly as they can, but it will take time to make sure it is safe and effective and then produce it and distribute it.

Is there a medication that will cure person's infected with the virus?

No, there is no cure to treat the underlying illness. Health care providers provide treatment to mitigate the symptoms and provide relief while the illness runs its course.

Additional Resources: The best website for an overview of the virus and current up-to-date information is the website for the CDC (Centers for Disease Control), which is <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>.

SECTION TWO: Governor Newsom Executive Order – Stay-at-Home for All Non-Essential Employees and Operations

When did the stay at home order go into effect and how long will we stay home? What areas of the state are covered?

The order went into effect on Thursday, March 19, 2020. The order is in place until further notice. It covers the whole state of California, and it exempts activity as needed to maintain continuity of operation of the federal [critical infrastructure sectors](#), critical government services, schools, childcare, and construction, including housing construction.

What services are open for business?

- Gas stations
- Pharmacies
- Food: Grocery stores, farmers markets, food banks, convenience stores, take-out and delivery restaurants
- Banks
- Laundromats/laundry services
- Essential state and local government functions will also remain open, including law enforcement and offices that provide government programs and services.

What services are closed?

- Dine-in restaurants
- Bars and nightclubs
- Entertainment venues
- Gyms and fitness studios
- Public events and gatherings
- Convention Centers
- Hair and nail salons

Can the Executive Order be changed?

Yes. The State Public Health Officer may issue orders as needed – for example if more information emerges about the public health situation – and issue new orders and directives as conditions warrant.

How does this order interact with local orders to shelter in place? Does it supersede them?

This is a statewide order. Depending on the conditions in their area, local officials may enforce stricter public health orders. But they may not loosen the state's order. [See Critical Infrastructure Guidelines for lists of essential governmental service sectors.](#)

When did the Order go into effect and how long does it last?

Thursday, March 19, 2020. The order is in place until further notice.

Who is covered by the Order?

All residents and businesses in the state of California.

What does the order mandate?

That all individuals living in the State of California stay home except as needed to maintain continuity of operation of critical infrastructure sectors (i.e. essential businesses and workers.)

Individuals are currently prohibited from in person gathers with others outside of their immediate family.

Individuals are allowed to go outside for exercise, go to get food, go out to care for a relative or friend, go out for necessary health care, or go to work if they are an essential worker, as long as they are maintaining a social distance of 6 feet apart.

Where can I find the full text of the Order?

The full text of the order can be found [HERE](#).

What essential services will remain open and what essential workers are allowed to go to work?

Gas stations, pharmacies, grocery stores, farmers markets, food banks and pantries, and convenience stores. Restaurants will be open only for takeout or delivery. Banks and essential state and local government functions will also remain open, including law enforcement and offices that provide government programs and services. Laundromats and laundry services may also remain open.

The essential infrastructures include: as health care, public safety and public works, transportation and logistics, emergency services, food, agriculture, financial services, hazardous materials, critical manufacturing, and communications and information technology (i.e. media and IT). The complete and very detailed list of essential critical infrastructure workers can be found [HERE](#).

What non-essential businesses must close?

Dine in restaurants, bars, nightclubs, entertainment venues, gyms and fitness studios, convention centers, hair and nail salons, any business that is not one that provides critical infrastructure for the state as outlined above.

Does an exempted business or organization need to get an official letter of authorization from the State to operate?

No.

May an individual go for a routine, elective or non-urgent medical appointment?

Non-essential medical care such as eye exams, teeth cleaning and elective procedures should be cancelled or rescheduled.

May an individual leave home to care for elderly parents or friends who require assistance to care for themselves?

Yes. Be sure that you protect them and yourself by following social distancing guidelines such as washing hands before and after, using hand sanitizer, maintaining at least six feet of distance when possible, and coughing or sneezing into your elbow or a tissue and then washing your hands. If you have any symptoms you should stay away from older family members.

May an individual visit friends or family in the hospital, nursing home, skilled nursing facility, or other residential care facility?

No. There are limited exceptions, such as if you are going to the hospital with a minor who is under 18 or someone who is developmentally disabled and needs assistance. For most other situations, the order prohibits non-necessary visitation to these kinds of facilities except at the end-of-life. This is difficult, but necessary to protect hospital staff and other patients.

What if my county adopts issues an order that is different from the Order issued by Governor Newsom?

You are required to follow this Order if you are an individual living or working in the State of California. If your County adopts a more stringent order, you are required to follow that as well.

SECTION THREE: Governor Newsom Executive Order – Emergency Shutdown of Schools

What is the Governor’s emergency order for LEAs?

The Order was issued on March 13, 2020. It provides in part:

1. For purposes of this Order, Local Educational Agency (LEA) means school districts, county offices of education, and charter schools.
2. If an LEA closes its schools to address COVID-19, as provided in Paragraph 4 of this Order, the LEA will continue to receive state funding to support the following during the period of closure:
 - (i) Continue delivering high-quality educational opportunities to students to the extent feasible through, among other options, distance learning and/or independent study; and
 - (ii) Provide school meals in non-congregate settings through the Summer Food Service Program and Seamless Summer Option, consistent with the requirements of the California Department of Education and U.S. Department of Agriculture;
 - (iii) Arrange for, to the extent practicable, supervision for students during ordinary school hours; and
 - (iv) Continue to pay its employees.

There are two divergent interpretations of the Governor's Executive order of 3/13/20, particularly with respect to the provision: "will continue to pay its employees" is to be interpreted. The majority of the Executive order addresses providing continuing services to students in a variety of settings – distance learning, nutrition, etc.

Interpretation #1

All of the above "continue to support" involves some level of employees working, which supports the interpretation that "continue to pay its employees" means for the above services. That would, in turn, support the interpretation that the administrative leave pay is for those providing these support services. And those who cannot provide this support due to temporary injury/illness / other regular sick leave, should be paid from sick leave and NOT the emergency administrative pay.

Bolstering the above interpretation is the fact that the initial order didn't contemplate closure for the remainder of the school year following 3/13/20.

Interpretation #2

Many – including some of the certificated and classified unions – are interpreting the "continue to pay its employees" as requiring pay for:

1. Every employee – essential and non-essential;
2. 100% for the entire work week – whether they work or not;
3. Regardless of whether they can (and do) work remotely, or whether they can't work because of a regular leave for which other paid accruals would apply.
4. In effective for entire time of closure – now expected to last through end of 2019-2020

That is really quite broad. It also doesn't take into account:

5. the fact that order didn't contemplate that the closure would be for so long; and
6. The fact that emergency child care and sick leave/FMLA expansion would be forthcoming under HR 6801 and other California job protected leaves.

ALERT:

We are working individually with districts to identify their specific issues and policies, as we are finding that union negotiations and other factors are varying between small and large districts. Rather than provide guidance that is a "one size fits all," we encourage you to use the Eyres Law Group hotline to get your district or COE's individual questions and circumstances addressed in a customized manner. We will continue to provide all of our districts with general guidance when we believe it is warranted.

See also: Section Eight of these FAQs for general information on how to handle leaves in progress for non-COVID-19 situations.

SECTION FOUR: Governor Newsom's Guidance for Schools and Childcare Facilities in Light of COVID-19

What Order was issued by CA Governor Gavin Newsom regarding K-12 schools in California and the COVID-19 pandemic?

On March 13, 2020 Governor Newsome issued an Executive Order with regard to K-12 schools in California and the COVID-19 crisis. The full order can be found [HERE](#).

This order ensures that schools continue to receive funding and outlined the following key efforts that schools should pursue:

1. Educational opportunities via distance learning and independent study;
2. Provision of school meals in non-congregate settings;
3. Continued services for students with disabilities;
4. Opportunities to support parents in securing care and supervision for their children;
5. Student supervision during ordinary school hours; and
6. Continued pay for employees

What does the Guidance create by the California Department of Education, the State Board of Education and the California Health and Human Services Agency address?

Following Governor Newsom's order, a Guidance was created on March 17, 2020 to provide clarification and details. The full guidance can be found [HERE](#).

The Guidance provides:

1. Curated resources for schools to plan and implement distance learning tailored to their community's needs and capacities;
2. Best practices and examples in distance learning and independent study from districts around the state and nation;
3. Best practices and examples in delivering school meals in no congregate settings; and
4. Curated resources for identifying local partnerships to support child care and supervision.

With the closure of schools due to the COVID-19 pandemic, will the schools still be providing any services to students?

Yes, the Governor's Order mandates that districts that have physically closed should continue to provide essential services for children and their families in the community. This means that the district should collaborate with local community partners to develop a plan for ensuring that all students are supervised during school hours.

The districts are also encouraged to consider allowing their school sites to be used as critical pop up childcare programs for working families.

Will school lunches continue to be provided to students who qualify?

Yes, the federal child nutrition meal programs administered by the California Dept. of Education have approved flexibilities in place to support local communities during COVID-19 school closures.

Schools or community organizations that are approved to operate the SSO or SFSP can serve non-congregate meals at closed school sites by submitting a request to snpinfo@sde.ca.gov and must include the following information:

1. Name of organization/school and list of school site closures the non-congregate food distribution will serve
2. Timeframe for starting meal distribution
3. Method(s) of meal distribution
4. Outreach efforts to communicate meal distribution
5. Method to focus services to families with children eligible for free and reduced-price meals
6. Basic information on meal counting, food safety, and oversight of the meal distribution, including information to offer foods for multiple days

How is it determined which districts are eligible for federal reimbursement for student meals during COVID-19?

To be eligible for federal reimbursement, meals can be served to all children 18 years and younger in communities where 50 percent or more of the children are eligible for free and reduced-priced meals. In communities with schools that have a student eligibility of less than 50 percent free or reduced-priced meals, the non-congregate meal distribution method needs to focus services to children who are eligible for free or reduced-price meals.

Is it possible to expand the eligibility for free meals to additional students given the current health crisis?

Reimbursement through federal funds requires adherence to the eligibility requirements. At this time, deviation from these requirements will require the use of additional local funds. Schools and community organizations need to follow the eligibility requirements, so the meals can be reimbursable through federal dollars.

If a district does not currently have a summer food service program, are they required to start one during this school closure period as a condition to continue to receive state funding?

No, they are not required to do that, but they are expected to implement programs to meet the needs of their students if schools are closed.

How should meals be distributed during COVID-19?

To allow for social distancing, non-congregate meal systems can vary based on community need and it is recommended that meals be taken away from the site and consumed elsewhere. Examples include:

1. Distributing meals using a school food truck
2. Sending a box or bag meal(s) home with students for multiple days
3. Keeping some school sites open to allow students to receive a meal
4. Partnering with local libraries that remain open to serve meals

5. Setting up a drive through system in the parking lot to minimize contact. Families can drive through and pick up a meal for all children in the vehicle. Please note, it is not permissible to provide meals to children who are not present.

What if meals need to be consumed on site?

If meals are consumed on site, the distribution and eating areas need to be created with social distancing protocols such as avoiding lines, arranging tables and chairs six feet apart, or spacing the meal service time. Tables and eating areas should be properly cleaned and sanitized and additional hand washing stations available to students.

What precautions should the workers distributing the meals take?

Individuals serving meals should follow all COVID-19 prevention and hygiene guidelines, including:

1. Staying home when sick;
2. Washing hands for at least 20 seconds prior to handling or distributing food;
3. Avoiding touching eyes, nose, and mouth;
4. Cleaning and disinfecting high touch surfaces.

How should information about the availability of meals and the procedures be communicated to families?

1. Public announcements on radio or television
2. Email blasts
3. Social media messages
4. Automated phone calls
5. Website announcements
6. Newspaper notifications
7. Community partner newsletters (i.e. food banks, City announcements, Boys and Girls Clubs, YMCA's, community centers, churches and temples)

If a district offers distance learning for instructional delivery in lieu of regular classroom instruction during a school site closure for students, what is the obligation to implement an IEP for students with disabilities?

When a district continues to provide educational opportunities to the general student population during physical school site closures, the district

If the district can continue providing special education and related services as outlined in the IEP, or an agreed upon amendment to the existing IEP, through a distance learning model, they should do so. must ensure that students with disabilities have equitable access to comparable opportunities, appropriately tailored to the individualized need of a student to ensure meaningful access, as determined through the IEP process to the extent feasible.

The district can also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services.

These alternative delivery options should seek to comply with federal, state, and local health official's guidance related to social distancing, with the goal of keeping students, teachers and service providers safe and healthy.

What is considered equitable access for students with disabilities?

When a district provides services to students during a school site closure, the district must provide equitable access to those services for students with disabilities, with services appropriately tailored to the individualized needs of students, to the greatest extent possible. When districts are providing instruction through a distance learning model to replace what would have been provided in the classroom, districts must create access to the instruction for students with disabilities, including planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality (e.g. virtual vs. classroom-based). Educational and support services provided should be commensurate with those identified in the IEP for each student to ensure educational benefit.

What other options could districts consider for special education students?

Districts could consider providing classroom-based instruction to small groups of special needs students despite the fact that the school site has closed, as long as social distancing and other prevention measures are practiced.

Another option would be to have school bus drivers deliver learning materials to students at their homes.

How is distance learning applied to economically disadvantaged students, students with disabilities and English learners?

Districts must make steps to ensure that distance learning opportunities are available to all students to the greatest extent possible, including those particular groups of students.

The California constitution prohibits school districts from requiring students to purchase devices or internet access, to provide their own devices or to pay any fees for course materials. Therefore, districts may need to consider loaning devices to students or providing access at a community site, consistent with social distancing guidelines.

The CDE is actively working with service providers and others in the private sector to develop partnerships to support students and districts during this crisis through offering free high-speed internet access, devices, and other opportunities.

What are some things school administrators should consider?

1. Hardware availability the school can provide for teachers and students
2. Who on staff can work remotely and who cannot?
3. What are the critical job functions and positions and how can they be re-assigned by cross training staff?
4. How to triage technical issues if faced with limited IT support and staff
5. WiFi capabilities of the school system
6. Licensing agreements with vendors

7. Must keep in mind that most schools will need to offer multiple options and a combination of strategies to meet the needs of all students and the strategies will likely be changing and evolving.
8. Instructional phone calls
9. When allowed, consider providing classroom-based instruction to small groups of students that have extensive support needs.

When school sites are closed and no services or instruction are being provided for a period of time, can districts consider providing some special education services to some students? How should they determine what services can or should be provided?

At this uncertain time, it is imperative to keep the safety of students as the primary consideration for every decision made. As districts strive for equitable supports and services for students, in some exceptional situations, districts may need to provide certain supports and services to individual students with extensive support needs in order to maintain their mental/physical health and safety.

The district may provide such services, even if the services are not available to all students with disabilities during a school site closure.

Districts should make individualized determinations about the need to provide services to ensure the mental/physical health and safety of a student with a disability, even during a school site closure, if those services are able to be provided consistent with federal, state, and local health directives.

Has the federal government waived the Individuals with Disabilities Education Act (IDEA)?

No, however the federal office of special education programs is allowing some flexibility to districts and the state may waive some requirements.

How long are the schools expected to be closed?

The Guidance advises districts to be prepared to have instruction be on-line until at least the beginning of April. Some districts, however, have already notified families that it will go through the end of April. Others have indicated a likelihood that it may be the rest of the academic year. The Governor's office has indicated they expect it to be until the end of the academic year.

Will state assessment testing be suspended this year for CA K-12 students?

Yes.

What should school and early childhood childcare program administrators be doing in light of the COVID-19 pandemic?

1. Administrators should check the CDC website every day for updated information.
2. Administrators must create and test communication systems with parents and guardians, all employees, facility management, and emergency medical services.
3. Administrators should establish procedures to notify local health officials upon learning that someone who has been at the facility has a COVID-19 infection.

4. Administrators should ensure the facility is well stocked with cleaning and disinfecting products.
5. Administrators should make sure to stay on top of all available sick and other leave policies for their employees and make sure to disseminate the information.
6. Administrators should consider having childcare programs only have up to 12 students or children at one time and give priority to the children of health care and other essential workers.

How should school and early childhood childcare program administrators train their employees with respect to the COVID-19 pandemic?

1. All employees should be instructed on how COVID-19 is spread, how to help try to prevent the spread, symptoms to look for in employees and in the students or children, and what to do if they observe someone with symptoms.
2. Teachers and staff should be trained on and asked to self-screen themselves every morning before coming to work to ensure that they do not have a fever, a cough or difficulty breathing.

Are visitors allowed at the place of childcare during this pandemic?

No. The facilities should be closed to visitors to reduce the number of people coming in to the facility. Special curb side drop offs and pickups should be implemented so that even parents and guardians should not be coming in and out.

When must childcare employees wash their hands?

1. When they arrive at the facility
2. Before and after handling food
3. Before and after helping a student or child to eat
4. Before and after eating their own meal
5. Before and after using the toilet
6. Before and after helping a student or child use the toilet or changing a diaper
7. After helping a student or child wipe their nose or mouth
8. After tending to a cut or sore
9. After working in a child's play area
10. Before and after giving medicine to a student or child
11. After handling wastebaskets or garbage

How should childcare employees be trained to clean and disinfect the facility?

1. Employees must regularly clean and sanitize all frequently touched surfaces. Such surfaces would be kitchen counters and faucets, bathroom counters and faucets, door knobs, light switches, computer keyboards, toys, remote controls, etc.
2. Cleaning products must be stored where they cannot be accessed by students or children.
3. Employees should use personal protective equipment (i.e. gloves) when using cleaners and disinfectants.
4. Cleaning products must be EPA approved for use against coronavirus.
5. Follow the manufacturer's instructions for all products in addition to PPE, such as what concentration to use, contact time, etc.

What other training must be provided to childcare employees?

1. Methods to avoid touching eyes, nose, and mouth
2. Methods to limit close contacts with others and maintaining more than six feet of separation
3. Coughing and sneezing etiquette
4. The importance of staying home if they have a cough, fever, or difficulty breathing.
5. The plan and procedure to follow if another employee exhibits symptoms at the facility (send them home!)
6. The plan and procedure to follow if a student or child exhibits symptoms at the facility

What procedures should be implemented to share information with parents and guardians of the students or children?

1. Establish a system to check in with parents and guardians daily on the status of their children when the children are dropped off at the facility.
2. Ensure that information and communication can be provided in the primary languages spoken by the parents and guardians.
3. Be sure to have email addresses and home, work and mobile phone numbers of the parents and guardians so that they can be reached at all times.

What information should be shared with parents and guardians?

1. Share information with parents and guardians about COVID-19, the symptoms, how it is transmitted, how to prevent the spread, and when to seek medical attention.
2. Encourage parents and guardians to share that information with their children as appropriate.
3. Communicate with parents and guardians that children should stay at home if they are sick, have been in contact with someone who has tested positive for coronavirus, or if someone in the household has symptoms.
4. Establish voluntary methods for parents and guardians to help screen their children for symptoms, i.e. ask parents and guardians to take their children's temperatures every day before coming to the facility and keep them home if it is above 100.4 degrees F.)
5. Advise parents and guardians that they must be practicing social distancing at home – no playdates or group activities, no religious services or events, no after school classes, no sporting events, etc.

What is the appropriate curriculum for childcare employees to use with students and children regarding how to help prevent the spread of COVID-19?

1. Frequent handwashing
2. Avoiding touching their noses, eyes and mouths as much as possible
3. Telling their teaching right away if they feel sick
4. Coughing and sneezing etiquette
5. Discourage students and children from sharing food, drinking cups, eating utensils, towels, etc.

What should the procedure be if a student or child becomes sick while at the facility?

1. The parent or guardian should be contacted immediately.

2. The employee should determine if medical assistance is needed and, if so, should call 911.
3. The sick student or child should be isolated and only limited staff should be attended to by only limited staff.
4. The student or child should be given a mask, if they are agreeable to wearing it.

When must students, children, teachers or staff be sent home from the childcare facility?

1. If they become sick.
2. If it is learned that they have travelled to a country or region that the CDC has deemed “high risk” (they must stay away from the facility for 14 days.)
3. If it is learned that they have been in close contact with someone diagnosed with COVID-19 (they must stay away from the facility for 14 days.)

What can teachers and staff at childcare facilities do to minimize close contact among the students and children?

1. Stagger recess or play times to limit the number of students and children out at one time.
2. Consider alternates to congregate or group programming.
3. Avoid large or communal activities such as assemblies.

Does a student or child need a doctor’s note to return to the childcare facility if they have been out sick?

This requirement should be waived, as childcare providers may not be able to provide such notes in a timely manner right now.

SECTION FIVE: CDC Guidance for Employers

This section is based on the CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), drafted in February 2020 and updated on March 21, 2020. It has been summarized below in Q & A format, but the entire report can be found [HERE](#).

At the current time, due to the California Stay-at-Home Executive Order, most employees who are working for public schools are those who provide essential services. The paid leaves, accommodations, telework, and other sections of this policy apply to the entire workforce; those who are ordered to remain at home and those providing essential services.

What are the most important considerations for employers with regard to the COVID-19 pandemic and the effect it is having on every workplace?

The overall goal for all employers is to reduce the spread of the virus, lower the impact in their workplace and protect the health and safety of their employees by maintaining a healthy work environment.

Employers should expect significant effects on their workplaces and should prepare for a possible disruption of business operations due to illness in employees and their family members and closures mandated by public health officials and federal, state and local government orders.

Employers should keep employee’s needs at the forefront while, of course, maintaining healthy business operations.

What are the most important things for all employers to know during this COVID-19 pandemic?

1. Where to find up to date information on COVID-19, local trends of cases, and current federal, state, and local government or public health orders.
2. The signs and symptoms of COVID-19 and what to do if an employee becomes symptomatic or exposed.

How can employers best prepare for the disruptions of their workplace?

1. Implement plans to continue essential business functions in cases of reduced hours, business closure and higher than usual absenteeism.
2. Improve and implement plans for clear, consistent and prompt communication with all employees.
3. Identify a COVID-19 workplace coordinator, whose responsibility it will be to stay on top of the pandemic and its impact on the workplace.
4. Cross train personnel to perform essential functions so that the workplace is able to operate even if key staff members are absent from work.
5. Consider alternate team approaches for work schedules.
6. Employers with more than one location are encouraged to provide local managers with the authority to take appropriate actions outlined in their business infectious disease outbreak response plan based on the condition in each locality.
7. Immediately update policies regarding sick leave, benefits and working remotely – make policies more liberal– and disseminate to all employees.
8. Use resilience principles in developing policies – the key goal in managing dynamic and unpredictable challenges is resilience – the ability to survive and thrive through unpredictable, changing and potentially unfavorable events.
9. Assess your essential functions and the reliance that others have on the organization’s services or products.
10. Be prepared to change business practices, if needed, to maintain critical operations.
11. Identify alternate sources for critical goods and services needed to maintain the organization.

Will more workplaces experience an increase of workers working remotely during this pandemic?

Yes. As businesses are temporarily closed or altered and employees need to be quarantined or stay home to care for children because schools are closed, employee’s working remotely (primarily from home) (called “telework”) has become the new normal.

More detail and guidance for managing employees working from home are addressed in detail in these FAQs – Section Ten. Use the hotline for customization of your policies and telework agreements.

What should employers be doing to enforce sick leave policies?

Employers must make sure to review the new Federal Act (HR 6201) and all other benefits provisions to make sure they are up to date on the current and evolving laws.

Employers should consider leave policies that ensure allow employees to stay home when they are sick or exposed or if they need to care for their children or a family member without pressure to report for work sick or with a potential risk of spread to others from exposures to community spread. Employers should consider giving advances of future sick leaves and allowing employees to donate sick leave to each other.

Draft and communicate to their workers a written policy or outline describing all available leave and pay benefits, detailing what they are, what has changed from prior benefits, any eligibility criteria, how they can be used, and the interplay with other available benefits.

What are the key leaves and benefits with which all employers should be familiar?

1. HR 6201 – FMLA Expansion and Emergency Sick Leave
2. CFRA Leave
3. Federal and California leave for child care emergencies
4. Paid Family Leave
5. Disability Benefits
6. Unemployment Insurance Benefits
7. Reasonable Accommodations

All of these leave and benefit options are addressed in detail in these FAQs

What are an employer's obligations to an employer who is under a government or public health authority-imposed quarantine?

The CDC and the EEOC have “strongly suggested” that employers be accommodating and flexible with workers impacted by imposed quarantines.

Employers may offer alternative work arrangements, such as working remotely from home and paid or unpaid leave time.

Should employers be concerned about discrimination against employees of Asian descent in their workplaces?

Yes, employers must be very careful not to discriminate against employees of Asian descent and must make sure all employees are aware that this is not ok. Fear and anxiety can lead to social stigma toward Asians or Asian Americans since the virus originated in China. This is not acceptable. **NOTE: California has specific regulations preventing both disability harassment and national origin harassment and those will be enforced moving forward for complaints following this pandemic.**

Should employers be concerned about other forms of discrimination?

Employers should always be careful not to discriminate against any employee on the basis of age, race, sex, sexual orientation, national origin, disability or Veteran benefit status. In addition, retaliation against any individual based on requests for leaves of accommodations due to their own or a family member's illness, risk status, or exposure is flatly prohibited by California and federal law.

This means that employers must be careful to treat all employees the same with regard to COVID-19. They cannot treat older employees or employees that are higher risk because of a medical condition any differently with regard to any workplace policies, travel restrictions, etc.

This subject is addressed in detail in these FAQs

What can employers do to maintain as safe a work environment as possible?

1. Require employees who are exhibiting symptoms or with known direct exposure to COVID-19 or who have travelled to a country viewed by the CDC as being “high risk” to stay home.
2. Encourage all workers to wash their hands frequently with soap and water for at least 20 seconds (if soap and water is unavailable, hand sanitizer is the next best option as long as it has at least 60% alcohol).
3. Encourage all workers to avoid touching their face with unwashed hands.
4. Encourage all workers to practice appropriate “cough and sneeze etiquette,” which is covering their mouth and nose with the inside of their elbow or a tissue and then throwing the tissue in the trash and immediately washing their hands for 20 seconds.
5. Clean and disinfect frequently touched surfaces, such as doorknobs, light switches, counter tops, desk tops, telephones, computer keyboards, handrails, shared office equipment, shared equipment in office break rooms, etc.
6. Increase ventilation in the workspace.
7. Be sure to provide tissues, soap and water, hand sanitizer and no-touch disposal receptacles.
8. Discourage handshaking and hugging – encourage non-contact ways of greeting
9. Implement social distancing measures by increasing physical space between workers at the worksite (ideally 6 feet apart), staggering work schedules, decreasing social contacts in the workplace such as in person meetings and lunches.
10. Discourage workers from using each other’s phones, desks, offices and equipment.
11. Avoid work-related social gatherings such as after work functions or group lunches.
12. Instruct employees to cancel all non-essential work travel.
13. Cancel all work-sponsored conferences, tradeshow, etc.
14. Place posters in visible locations with instructions on hand washing, cough and sneeze etiquette and social distancing.

What should an employer do if an employee shows up to work with symptoms of COVID-19 (i.e. fever, cough, or shortness of breath?)

If an employee shows up at work with symptoms or develops symptoms during the work day, that employee should be immediately isolated from all others and then sent home.

Employees who are sent home should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments.

What if the employee is not sick, but has a family member at home who has symptoms, risk factors, or known exposures to the virus?

The employee should stay home and telework if possible.

If there is a factual basis to corroborate that an employee has been directly exposed to the virus, the employer has the right to require the employee to take a 14-day furlough from work, but the employee should be paid for this time. The employer is entitled to ask the employee to go through a medical or fit for duty examination before returning to work.

What are the criteria to discontinue home isolation?

Employees who have been caring for themselves at home due to symptoms relating to COVID-19 may discontinue home isolation when they have been fever free (without fever reducing medications) for 3 days AND show an improvement in respiratory symptoms AND at least 7 days have passed since the onset of symptoms.

Should an employer require a negative COVID-19 test result before allowing an employee to return to work?

No. In most situations people are not even being tested. Only those with severe illness are being tested at this time.

Should an employer require a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or return to work?

No. Health care providers are extremely overwhelmed with the pandemic and may not be able to provide such documentation in a timely manner.

Should an employer have an infection disease outbreak response plan in place?

Yes, ideally employers should already have this. If not, they should have one now.

Key components of such a plan?

1. The plan should be flexible because the situation changes and evolves.
2. Employees should be involving in developing and reviewing the plan.
3. Employers should conduct a focused discussion or exercise using the plan to see where there are possible gaps or problems that should be corrected.
4. The plan should be shared with employees and it should be explained what human resource policies, workplace and leave flexibilities and pay and benefits will be available to them.
5. Employers should plan as if the only way to remain operational will be for as many employees as possible to work remotely.
6. Employers should gather a cross functional team including business line leaders, IT, HR, communications employees and facilities employees to plan for different scenarios and optimize execution.
7. Employers should engage with other companies to share best practices and improve community response efforts.
8. Employers should work with OSHA to identify possible work-related exposure and health risks to employees.
9. Set up authorities, triggers and procedures for activating and terminating the company's infectious disease outbreak response plan, altering business operations, and transferring business knowledge to key employees.
10. Establish a process to communication information to employees.
11. Anticipate employee fear, anxiety, rumors and misinformation, and plan communications accordingly.

Must an employer pay their employees if they are required to be quarantined at home for any length of time due to illness or exposure or if the business must cease operations during a federal, state or local mandate to close during the pandemic?

Employers are not required to pay employees for the time they may be quarantined at home due to having the virus or being exposed to it, however the CDC encourages all employers to pay their employees in these situations. Doing so will serve to incentivize employees to self-identify and self-quarantine.

Choosing not to pay them makes it more likely that the employee will prematurely return to work, thereby infecting other staff, risking business continuity, legal liability from third parties such as customers, and contributing to an increase in infections in the workplace.

Salaried workers, managers and executives will usually, but not always, be paid for such a business disruption, but the concern is about lowered level and hourly employees.

The CDC suggests that if an employer is not able to pay an employee for a quarantine period, they should consider letting them use vacation time, other sick time, personal days or any other available time off.

Employers should also be familiar with all of the various leave options, disability benefits and unemployment insurance options and direct employees accordingly.

All of these pay, leave and benefit options are addressed in detail in these FAQs

If individuals volunteer for a public agency during the COVID-19 pandemic, are they entitled to compensation?

No. Individuals who volunteer their services to a public agency (such as a state, city or county government) in an emergency capacity are not considered employees due compensation under the FLSA if they:

1. Perform such services for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation. The volunteer performing such service may, however, be paid expenses, reasonable benefits or a nominal fee to perform such services; and,
2. Offer their services freely and without coercion, direct or implied; and,
3. Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer.

Where can an employer find more resources?

CDC website – www.cdc.gov

CDC COVID-19 Guidance for employers and workplaces - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

OSHA - <https://www.osha.gov/>

OSHA COVID-19 website - <https://www.osha.gov/SLTC/covid-19/>

CAL OSHA - <https://www.dir.ca.gov/dosh/>

CAL OSHA COVID-19 website - <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

California Government Page (Gavin Newsome) - <https://covid19.ca.gov/>

California Dept. of Public Health - <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

CDC Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19 – can be found [HERE](#) (or from the CDC website)

EEOC Pandemic Preparedness in the Workplace and the ADA and COVID-19 – https://www.eeoc.gov/facts/pandemic_flu.html#secB

Factor	Potential mitigation activities according to level of community transmission or impact of COVID-19 by setting		
	None to Minimal	Minimal to moderate	Substantial
<p>Workplace "What workplaces can do to prepare for COVID-19, if the workplace has cases of COVID-19, or if the community is experiencing spread of COVID-19)"</p>	<ul style="list-style-type: none"> • Know where to find local information on COVID-19 and local trends of COVID-19 cases. • Know the signs and symptoms of COVID-19 and what to do if staff become symptomatic at the worksite. • Review, update, or develop workplace plans to include: <ul style="list-style-type: none"> » Liberal leave and telework policies » Consider 7-day leave policies for people with COVID-19 symptoms » Consider alternate team approaches for work schedules. • Encourage employees to stay home and notify workplace administrators when sick (workplaces should provide non-punitive sick leave options to allow staff to stay home when ill). • Encourage personal protective measures among staff (e.g., stay home when sick, handwashing, respiratory etiquette). • Clean and disinfect frequently touched surfaces daily. • Ensure hand hygiene supplies are readily available in building. 	<ul style="list-style-type: none"> • Encourage staff to telework (when feasible), particularly individuals at increased risk of severe illness. • Implement social distancing measures: <ul style="list-style-type: none"> » Increasing physical space between workers at the worksite » Staggering work schedules » Decreasing social contacts in the workplace (e.g., limit in-person meetings, meeting for lunch in a break room, etc.) • Limit large work-related gatherings (e.g., staff meetings, after-work functions). • Limit non-essential work travel. • Consider regular health checks (e.g., temperature and respiratory symptom screening) of staff and visitors entering buildings (if feasible). 	<ul style="list-style-type: none"> • Implement extended telework arrangements (when feasible). • Ensure flexible leave policies for staff who need to stay home due to school/childcare dismissals. • Cancel non-essential work travel. • Cancel work-sponsored conferences, tradeshows, etc.

SECTION SIX: Paid Emergency Leave: HR 6201 Families First Act (“FFCRA”)

Why was this Act created?

To protect the health, economic security, and wellbeing of the American people while stimulating the economy during the COVID-19 pandemic.

What is the Act called?

The Families First Coronavirus Response Act

What are the two primary measures with regard to employees?

One, to provide two weeks of paid emergency sick leave for illnesses related to COVID-19 – Emergency Paid Sick Leave Act (Division E of HR 6201.)

Two, to provide 90 days (12 weeks) of family and medical leave for eligible workers to care for themselves or a family member when the need arises as a result of the COVID-19 pandemic – Emergency FMLA (Family and Medical Leave) Expansion Act (Division C of HR 6201.)

When does the new Act take effect and end?

As soon as possible, but no later than **April 1, 2020** and ends December 31, 2020.

Who are the employers and employees that are covered?

Both the paid FMLA and paid sick leave provisions apply to private sector employers with fewer than 500 employees and all public employers (government and all other non-private entities) with more than one employee.

In addition, they both allow subsequent U.S. Department of Labor regulations to exempt small businesses with fewer than 50 employees when the provision would jeopardize the viability of the business.

Are any employees excluded?

Yes, both provisions allow an employer of an employee who is a healthcare provider or an emergency responder to elect to exclude the employee from the application of these two provisions.

Does the 500-employee requirement refer to a location or entity-wide?

The employer organization (not just the location) must have fewer than 500 employees.

Are employers with 500 or more employees obligated to provide paid sick or leave benefits?

They have no such obligation under this bill. However, they still must comply with obligations under state or local paid sick leave or paid family and medical leave laws and administer sick or

paid time off or paid leave provided under district or COE policies or collective bargaining agreements.

Who pays for the sick time or leave?

Employers must pay the benefits, but they will receive a tax credit for doing so.

What notice must an employee provide for these leaves?

The FMLA provisions require employees to provide the employer with “notice of leave as is practicable.”

The paid sick leave provisions state that after the first workday (or portion thereof) that an employee receives paid sick leave, an employer may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

With regard to the FMLA expansion, how long must the employee have been employed before taking the leave?

30 calendar days. (Not one year, which is required by the original FMLA.)

With regard to the FMLA expansion, must the employee have worked at least 1,250 hours before taking leave?

No. That requirement is waived.

With regard to the FMLA expansion, must the employee have worked in a location where there are 50 employees within a 75-mile radius?

No. That requirement is waived.

With regard to the FMLA expansion, when does this Act apply?

When an employee is unable to work (or telework) due to the need to care for a child under the age of 18 if the child’s school or place of child care has been closed due to the COVID-19 pandemic.

With regard to the FMLA expansion, how much should an employee be paid?

An amount that is not less than 2/3 of their regular rate of pay, but it should not exceed \$200 per day or \$10,000 total.

With regard to the FMLA expansion, how are an employee’s hours calculated if the hours vary?

Use a number that represents the average number of hours per day the employee would normally be scheduled to work.

With regard to the FMLA expansion, is the employee entitled to start receiving leave pay immediately?

No. The first 10 days of the leave may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave or medical or sick leave for the unpaid leave.

With regard to the FMLA expansion, is the employee's job protected?

Yes, the Act offers job protection. However, the FMLA's requirement that an employee be restored to the same or equivalent position after leave does not apply to an employer with fewer than 25 employees if the employee's position no longer exists due to economic conditions or other changes in the employer's operations that affect employment and are caused by the public health crisis during the period of leave.

The employer must make reasonable efforts to restore the employee to the same or an equivalent position, and if the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period beginning on the earlier of (a) the date on which the qualifying need related to a public health emergency concludes, or (b) the date that is 12 weeks after the date the employee's leave started.

With regard to the emergency paid sick leave, how long must the employee have worked to qualify for the sick pay?

This benefit is available to any employee, regardless of how long the employee has worked for the employer

With regard to the emergency paid sick leave, at what rate is the paid sick leave accrued?

For full time employees, the entire 80 hours of paid sick leave is available immediately. There is no accrual rate or period.

Part time employees should receive the number of hours that such an employee would work, on average, over a two-week period.

For hourly employees whose schedules vary, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the 6-month period prior to the leave.

With regard to the emergency paid sick leave, how should employers calculate the rate of compensation?

Amount of compensation should be not less than the greater of the following: (1) Employee's regular rate of pay or (2) the federal, state or local minimum wage rate.

The paid sick leave rate may not exceed \$511 per day or \$5,110 in the aggregate.

With regard to the emergency paid sick leave, are there any exceptions to this rate of compensation?

Yes. If the employee is taking leave to care for a family member, the rate of pay should be 2/3 of the amount of their regular rate of pay and may not exceed \$200 per day or \$2,000 in aggregate.

With regard to the emergency paid sick leave, is this in addition to current leave provided by the employer?

Yes. This new leave must be used first. But an employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave available under the Act.

With regard to the emergency paid sick leave, what circumstances makes an employee eligible to receive the sick leave?

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

With regard to the emergency sick leave, is carryover required for unused emergency paid sick leave?

The paid sick provisions state that unused paid sick leave does not carry over from one year to the next.

With regard to the emergency sick leave, can an employee who takes emergency paid sick leave be required to find a replacement worker?

No.

With regard to the emergency sick leave, must an employer pay out unused emergency paid sick leave if the employee separates from its employment?

No.

What is prohibited under this Act?

It is unlawful for an employer to discharge, discipline or in any manner discriminate against any employee who takes leave in accordance with this Act or who files a complaint related to this Act.

What is the impact for employees who work under multi-employer bargaining agreements?

Both the FMLA provisions and the paid sick leave provisions state that an employer who is a signatory to a multi-employer collective bargaining agreement may fulfill its obligations (consistent with bargaining obligations and the collective bargaining agreement) by making contributions to a multi-employer fund, plan, or program based on what paid leave each of its employees is entitled to while working under the agreement. The fund, plan, or program must enable employees to receive pay for the FMLA leave.

To what kind of tax and payroll credits are employers entitled under this Act?

Employers are allowed a tax credit for each calendar quarter an amount equal to 100% of the qualified sick leave wages paid by the employer. Other payroll credits also may apply.

There are limits on total amount of wages which will be considered or total number of days taken into account. There are also limits on government employers. And special rules for self-employed individuals.

<u>Covered Reason for Leave</u>	<u>Rate of Pay</u>	<u>Cap on Payments</u>
(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	The employee’s regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).	Two-thirds of the employee’s regular rate of pay.	\$200 per day and \$2,000 in the aggregate

<p>(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.</p>	<p>Two-thirds of the employee's regular rate of pay.</p>	<p>\$200 per day and \$2,000 in the aggregate</p>
<p>(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.</p>	<p>Two-thirds of the employee's regular rate of pay.</p>	<p>\$200 per day and \$2,000 in the aggregate</p>

NEW: added 3/30/2020:

NOTE: the DOL refers to HR 6801 in the Clarifying FAQs as the “FFCRA”

Department of Labor Additional Clarifying FAQ's with Regard to FFCRA (HR 6801) during COVID-19 Pandemic

Can an employee stay home under FMLA leave to avoid getting COVID-19?

No. Leave taken by an employee for the purpose of avoiding exposure to the virus would not be protected under the Act. An employee must otherwise meet the eligibility requirements for the leave.

NOTE: A request to stay home to avoid exposure, without establishing one of the risk factors, would be treated as a request for reasonable accommodation and subject to an interactive process under the California FEHA or the ADA.

When calculating pay due to employees, must overtime hours be included?

Yes. The FMLA Expansion Act requires employers to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

May an employee take 80 hours of paid sick leave for self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. An employee may take up to two weeks—or ten days— (80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which any employee receives paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

NOTE: the employee may be eligible for separate paid leave pursuant to California law or employer policy, but the FFCRA leave is not applied consecutively.

If an employee is home with his or her child because his or her school or place of care is closed, or child care provider is unavailable, does the employee get receive sick leave, expanded family and medical leave, or both—how do they interact?

An employee may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. He or she may take both paid sick leave and expanded family and medical leave to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the employee elects to use existing vacation, personal, or medical or sick leave under their employer's policy.

After the first ten workdays have elapsed, the employee will receive 2/3 of their regular rate of pay for the hours he or she would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Remember the employee can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Can an employer deny paid sick leave if the employee had received paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Are the paid sick leave and expanded family and medical leave requirements retroactive?

No.

How does an employee know whether he or she has “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

An employee is considered to have been employed by their employer for at least 30 calendar days if the employer had her or she on the payroll for the 30 calendar days immediately prior to the day leave would begin.

For example, if an employee wants to take leave on April 1, 2020, he or she would need to have been on your employer's payroll as of March 2, 2020.

If an employee has been working for a company as a temporary employee, and the company subsequently hires the employee on a full-time basis, he or she may count any days previously worked as a temporary employee toward this 30-day eligibility period.

What records does an employee need to keep when the employee takes paid sick leave or expanded family and medical leave?

Employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If the employer intends to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, the employer should retain appropriate documentation. The employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of the employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, the employer may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

What documents must an employee give an employer to get paid sick leave or expanded family and medical leave?

The employee must provide to the employer documentation in support of the paid sick leave as specified in applicable IRS forms, instructions, and information.

The employer may also require the employee to provide additional in support of the expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this may include a notice of closure or unavailability from the child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed from an employee or official of the school, place

of care, or child care provider. The employer must retain this notice or documentation in support of expanded family and medical leave, including while you the employee be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in effect if the employee is taking leave for one of the existing qualifying reasons under the FMLA. For example, if the employee is taking leave beyond the two weeks of emergency paid sick leave because his or her medical condition for COVID-19-related reasons rises to the level of a serious health condition, he or she must continue to provide medical certifications under the FMLA if required by the employer.

When is an employee able to telework under the FFCRA?

An employee may telework when the employer permits or allows the employee to perform work while at home or at a location other than the normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

What does it mean to be unable to work, including telework for COVID-19 related reasons?

An employee is unable to work if the employer has work and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents the employee from being able to perform that work, either under normal circumstances at the normal worksite or by means of telework.

If the employee and employer agree that the employee will work normal number of hours, but outside of the normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working that schedule.

If the employee becomes unable to telework, is the employee entitled to paid sick leave or expanded family and medical leave?

If the employer permits teleworking—for example, allows employees to perform certain tasks or work a certain number of hours from home or at a location other than the normal workplace—and the employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then the employee is entitled to take paid sick leave.

Similarly, if the employee is unable to perform those teleworking tasks or work the required teleworking hours because he or she needs to care for a child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then the employee is entitled to take expanded family and medical leave.

May an employee take paid sick leave or expanded family and medical leave intermittently while teleworking?

Yes, if the employer allows it and if the employee is unable to telework the normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, the employee and the employer may agree that the employee may take paid sick leave intermittently while teleworking.

Similarly, if the employee is prevented from teleworking the normal schedule of hours because he or she needs to care for a child whose school or place of care is closed, or child care provider

is unavailable, because of COVID-19 related reasons, the employee and employer may agree that he or she take expanded family medical leave intermittently while teleworking.

They may take intermittent leave in any increment, provided that they agree. For example, if they agree on a 90-minute increment, they could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

May an employee take paid sick leave intermittently while working at the usual worksite (as opposed to teleworking)?

It depends on why the employee is taking paid sick leave and whether the employer agrees. Unless the employee is teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
5. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless the employee is teleworking, once he or she begins taking paid sick leave for one or more of these qualifying reasons, he or she must continue to take paid sick leave each day until he or she either (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking paid sick leave. This limit is imposed because if the employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep the employee from spreading the virus to others.

If the employee no longer has a qualifying reason for taking paid sick leave before the employee exhausts the paid sick leave, he or she may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if the employee and employer agree, the employee may take paid sick leave intermittently if he or she is taking paid sick leave to care for a child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if a child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

May an employee take expanded family and medical leave intermittently while their child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if the employee is not teleworking?

Yes, but only with the employer's permission. Intermittent expanded family and medical leave should be permitted only when the employee and employer agree upon such a schedule. For example, if the employee and employer agree, the employee may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while a child is at home because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of the leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

NEW ADDED QUESTIONS BY EYRES LAW GROUP 3-30-20

Does the language in HR 6801 that states: *The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19* apply to the statewide stay at home order issued by Governor Newsom?

This has been unclear, as there have been two interpretations of this ambiguous language.

Interpretation #1; the Governor's stay at home order is a state quarantine or isolation order related to COVID-19, to the point that all employees of facilities that are shut down as non-essential are eligible to receive this emergency benefit, regardless of whether they or their family have COVID-19 symptoms, a positive test, a known exposure, or are in a high risk category for serious complications.

Interpretation #2; The stay at home order is not a quarantine or isolation order.

Quarantine is limited to people who may have been exposed to the virus. Governments -- federal, state and local -- can order quarantines, and in fact, those repatriated from China were under a federal quarantine order. They are asked to stay at home for 14 days, or as in the case with people who were repatriated from China to the United States, to stay in a provided facility.

Isolation This is for people who actually have the virus or suspect they may be infected. Those with the virus who need to be hospitalized will be kept in an isolation unit.

Shelter in place or stay at home order does not apply to people who are ill with COVID-19 disease, or have been exposed. Essential services staff are required to go to work. Other residents who are free of symptoms, exposures, or high risk are able to go outside, while maintaining social distancing (but neither quarantine nor isolation).

Result: with interpretation #2, individuals would be eligible for unemployment if they have no work, but neither disability nor emergency sick leave. With interpretation #1: they will be paid the 80 hours before being eligible for unemployment. The more “conservative” position (which limits risk in the event that you receive a claim from an employee) is to go with interpretation #1 and pay the employees the 80 hours of emergency leave even if they do not meet the other criteria listed in that section of HR 6201. We do not have clarity from EDD on how they will address this issue, e.g., whether they will delay unemployment claims until employees use the 80 hours. So, the “safer” approach is to adopt interpretation #1.

Is an employee who doesn't qualify for child care emergency leave or emergency paid sick leave, and is unable to work solely because there is no work to perform due to shutdown of operations, eligible for any paid leave benefits under HR 6801?

The following six (6) new DOL FAQs relate to this provision of the FFCRA; specifically, clarification of this ambiguity. The DOL makes it clear that an employee is not eligible for the HR 6201 paid emergency leave if the only reason the employee is unable to work is that there is no work due to an ordered shutdown. Employees who do not provide essential services and who are furloughed due to the impact of the stay at home order on their worksite, may apply for unemployment benefits.

If an employer closed a worksite before April 1, 2020 (the effective date of the FFCRA), can the employee still get paid sick leave or expanded family and medical leave?

No.

This is true whether your employer closes the worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.

It should be noted, however, that if the employer is paying the employee pursuant to a paid leave policy or State or local requirements, the employee is not eligible for unemployment insurance.

If an employer closes a worksite on or after April 1, 2020 (the effective date of the FFCRA), but before an employee goes out on leave, can the employee still get paid sick leave and/or expanded family and medical leave?

No. If the employer closes after the FFCRA's effective date (even if an employee requested leave prior to the closure), the employee will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits.

This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive.

If an employer closes my worksite while an employee is out on paid sick leave or expanded family and medical leave, what happens?

If the employer closes while an employee is on paid sick leave or expanded family and medical leave, the employer must pay for any paid sick leave or expanded family and medical leave the employee used before the employer closed. As of the date the employer closes the worksite, the employee is no longer entitled to paid sick leave or expanded family and medical leave, but may be eligible for unemployment insurance benefits.

This is true whether the employer closes the worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive.

If my employer is open, but furloughs an employee on or after April 1, 2020 (the effective date of the FFCRA), can the employee receive paid sick leave or expanded family and medical leave?

No. If an employer furloughs the employee because it does not have enough work or business for that employee, you are not entitled to then take paid sick leave or expanded family and medical leave. However, the employee may be eligible for unemployment insurance benefits.

If an employer closes a worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells the employees that it will reopen at some time in the future, can an employee receive paid sick leave or expanded family and medical leave?

No, not while the worksite is closed. If your employer closes your worksite, even for a short period of time, the employees are not entitled to take paid sick leave or expanded family and medical leave. However, they may be eligible for unemployment insurance benefits.

This is true whether the employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive

If the employer reopens and you resume work, employees would then be eligible for paid sick leave or expanded family and medical leave as warranted.

If an employer reduces an employee's scheduled work hours, can the employee use paid sick leave or expanded family and medical leave for the hours that he or she is no longer scheduled to work?

No. If an employer reduces work hours because it does not have work for employees to perform, they may not use paid sick leave or expanded family and medical leave for the hours that they are no longer scheduled to work. This is because they are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

Employees may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents them from working their full schedule. If they do, the amount of leave to which they are entitled is computed based on their work schedule before it was reduced

May an employee collect unemployment insurance benefits for time in which they receive pay for paid sick leave and/or expanded family and medical leave?

No. If an employer provides an employee paid sick leave or expanded family and medical leave, that employee is not eligible for unemployment insurance. However, each State has its own unique set of rules, so employee should contact their State workforce agency or State unemployment insurance office for specific questions.

If an employee elects to take paid sick leave or expanded family and medical leave, must the employer continue the employee's health coverage? If the employee remains on leave beyond the maximum period of expanded family and medical leave, does the employee have a right to keep their health coverage?

If an employer provides group health coverage that employees have elected, they are entitled to continued group health coverage during expanded family and medical leave on the same terms as if they continued to work. If they are enrolled in family coverage, the employer must maintain coverage during an expanded family and medical leave. The employee must continue to make any normal contributions to the cost of the health coverage.

If the employee does not return to work at the end of the expanded family and medical leave, he or she should check with the employer to determine whether he or she is eligible to keep the health coverage on the same terms (including contribution rates). If they are no longer eligible, they may be able to continue your coverage under COBRA.

If they elect to take paid sick leave, they employer must continue health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), an employer cannot establish a rule for eligibility or set any individual's premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

May an employee use an employer's preexisting leave entitlements and FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

No. If an employee is eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by the employer, unless the employer agrees the employee must choose one type of leave to take. They may not simultaneously take both, unless your employer agrees to allow the employee to supplement the amount they receive from paid sick leave or expanded family and medical leave under the FFCRA, up to normal earnings, with preexisting leave.

For example, if an employee is receiving 2/3 of his or her normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and the employer permits, he or she may use their preexisting employer-provided paid leave to get the additional 1/3 of their normal earnings so that he or she receives the full normal earnings for each hour.

May an employer supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

If an employee chooses to use existing leave the employer has provided, yes; otherwise, no.

Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees' preexisting leave entitlements, including Federal employees. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee's normal earnings. Note, however, that you are not entitled to a tax credit for any paid sick leave or expanded family and medical leave that is not required to

be paid or exceeds the limits set forth under Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

May an employer require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

If an employer wants to pay employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, may they do so and claim a tax credit for the entire amount paid to them?

You, an employer may pay the employees in excess of FFCRA requirements. But the employer cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

HR6201 – FFCRA – Families First Coronavirus Response Act – Poster Requirements

On March 25, 2020, the Dept. of Labor published a required poster for employers regarding the Families First Coronavirus Response Act, also known as HR 6201 or FFCRA.

Who is required to post the notice?

All employers who are covered by the Act.

Is this the final version of the poster?

No, it is likely that the DOL will need to issue a new version because it appears to have two errors.

1. With respect to paid sick leave, the poster leaves off the pay requirement with respect to paid sick leave for reason number five, school closings.
2. The poster also indicates that the additional 10 weeks of pay under the expanded FMLA is capped at \$12,000, but it is actually \$10,000.

Where must the notice be posted, especially if most of the workplace is teleworking right now?

Each covered employer must post the notice in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

Must the notice be posted in other languages besides English? Are other languages available?

The notice only needs to be posted in English, but the DOL is working to translate it into other languages.

Must an employer share the notice with employees who have been laid off?

No, only current employees.

Must an employer share the notice with new job applicants?

No, there is no obligation to share the notice with prospective employees.

Must an employer share the notice with new hires?

Yes, if an applicant is hired, they must be given notice of the Act, either by email, direct mail, on an employee information internal or external website, or on the premises where the employee will be working.

If an employer's state provides greater protections than the Act, must they still post the notice?

Yes, all covered employers must post this notice regardless of whether their state requires greater protections. The employer must comply with both federal and state law.

What if an employer has a main office headquarters, where all employees report each morning, but then go off to different worksite locations – must the notice be posted in all locations?

No, as long as it is posted in a place in the main headquarters where employees will see it.

How is an employer able to obtain the notice?

By calling the Dept. of Labor Wage and Hour Division at 1-866-487-9243. Or they can be downloaded and printed at <http://www.dol.gov/agencies/whd/posters>.

May an employer put the notice in a binder instead of on the wall?

No. Federal notices must be put on the wall where they are visible to all employees.

Must an employer post notices in each break room on each floor or is it ok to just post the notice in the lunchroom?

As long as all of the employees regularly visit the lunchroom it is fine to just post the notice there. Otherwise, it would be best to post the notice in the breakroom on each floor.

If an employer has multiple buildings and the employees report directly to their own building to work, rather than one central location, must the employer post the notice in each building? Yes, even if the buildings are in a cluster or on a campus, the notice must be posted in each individual building.

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

NEW: Department of Labor Guidance on Enforcement of FFCRA (Families First Coronavirus Response Act)

The US Dept. of Labor released a guidance regarding the temporary non-enforcement period applicable to the FFCRA. The Guidance provides that the Department will not bring enforcement of any kind against any public or private employers for violations of the FFCRA through **April 17, 2020**, providing that the employer has made reasonable, good faith efforts to comply with the Act.

An employer has acted “reasonably” and “in good faith” when ALL of the following is met:

1. The employer has remedied any violations, including making all affected employees whole as soon as practicable.
2. The violations of the Act were not “willful”
3. The Dept. receives a written commitment

If those are not met, the Dept. will exercise its enforcement authority.

After April 17, 2020, the limited stay of enforcement will be lifted and the Dept. will fully enforce violations of the Act.

BROADER FMLA/CFRA APPLICABILITY (separate from the federal “expansion”).

Are Employees Infected with COVID-19 Eligible for Protected Leave Under the FMLA and CFRA Statutory Leave Laws?

It depends on the reason for the absence. The FMLA and CFRA provides up to twelve (12) weeks of unpaid, job-protected leave for eligible employees with a serious health condition. The definition of “Serious Health Condition under the CFRA is broader than the FMLA. It includes:

Serious Health Conditions

“Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent, or spouse of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse. A serious health condition may involve one or more of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care. A person is considered an “inpatient” when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e. g, physical therapist) under orders of, or on referral by, a health care provider, or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy [NOTE: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA] Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatment

A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12945.2, Government Code; California Genetic Information Nondiscrimination Act, Stats. 2011, ch. 261; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825. Appendix B, Form WH-380, as revised December 1994

Employees who become ill with COVID-19 but have only mild symptoms may not be covered by the FMLA. The WHO and the U.S. Centers for Disease Control and Prevention (CDC) report that the majority of individuals contracting COVID-19 experience mild symptoms including a cough, fever and shortness of breath. Illnesses with such symptoms (e.g., the flu) historically do not rise to the level of a serious health condition, and would not be covered by the FMLA. As such, an individualized assessment of the circumstances surrounding each potential FMLA qualifying event must be made to determine whether the regulatory definitions of a serious health condition are met.

May Employees Use FMLA and CFRA to Care for A Family Member that Becomes Ill from COVID-19 or Tests Positive?

Similar to situations with employees who contract COVID-19 themselves, and as discussed above, whether an employee can use FMLA to care for a parent, child or spouse if that person has a serious health condition will depend in part on the person's symptoms and treatment. States with corollary leave laws often have expanded definitions of a covered family member, so in many states, employees may be eligible for leave to care for domestic partners, siblings, grandparents and grandchildren.

Additional California specific Information

CFRA Leave and COVID-19, Information from the Department of Fair Employment and Housing (DFEH) Website

May an employer send employees home if they display symptoms of COVID-19?

Yes. The CDC states that employees who show symptoms of the virus must leave the workplace immediately. Employers may ask employees who exhibit symptoms of COVID-19 to go home and stay home until they have been symptom free for 14 days. Employers must provide sick leave and compensate the employee under all applicable sick leave laws. If sick leave is exhausted, employees may be entitled to other paid leave or job protected unpaid leave.

What information may an employer reveal to other employees if an employee is quarantined, tests positive for COVID-19, or has come in contact with someone who has the virus?

There is definitely a need for employers to notify everyone in the workplace if they have been in contact with an employee who is quarantined, tests positive for COVID-19 or has come in contact with someone who has the virus.

Employers should not identify any employees by name, in order to ensure compliance with privacy laws. Employers may not confirm the health status of employees or communicate about any employee's health with others.

Employers may notify affected employees in a way that does not reveal the personal health related information of any employee. For example, the employer could send a written communication stating: "We have learned that an employee at this location has tested positive for the COVID-19 virus. The employee received positive results on [date.] This email is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department or health care provider for guidance and any possible actions to take based on individual circumstances."

Are employees entitled to job-protected unpaid leave under CFRA if they cannot work because they are ill because of COVID-19 or because they must care for a family member who is ill because of COVID-19?

Yes. Employees are entitled to up to 12 weeks of job protected leave under CFRA for their own serious health condition, or to care for a spouse, parent, or dependent child with a serious health condition.

COVID-19 will qualify as a serious health condition if it results in inpatient care or continuing treatment or supervision by a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.

Employees are eligible for CFRA job-protected leave if they work for an employer with at least 50 employees within 75 miles of their worksite, have worked there for at least a year, and have worked at least 1250 hours in the year before they need time off. (NOTE: there is nothing to indicate that these requirements have been waived.)

If an employee requests leave under CFRA because of COVID-19, what type of certification from a health care provider is appropriate during this pandemic?

In light of the COVID-19 pandemic, it's not practical or prudent to require employees to obtain a medical certification from a health care provider within 15 days of an employee's request for CFRA leave, which is what is normally required. The health care system is overloaded and may not be able to respond to such requests and the need for leave is immediate.

Employers should use their judgment and waive certification requirements when granting such leave requests.

During the COVID-19 pandemic, may an employer ask an employee's health care provider if an employee tested positive, even if the employee refuses to give permission?

Yes. HIPPA contains an exception for disclosures necessary to prevent a serious and imminent threat. Health care providers may share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public.

What if an employee cannot come to work because of an illness relating to COVID-19, but is not eligible for CFRA leave?

All employers who have less than 500 employees and all public agencies must comply with the new Emergency Paid Sick Leave Act and provide two weeks of paid sick leave to all employees.

Once that is used up, the employee may use any other sick leave or other PTO.

After that, the determination of whether an illness related to COVID-19 has risen to the level of a disability is a fact-based determination. Considerations would be if it results in inpatient care or continuing treatment or supervision by a health care provider or if it results in pneumonia.

Employers should consider all possible reasonable accommodations for their employees in this situation, such as telework and unpaid leave, as long as it does not impose an undue hardship.

What factors should be considered when making the determination of whether or not providing an accommodation is an undue hardship, in light of the COVID-19 pandemic?

Things such as the number of total employees, the number of employees affected by COVID-19 who will need to be accommodated, the size of the employer's budget, the nature of the business or operation, and whether the business will be able to remain open or must close during the COVID-19 pandemic.

What medical documentation should employees provide to support a request for reasonable accommodation to work remotely or take leave because they are disabled by COVID-19?

During the current COVID-19 pandemic, it may be impracticable for employees to obtain medical documentation of a COVID-19 related disability from their health care provider. To the extent employers require medical documentation in order to grant reasonable accommodations, DFEH recommends waiving such requirements until such time as the employee can reasonably obtain documentation.

How can an employer plan for employee absences and staff shortages during the COVID-19 pandemic if the employer cannot ask about underlying health conditions?

The employer can send out a survey to ALL employees asking them to respond yes or no to the following:

In light of the COVID-19 pandemic, will you be unable to come to work because of any of the following reasons:

If schools or day-care centers are closed, would you need to care for a child?

If other services are unavailable, would you need to care for other dependents?

If public transport was sporadic or unavailable, would you be able to travel to work?

Do you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the COVID-19 virus such that you would be advised by public health authorities not to come to work (i.e. pregnant women; persons with compromised immune systems; older people; people with certain underlying health conditions like heart disease, lung disease and diabetes.)

What should an employer do if an employee has exhausted all available sick leave but must remain off work for reasons related to COVID-19?

The employer and employee should consider unpaid leave or the other paid leave options that could potentially be available such as disability leave, paid family leave, and unemployment insurance.

Can an employee use paid sick leave if they need to take off to self-quarantine because they have been exposed to COVID-10 or because they have travelled to a high-risk country, even if they are not showing symptoms and do not have the virus?

Yes. Paid sick leave can be used for preventative care for the employee or the employee's family member. Preventive care includes self-quarantine as a result of potential exposures if such quarantine has been recommended by public health authorities or federal, state, or local governments, which it has.

Is an employee entitled to compensation for reporting to work if they are sent home for reasons relating to COVID-19?

If an employee reports for their regularly scheduled shift but is required to work fewer hours or is sent home, the employee must be compensated for a minimum of two hours but not more than four hours.

Exception: reporting time pay does not apply when operations cannot commence or continue because civil authorities have mandated that the business close.

Exempt employees are entitled to their full weekly salary if they are sent home because of COVID-19, as long as they worked some work during that work week.

SECTION SEVEN: Other Pay and Benefits Protections

If an Employee's Time Off Does Not Qualify for Leave Under the FMLA or CFRA, Are There Any Other Leaves to Which They May Be Entitled if They or Their Close Family Member Contracts COVID-19?

Yes. Even if an employee is not entitled to leave under the FMLA or CFRA because the illness does not necessarily rise to the level of a "serious health condition", employees may be entitled to other protected time off.

Paid Sick Leave for COVID-19. The California paid sick leave law (Healthy Families, Healthy Workplaces Act of 2015) accrue up to 24 hours or three work days of sick leave each year. Employees may be entitled to use accrued, unused sick time for themselves or to care for a covered family member if they contract COVID-19.

Employees may also use paid sick leave for their own, or a family member's "preventative care." Close family member is more broadly defined than under FMLA and CFRA. It applies to spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild, or sibling. Preventative care may include taking appropriate steps to assure that an individual with a chronic health condition or immune disorder that places them at higher risk for serious COVID-19 infection, including self-isolation/quarantine.

California Kin Care. In addition to paid sick leave, California Kin Care, codified in the Labor Code section 233, permits an employee to use their accrued sick leave or other paid time off to care for a family member who is sick. allows use for an employee's own sickness. Close family member is more broadly defined than under FMLA and CFRA. It applies to spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild, or sibling. Kin Care may be used up to 50% of the employee's current year sick leave accrual. Many employers provide for more "generous" sick leave accruals and Kin Care by policy or collective bargaining agreement.

Are There Any Protections for Employees who Have No Illness or Symptoms, but Have a Known Exposure Requiring Quarantine?

Yes. The CDC, NIH, Department of Homeland Security and many state and federal agencies have advised that individuals who came into close or extended contact with someone who has tested positive for COVID-19 should be quarantined, as they have become "exposed" to the virus. Whether there are job-related leave protections for such employees will depend on the jurisdiction in which they live.

Paid Sick Leave for Preventative Care for COVID-19 Most paid sick leave laws allow employees to use leave for preventive care. These provisions might impliedly cover quarantines. The majority of laws envision the actual use of medical care, however, so a self- or employer-instituted quarantine without medical care technically may not be a covered paid sick leave use. A few laws use broader terminology (e.g., preventative care, not just preventive medical care)

and others include catchall language (e.g., other medical reasons) that could potentially apply to these situations. For example, in California, preventative care may include quarantine or self-isolation as a result of potential exposure to COVID-19 if quarantine is recommended by civil authorities.

FAQS From California Labor Commissioner's Office (Dept. of Industrial Relations)

Can an employee use California Paid Sick Leave due to COVID-19 illness?

Yes. If the employee has paid sick leave available, the employer must provide such leave and compensate the employee under [California paid sick leave laws](#).

Paid sick leave can be used for absences due to illness, the diagnosis, care or treatment of an existing health condition or preventative care for the employee or the employee's family member.

Preventative care may include self-quarantine as a result of potential exposure to COVID-19 if quarantine is recommended by civil authorities. In addition, there may be other situations where an employee may exercise their right to take paid sick leave, or an employer may allow paid sick leave for preventative care. For example, where there has been exposure to COVID-19 or where the worker has traveled to a high-risk area.

If an employee exhausts sick leave, can other paid leave be used?

Yes, if an employee does not qualify to use paid sick leave, or has exhausted sick leave, other leave may be available. 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 allows for leave in this circumstance.

Can an employer require a worker who is quarantined to exhaust paid sick leave?

The employer cannot require that the worker use paid sick leave; that is the worker's choice. If the worker decides to use paid sick leave, the employer can require they take a minimum of two hours of paid sick leave. The determination of how much paid sick leave will be used is up to the employee.

What options do I have if my child's school or day care closes for reasons related to COVID-19?

Employees should discuss their options with their employers. There may be paid sick leave or [other paid leave](#) that is available to employees. Employees at worksites with 25 or more employees may also be provided up to 40 hours of leave per year for specific school-related emergencies, such as the closure of a child's school or day care by civil authorities (see [Labor Code section 230.8](#)). Whether that leave is paid or unpaid depends on the employer's paid leave, vacation or other paid time off policies. Employers may require employees use their vacation or paid time off benefits before they are allowed to take unpaid leave, but cannot mandate that employees use paid sick leave. However, a parent may choose to use any available paid sick leave to be with their child as preventative care.

Can an employer require a worker to provide information about recent travel to countries considered to be high-risk for exposure to the coronavirus?

Yes. Employers can request that employees inform them if they are planning or have traveled to [countries considered by the Centers for Disease Control and Prevention to be high-risk areas](#)

[for exposure to the coronavirus](#). However, employees have a right to medical privacy, so the employer cannot inquire into areas of medical privacy.

Is an employee entitled to compensation for reporting to work and being sent home?

Generally, if an employee reports for their regularly scheduled shift but is required to work fewer hours or is sent home, the employee must be compensated for at least two hours, or no more than four hours, of reporting time pay.

For example, a worker who reports to work for an eight-hour shift and only works for one hour must receive four hours of pay, one for the hour worked and three as reporting time pay so that the worker receives pay for at least half of the expected eight-hour shift.

[Additional information on reporting time pay](#) is posted online.

When a state of emergency is declared, does reporting time apply?

[Reporting time pay](#) does not apply when operations cannot commence or continue when recommended by civil authorities. This means that reporting time pay does apply under a state of emergency, unless the state of emergency includes a recommendation to cease operations.

If an employee is exempt, are they entitled to a full week's salary for work interruptions due to a shutdown of operations?

An employee is exempt if they are paid at least the minimum required salary and meet the other qualifications for exemption. Federal regulations require that employers pay an exempt employee performing any work during a week their full weekly salary if they do not work the full week because the employer failed to make work available.

An exempt employee who performs no work at all during a week may have their weekly salary reduced.

Deductions from salary for absences of less than a full day for personal reasons or for sickness are not permitted. If an exempt employee works any portion of a day, there can be no deduction from salary for a partial day absence for personal or medical reasons.

Federal regulations allow partial day deductions from an employee's sick leave bank so that the employee is paid for their sick time by using their accrued sick leave. If an exempt employee has not yet accrued any sick leave or has exhausted all of their sick leave balance, there can be no salary deduction for a partial day absence.

Deductions from salary may also be made if the exempt employee is absent from work for a full day or more for personal reasons other than sickness and accident, so long as work was available for the employee, had they chosen to work.

What protections does an employee have if they suffer retaliation for using their paid sick leave?

The Labor Commissioner's Office [enforces several laws](#) that protect workers from retaliation if they suffer adverse action for exercising their labor rights, such as using paid sick leave or time off related a specified school activity as outlined in question 4. Additional information on [how to file a retaliation or discrimination complaint](#) is posted online.

Given the evolving nature of this unprecedented health emergency, if an employee elects not to use available paid sick leave, or have no other paid leave available, employees and employers should discuss what [unpaid or paid leave options](#) may be available.

Making immigration-related threats against employees who exercise their rights under these laws is unlawful retaliation.

If I am a party in an action filed with the Labor Commissioner’s Office, can I seek an accommodation to participate remotely due to the coronavirus?

Yes. Requests to participate remotely should be emailed to the district office in which the claim has been filed. These requests will be evaluated on a case-by-case basis. A [full listing of Labor Commissioner’s Office locations including email addresses](#) is posted online.

FAQs from Employment Development Department (EDD)

What Other Public Benefits Available for Sickness or Preventative Self-Isolation?

Yes. The California EDD—who enforces the California State Disability Insurance (SDI) and Paid Family Leave (PFL) insurance—approved expansion of SDI and PFL benefits for COVID-19. This means employees who contract or are quarantined due to COVID-19 may apply for SDI benefits, and similarly, employees who need to take time off to care for a family member who has contracted or is quarantined due to COVID-19 may apply for PFL benefits. The state is coordinating with the Center for Disease Control (CDC). They issued information about business slowdowns and other relevant information.

Should California employers advise their employees of their options for additional pay benefits in light of the COVID-19 pandemic?

Yes, because of the increased numbers of workers being unable to work for reasons relating to the COVID-19 pandemic and because of the increasing numbers of employers who will need to reduce the hours of their employees or temporarily cease operations, employers MUST understand the additional pay benefits that are available for their employees and are encouraged to communicate with their employees and Ensure they know their options.

If an employee is unable to come to work due to reasons relating to COVID-19, can they file a Disability Insurance Claim?

Yes. Disability insurance provides short term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness, injury or pregnancy. The COVID-19 pandemic falls under this category.

If an employee is quarantined but not sick, might they qualify for Disability benefits?

Yes, as long as the quarantine is certified by a medical professional or state or local health officer.

What are the benefit amounts for an employee taking Disability Insurance?

60 to 70 percent of their wages, depending on their income; ranges from \$50 to \$1300 per week.

Is there a waiting period for an employee to take Disability Insurance?

No. The Governor's Executive Order dated March 12, 2020, waives the one week waiting period for workers who are out of work for reasons relating to COVID-19 and are filing a claim for Disability Insurance. Employees can file right away and benefits will start coming within a few weeks of the claim being received.

What medical documentation is required to support a claim for Disability Insurance Benefits during the COVID-19 pandemic?

A medical certification signed by a treating physician or a practitioner that includes a diagnosis and ICD-10 code, or, if no diagnosis has been obtained, a statement of symptoms, the start date of the condition, its probable duration, and the treating physician's or practitioner's license number or facility information.

NOTE: this certification has not yet been waived with regard to the COVID-19 pandemic.

If an employee is unable to work because she or he needs to care for an ill or quarantined family member for reasons related to COVID-19 are they entitled to Paid Family Leave?

Yes, Paid Family Leave provides up to six weeks of benefits payments to eligible workers who have a full or partial loss of wages because they need time off work to care for a seriously ill family member. Needing to care for a family member for reasons related to COVID-19 qualifies.

What are the benefit amounts for an employee taking Paid Family Leave?

60 to 70 percent of their wages, depending on their income; ranges from \$50 to \$1300 per week.

Is there a waiting period for an employee to take Paid Family Leave?

No. The Governor's Executive Order dated March 12, 2020, waives the one week waiting period for workers who are unable to work for reasons relating to COVID-19 and are filing a claim for Paid Family Leave. Employees can file right away and benefits will start coming within a few weeks of the claim being received.

What kind of medical documentation is required to support a claim for Paid Family Leave benefits during the COVID-19 pandemic?

A medical certification signed by a treating physician or a practitioner that includes a diagnosis and ICD-10 code, or, if no diagnosis has been obtained, a statement of symptoms, the start date of the condition, its probable duration, and the treating physician's or practitioner's license number or facility information.

If an employer is forced to lay off workers or reduce their hours due to their business closing or reducing hours as a result of the COVID-19 pandemic, can their employees file a claim for unemployment insurance benefits?

Yes, they may file a claim. Unemployment Insurance provides partial wage replacement benefits to workers who lose their jobs or have their hours reduced, through no fault of their own.

Must an employee actively seek work if they are receiving Unemployment Insurance benefits due to reduced hours related to the COVID-19 pandemic?

No. Workers who are temporarily unemployed due to COVID-19 and expected to return to work with their employer within a few weeks are not required to actively seek work each week. However, they must remain able and available and ready to work during their unemployment for each week of benefits claimed and they must meet all other eligibility criteria.

Is there a waiting period for a worker to file a claim for Unemployment Insurance?

No. The Governor's Executive Order dated March 12, 2020, waives the one week waiting period for workers who are out of work for reasons relating to COVID-19 and are filing a claim for Unemployment Insurance Benefits. Employees can file right away and benefits will start coming withing a few weeks of the claim being received.

What are the benefit amounts for an employee taking Paid Family Leave?

\$40 to \$450 per week

If an employee is able to work remotely from home, can they collect Unemployment Insurance?

Not if they are working normal hours. However, if an employee's usual number of hours is reduced for reasons relating to the COVID-19 pandemic, they could collect some Unemployment Insurance benefits.

Can an employee collect disability and unemployment benefits at the same time?

No. They can file a claim for both benefits, but they can only collect payments under one benefit program at a time.

Can an employee collect disability benefits if he or she qualifies and then transition to an unemployment claim if the workplace operations continue to be impacted with a slowdown or a shutdown?

Yes.

Can an employee start collecting unemployment benefits because they are laid off or have their hours reduced and then switch to a disability claim if they become sick?

Yes, if an employee in that situation becomes sick, he or she can apply for disability benefits, which can provide a higher benefit amount, but a medical certification is still required. If they transition to disability benefits, the unemployment insurance benefits are suspended.

Can an employee start collecting unemployment benefits because they are laid off or have their hours reduced and then switch to a paid family leave claim if they have to care for a sick family member for reasons relating to COVID-19?

Yes, if a family member of an employee in that situation becomes sick, the employee can apply for disability benefits, which can provide a higher benefit amount, but a medical certification is still required. If they transition to paid family leave benefits, the unemployment insurance benefits are suspended.

Benefit Summary Chart for Workers Impacted By COVID-19

Source: California Labor and Workforce Development Agency

<https://www.labor.ca.gov/coronavirus2019/#chart>

Program	Why	What	Benefits	More Information	How to File
Disability Insurance	If you're unable to work due to medical quarantine or illness related to COVID-19 (certified by a medical professional)	Short-term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness, injury, or pregnancy.	Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 52 weeks.	Learn more about your eligibility for Disability Insurance	File a Disability Insurance claim
Paid Family Leave	If you're unable to work because you are caring for an ill or quarantined family member with COVID-19 (certified by a medical professional)	Up to six weeks of benefit payments to eligible workers who have a full or partial loss of wages because they need time off work to care for a seriously ill family member.	Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 6 weeks.	Learn more about your eligibility for Paid Family Leave	File a Paid Family Leave claim
Unemployment Insurance	If you have lost your job or have had your hours reduced for reasons related to COVID-19	Partial wage replacement benefit payments to workers who lose their job or have their hours reduced, through no fault of their own.	Range from \$40-\$450 per week for up to 26 weeks.	Learn more about your eligibility for Unemployment Insurance	File an Unemployment Insurance claim

Paid Sick Leave	If you or a family member are sick or for preventative care when civil authorities recommend quarantine	The leave you have accumulated or your employer has provided to you under the Paid Sick Leave law.	Paid to you at your regular rate of pay or an average based on the past 90 days.	Learn more about your eligibility for Paid Sick Leave	If accrued sick leave is denied, file a Wage claim
Workers' Compensation	If you are unable to do your usual job because you were exposed to and contracted COVID-19 during the regular course of your work, you may be eligible for workers' compensation benefits.	Benefits include temporary disability (TD) payments, which begin when your doctor says you can't do your usual work for more than three days or you are hospitalized overnight. You may be entitled to TD for up to 104 weeks. TD stops when either you return to work, your doctor releases you for work, or your doctor says your illness has improved as much as it's going to.	TD generally pays two-thirds of the gross wages you lose while you are recovering from a work-related illness or injury, up to maximum weekly amount set by law. In addition, eligible employees are entitled to medical treatment and additional payments if a doctor determines you suffered a permanent disability because of the illness	Learn more about your eligibility for Workers' Compensation benefits	File a Workers' Compensation claim

What Other Statutes Provide Protection for Time off?

Americans with Disabilities Act (ADA). Employees that become ill with the COVID-19 virus may be considered disabled under the ADA. The ADA defines disability as a “substantial limitation of a major life activity.” The determination of whether the COVID-19 infection actually substantially limits the individual’s major life activities depends on the severity of an individual’s symptoms. If the condition impairs a major life activity, for example, “breathing,” the employee could be considered disabled and thus protected under the ADA. If an employee seems to be disabled by COVID-19, or requests a reasonable accommodation, the employer must engage in the usual

interactive process and assess whether the individual can be accommodated, either by working from home or, possibly, by taking a protected leave of absence.

Fair Employment & Housing Act (FEHA): The FEHA defines disability more broadly than the ADA. An individual is covered by the FEHA with “any limitation of a major life activity.” Limits means making achievement of the major life activity difficult. Breathing, concentrating, focus, and other bodily functions that may be impaired or limited by COVID-19 would be major life activities. Significantly, the FEHA expressly defines “working” as a major life activity. Therefore, any limitation of the major life activity of working could be a covered disability, triggering a need to conduct an interactive process. This is very broad, and may include: (1) actual symptoms of COVID-19; (2) a known exposure that places the individual at risk of contracting or spreading the virus, in turn requiring self-isolation and limitation on working; or (3) a chronic underlying condition that places the individual at great risk of serious illness from contracting or exposure to COVID-19 during a community spread.

NOTE: Individuals who request a reasonable accommodation will always trigger an interactive process. In the normal course of business these should be conducted in person. Given the current risks from community spread of COVID-19, interactive processes should be conducted via telephone, or online meeting using Zoom, Webex, or other applications. Reasonable accommodations may be a range of things for employees performing essential functions, including modified schedule, work from home arrangements, or extended leave for a finite and reasonable period of time.

ALSO NOTE: In today’s climate, the traditional defense of “undue burden” may be very limited, given the extreme risks associated with permitting an individual to report for duty – even in a position that involves essential services. Thus, every form of reasonable accommodation should be considered.

NON-Retaliation is Critical: The California FEHA prohibits discrimination in the form of retaliation for any individual who requests a reasonable accommodation. The retaliation provisions of all job and benefit protected leaves, and FEHA compliance requirements will be aggressively enforced by the DFEH.

What Leave Applies if the Entity/School Closes Due to a Public Health Emergency?

In California, the combination of paid sick leave and employer-based paid administrative leave policies provide job protections to some degree when an employee must be absent from work when their employer’s organization closes due to a public health emergency. As written, the laws require a public official to close a business. Without such an order, an employer deciding to close down a place of business due to a public health emergency like COVID-19 technically would not be a covered paid sick leave laws.

The same rules apply if a child’s school or place of care is closed because of a public health emergency – jobs may be protected but a public official must make the determination.

In California, the Labor Code section 230.8 provides job and benefit protection for employees who have a child care emergency, in which the school or child care provider must close and will not provide services to the employee’s child(ren). This California -specific job and benefit protected leave provides that employees at worksites with 25 or more employees may also be

provided up to 40 hours of leave per year for specific school related emergencies, such as the closure of a child's school or day care by civil authorities.

Because it provides an additional layer of protection, this is **in addition** to the Federal law, HR 6201 and should be applied consecutively, when the HR 6201 leave is exhausted.

The Labor Code defines child care emergency to include:

- (1) "Parent" means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.
- (2) "Child care provider or school emergency" means that an employee's child cannot remain in a school or with a child care provider due to one of the following:
 - (A) The school or child care provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or child care provider.
 - B) Behavioral or discipline problems.
 - (C) Closure or unexpected unavailability of the school or child care provider, excluding planned holidays.
 - (D) A natural disaster, including, but not limited to, fire, earthquake, or flood.

May Employers Provide Paid Leave Benefits – Either Through Sick Leave or Paid Administrative Leave?

Employers are free to allow employees to use available paid sick leave for a self-induced quarantine or for another purpose not explicitly covered under an applicable paid sick leave law.

Employers may consider taking certain proactive steps when establishing a temporary policy to address absences resulting from the COVID-19 pandemic. Employers should provide employees with written notice that explains the expansion of permitted sick leave uses, the reason for the change and the circumstances, *i.e.*, that it is one-time exception for the COVID-19 coronavirus. Employers also may want to limit an employee's use for self-quarantine to 14-days (or 14 days from the last known possible contact), or some other time period as recommended by health officials, provided such limitation is consistent with applicable law. The policy should make clear that the change is temporary and that the district or COE reserves the right to discontinue the policy change at its sole discretion.

For employers that are not covered by a paid sick leave law, employer/entity policies and collective bargaining agreements will govern, and public schools may choose to temporarily modify their policies.

Can an Employer Require an Employee to Stay Home If They Are Suspected of Contracting COVID-19?

Employers must be careful to avoid discriminating against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted COVID-19, or against individuals belonging to certain races or nationalities where the virus is most prevalent. Employers may implement a policy prohibiting employees that recently traveled

to certain places (as identified as high risk by the CDC) from coming to work for 14 days. Employers should not send home individuals because they have a stuffy nose, cough, or other mild symptoms that could be due to a variety of illnesses. If employers elect to adopt a policy that requires employees to stay home, they should consider whether such time is compensable under applicable laws.

SECTION EIGHT: How Do Districts and COEs Handle LOAs in Progress Before the Emergency Shutdown?

As noted earlier in these FAQs, there are two interpretations of the 3/13/20 order with respect to paid administrative leave.

Interpretation #1

The provision requiring continued support of students “involves some level of employees working, which supports the interpretation that “continue to pay its employees” means for the above services. That would, in turn, support the interpretation that the administrative leave pay is for those providing these support services. Under this interpretation, districts would not apply any other leave (PDL, FMLA-CFRA for bonding leave or serious health conditions, or industrial injury leave) to any time off by the employee during the shutdown for a non-COVID-19 cause. Likewise, districts would NOT apply personal paid sick leave, or extended sick leave (sub differential, or 100 days at 50%) to any time off. All employees would receive full pay administrative leave, regardless of their leave status unrelated to COVID-19.

Interpretation #2

Many – including some of the certificated and classified unions – are interpreting the “continue to pay its employees’ as requiring pay for:

Every employee – essential and non-essential;

100% for the entire work week – whether they work or not;

Regardless of whether they can (and do) work remotely, or whether they can’t work because of a regular leave for which other paid accruals would apply.

In effective for entire time of closure – now expected to last through end of 2019-2020

PLEASE NOTE: The following are general FAQs regarding current leaves in process, based on interpretation #2. These are offered as a starting point for consideration. Because each district or COE may have specific policies, union negotiations in process for MOUs and related activities, we recommend that you contact Patti Eyres on the ELG hotline for specific and customized assistance and protocols for your district. We will address how to address absence management for COVID-19 related issues, application of paid emergency leave, and most importantly review of all leaves in progress and any required updates to the previously issued leave designation letters. The same is true for new leave designation letters. One size does NOT fit all, so use the hotline.

Is a pregnancy-disability (PDL) leave that was in progress prior to 3/13/20 subject to the Executive Order for administrative pay, so that the application of the PDL leave must stop?

No. A PDL leave for conditions of pregnancy, childbirth and recovery that was in progress prior to 3/13/20 will remain in place, as the employee would be otherwise unable to report for duty and perform essential job functions either onsite or working remotely. PDL and appropriate paid sick leave or extended sick leave may be applied.

Is an FMLA-CFRA leave for an employee's serious health condition that is unrelated to any COVID-19 condition and that was in progress prior to 3/13/20, subject to the Executive Order for administrative pay, so that the application of the FMLA-CFRA leave must stop?

No. A leave for the employee's serious health condition for any condition that is entirely unrelated to COVID-19 symptoms, exposure, ordered quarantine, or presents a high risk of serious COVID-19 illness will remain in place. Both the FMLA-CFRA leave and appropriate paid sick leave or extended sick leave may be applied until the employee is released to return to work.

Is a FMLA-CFRA leaves for an employee's caregiver responsibilities for a close family member serious health condition that is unrelated to any COVID-19 condition and that was in progress prior to 3/13/20, subject to the Executive Order for administrative pay, so that the application of the FMLA-CFRA leave must stop?

No. A caregiver leave due to the serious health condition for any condition that is entirely unrelated to COVID-19 symptoms, exposure, ordered quarantine, or presents a high risk of serious COVID-19 illness will remain in place. Both the FMLA-CFRA leave and appropriate paid sick leave or extended sick leave may be applied until the employee is released to return to work.

Is a child bonding leave that is unrelated to any COVID-19 condition or child care emergency and that was in progress prior to 3/13/20, subject to the Executive order for administrative pay, so that the application of the parental child bonding leave must stop.

If the employee wishes to work and provide essential services, onsite or in a remote location, and wishes to do so, the employee may withdraw the bonding leave and return to work.

If an employee is currently on a child bonding parental leave and wishes to end the leave and return to work, while preserving the bonding time to use in the future, must the District grant the request?

Yes. Under the CFRA and the CA. Education Code paid parental leave, the employee may use the bonding leave up to the child's first birthday. This is the employee's right.

Is an industrial injury leave that is unrelated to any COVID-19 condition and that was accepted and in progress prior to 3/13/20, subject to the Executive order for administrative pay, so that the application of the Industrial Injury leave must stop?

No. If the employee began the sixty (60) days of industrial leave under the California Education Code prior to 3/13/20, that leave will continue to be applied up until the 60 days is exhausted or the employee is released to modified duty or full duty.

If an employee is currently receiving TTD, and the employee is released for full duty will Temporary disability payments stop?

Yes, if the injury is unrelated to COVID-19.

If an employee is working modified duty and is unable to work because of the mandatory COVID-19 shutdown, will TD apply?

No, TD will not be required and TD payments should stop.

What are the District's obligations if an employee is currently receiving TTD, and is released for modified duty, or if working modified duty and the restrictions change?

The district or COE will need to engage in the interactive process to determine whether the new temporary restrictions can be reasonably accommodated. The determination will necessarily include two assessments:

First, is the employee unable to perform modified duty because the restrictions are too limiting for the employee to perform any essential job functions? Second, is the employee able to perform modified duty with restrictions that are capable of being accommodated, but there is no work available due to the COVID-19 shutdown?

Determine if you are unable to accommodate because the restrictions are too limiting or if you are unable to accommodate because of the mandatory COVID-19 shutdown.

- If the District **CANNOT** provide modified duty **because the restrictions are too limiting**, then TD payments continue.
- If the District **CANNOT** provide modified duty **because of the COVID-19 mandatory shutdown**, TD payments stop.
- If an employee is/was working modified duty by working reduced work hours and collecting TPD, the TPD payments should continue.

If a substitute employee is collecting TTD on an accepted industrial injury claim, will the payments will continue until they are either given work restrictions or released full duty

Yes.

If a substitute employee is released for *modified duty, please follow steps above for modified duty*. If District is unable to accommodate because the restrictions are too limiting, TD payments will continue. If the District cannot provide modified duty because of the COVID-19 mandatory shutdown, TD payments stop.

Releases from Currently In Process LOAs and Return to Work.

If an employee on a PDL leave is released from her period of actual disability for childbirth and recovery, what is the District's obligation?

The district must evaluate return to work.

- If the employee is released without restrictions, she may be returned to work, if work is available to be performed during the continuing COVID-19 shutdown. If there is no work to return to, either onsite or telework, she will be treated in the same manner as other similarly situated employees who are able to work, but there is no work to perform.
- If the employee is released with restrictions, the District must conduct an interactive process to evaluate if she can perform the essential functions of any work that is available to perform during the continuing COVID-19 shutdown. If she can be reasonably accommodated to begin performing duties with telework or onsite, she should be returned to duty. If there is no work to return to, either onsite or telework, she will be treated in the same manner as other similarly situated employees who are able to work, but there is no work to perform.

If an employee on a FMLA-CFRA leave for their own serious health condition is released to return to work, what is the District's obligation?

- If the employee is released without restrictions, she may be returned to work, if work is available to be performed during the continuing COVID-19 shutdown. If there is no work to return to, either onsite or telework, he or she will be treated in the same manner as other similarly situated employees who are able to work, but there is no work to perform.
- If the employee is released with restrictions, the District must conduct an interactive process to evaluate if she can perform the essential functions of any work that is available to perform during the continuing COVID-19 shutdown. If the employee can be reasonably accommodated to begin performing duties with telework or onsite, he or she should be returned to duty. If there is no work to return to, either onsite or telework, the employee will be treated in the same manner as other similarly situated employees who are able to work, but there is no work to perform.

If an employee performing essential services informs the District or COE that they now have any of the following: COVID-19 symptoms, a known exposure, a medical condition that places them at high risk for serious COVID-19 complications, what is the District's obligation?

Place the employee on leave. The leave to be used in this situation will be from those described in the above section – HR 6201 emergency leave, OR FMLA-CFRA, or EDD disability if the employee contributes to SDI. **For assistance with all interactive processes, contact the hotline**

If an employee exhausts all available paid sick leave and extended sick leave and cannot return to work due to a medical condition (industrial or non-industrial), what is the District's obligation?

Normally, we conduct an interactive process to evaluate whether an employee will be able to recover and return to work within a fixed, finite, and reasonably short period of time. If so, extended unpaid leave may be appropriate as a reasonable accommodation. In the current COVID-19 situation two items will be difficult from a practical perspective;

1. Determining recovery whether recovery will occur within a fixed and finite period of time, particularly for a condition that is related to COVID-19, may be impossible to determine. Medical providers will likely not provide an opinion, without reasonable medical certainty.

2. Obtaining any type of certification or medical opinion will be difficult or impossible as health care providers are not providing notes or certifications, or even communicating with their patients on anything that is not an urgent medical need.

For the above reasons, we recommend that at this time, employees who exhaust all paid leave NOT be placed on the 39-month reemployment list. Rather, they should be kept in unpaid leave status, at least through the end of

If a certificated employee is currently on the 39-month re-employment list, and was placed on the list prior to 3/13/20 for a non-COVID-19 medical inability to return is the district required to let the employee return to work during the shutdown?

If the certificated employee obtains a full duty release to return to work, the employee must be brought back to work under Ed. Code section 44978.1 and the case of Vequez vs. Long Beach Unified School District. CAVEAT: the release must be specific to return to work to perform the essential duties that are required in a remote location performing distance learning, which may be materially different from their regular duties. We recommend an interactive process to address this return to work issue.

The Ed Code does not require reinstatement on the availability of a position; it requires reinstatement once an employee is medically able to return to work: “When the employee is medically able, during the 24- or 39-month period, the certificated employee shall be returned to employment in a position for which he or she is credentialed and qualified.” Section 44978.1’s guaranty of a right to reinstatement within the prescribed time period would be illusory if the District could deny reinstatement on the ground an appropriate position is not available.

If a classified employee is currently on the 39-month re-employment list obtains a full duty release, is the district required to return them to work?

Classified employees may only return from the 39-month reemployment list if there is a vacant, budgeted position in their classification where the work may be performed. For positions where no work is being performed, the answer is no as there are no vacant positions for immediate return. If the classified employee’s classification involves current essential services and there is work to perform, the return to work may be considered through an interactive process.

If an employee is on a prior approved discretionary unpaid leave for one semester or more during the 2019-2020 school year, with specific terms and conditions that it is for the whole period and a temporary employee is backfilling the position, must the District grant the request to rescind the leave to allow the employee to return to work?

No. Pre-approved discretionary leaves may remain in place and there is no legal or policy requirement to allow them to be ended earlier than their agreed upon period of time.

SECTION NINE Employment Discrimination, Reasonable Accommodations, and Retaliation Prevention

EEOC Guidance Regarding COVID-19 pandemic – updated March 21, 2020

What is the title of the EEOC guidance?

Pandemic Preparedness in the Workplace and the ADA

Is this a new guidance?

No. The guidance was first issued in 2009, during the spread of H1N1, but was re-issued and updated on March 21, 2020, in response to the COVID-19 pandemic.

Do the ADA and Rehabilitation Act still apply in light of new guidelines because of the current pandemic?

Yes. They do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC, state or local public health authorities.

What is pandemic planning and preparedness?

This encompasses everything from global and national public health strategies to keep workplaces and employees safe to an individual employer's plan about how to continue business operations.

What is a “direct threat” and why is it important?

A direct threat is an important ADA concept during a pandemic. Whether pandemic viruses rise to the level of a direct threat depends on the severity of the illness. If a health crisis is determined to be a direct threat, disability related inquiries and medical examinations are justified.

As of March, 2020, the CDC and public health authorities have declared that the COVID-19 pandemic meets the direct threat standard.

There would be a significant risk of substantial harm by having someone with COVID-19, or symptoms of it, present in the workplace.

What have the CDC, public health authorities, the WHO and local governments done to slow the spread of COVID-19?

They have imposed significant restrictions on public and private gatherings, as well as issued closure orders for businesses, restaurants, entertainment and sports venues and schools in order to avoid bringing people together in close quarters due to the risk of contagion.

In California, Governor Gavin Newsom issued an Order mandating all of the above closures as well as requiring all California residents to “Stay at Home.”

May an ADA covered employer send an employee home if he or she displays any of the symptoms of COVID-19?

Yes, the employer can and should send the employee home.

During this COVID-19 pandemic, how much information may an ADA covered employer request from employees who report feeling ill at work or who call in sick?

Employers may ask these employees questions regarding their specific symptoms, such as if they have a fever, chills, a cough, shortness of breath or a sore throat.

During this COVID-19 pandemic, may an ADA covered employer take an employee's temperature to determine if they have a fever?

Yes, employers may measure the temperatures of their employees as long as they do so in a non-discriminatory manner. As with all medical information, the fact that an employee has a fever or other symptoms would be subject to ADA confidentiality requirements. Also, employers should be aware that some people who test positive for COVID-19 do not have a fever.

When an employee returns from travel during this COVID-19 pandemic, must an employer wait until the employee develops symptoms to ask questions about exposure to COVID-19 during the trip?

No. employers may and must follow the advice of the CDC and state/local public health authorities regarding asking employees about where they travelled and possible exposures after visiting certain locations, whether for business or personal reasons. The current list of countries that are considered "high risk" are outlined on the CDC webpage.

During this COVID-19 pandemic, may an ADA covered employer ask employees who do NOT have any related symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to complications should they contract COVID-19?

The answer to this would be "not quite yet."

If an influenza pandemic is similar to the H1N1 virus in 2009, disability-related inquiries or requiring medical examinations of employees without symptoms would be prohibited by the ADA.

However, IF an influenza epidemic becomes more severe or serious according to the assessment of local, state, or federal public health officials, ADA covered employers may have sufficient objective information to reasonably conclude that employees will face a direct threat if they contract pandemic influenza. In that case, they may make disability related inquiries or require medical examinations of asymptomatic employees to identify those at higher risk of complications.

As of March 21, 2020, we are not quite there YET with the COVID-19 pandemic. But the situation continues to evolve and this could change any day.

Employers must not assume that all disabilities increase the risk of complications from COVID-19.

If an employee voluntarily discloses that he or she has a specific medical condition that puts him or her at an increased risk of complications, the employer must keep this information confidential.

May an employer allow/encourage employee to work from home ("telework") as an infection-control strategy during this COVID-19 pandemic?

Yes. Telework is an effective infection-control strategy.

May an employer require employees to work from home (“telework”) as an infection-control strategy during this COVID-19 pandemic?

No, unless the employee is exhibiting symptoms or has travelled to one of the high-risk countries, or unless it is mandated by a federal, state, or local order.

Must an employer allow an employee to telework if the employee requests telework as a reasonable accommodation because he or she has a disability that places them at an increased risk of complications should they contract COVID-19?

Yes.

Must an employer go through the interactive process before allowing an employee to telework when that employee requests telework as a reasonable accommodation because he or she has a disability that places them at an increased risk of complications should they contract COVID-19?

This is unclear. The EEOC states: The rapid spread of COVID-19 has disrupted normal work routines and may have resulted in unexpected or increased requests for reasonable accommodation. Although employers and employees should address these requests as soon as possible, the extraordinary circumstances of the COVID-19 pandemic may result in delay in discussing requests and in providing accommodation where warranted. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.

During the COVID-19 pandemic, may an ADA covered employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?

Yes. Asking why an individual who did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

During the COVID-19 pandemic, may an employer require its employees to adopt infection control practices such as regular handwashing, cough and sneeze etiquette or social distancing?

Yes, in fact, employers MUST adhere to the CDC and state/local public health authorities and require this.

During the COVID-19 pandemic, may an ADA covered employer require its employees to wear personal protective equipment (i.e. face masks, gloves and gowns) designed to reduce the transmission of infection?

Yes. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

Moreover, employers should note that the CDC and state and local public health authorities are NOT recommending the use of masks, gloves and gowns as a preventative measure unless the individual is showing symptoms, and then they must be sent home.

During the COVID-19 pandemic, IF a vaccine becomes readily available, may an ADA covered employer compel all of its employees to get the vaccine regardless of their medical conditions or their religious beliefs?

No, an employer is not allowed to force an employee to get a vaccine, but can simply encourage the employees to get the vaccine.

During the COVID-19 pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic?

Yes, as long as it does not create an undue hardship. The only exception is if the employer can demonstrate that the employee with a disability poses a direct threat to others, even after reasonable accommodation.

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

All employees with disabilities whose responsibilities include management during a pandemic must receive reasonable accommodations necessitated by pandemic conditions, unless undue hardship is established.

Must an employer grant FMLA leave to an employee who has COVID-19 or who is caring for a family member that has COVID-19?

Yes. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons. This includes COVID-19 where complications arise that create a “serious health condition” as defined by the FMLA.

See also the FMLA Expansion Act in separate memo.

Employees on FMLA leave are entitled to the continuation of group health insurance coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

Should an employer be flexible with their leave policies in light of the COVID-19 pandemic?

Yes. All employers should review their leave policies to consider providing increased flexibility to their employees during the COVID-19 pandemic, for however long it lasts.

Employers must keep in mind that all leave policies must be administered in a manner that does not discriminate against employees because of race, color, sex, national origin, religion, gender, age, disability, sexual preference, or veteran status.

May employers change their sick leave policy if a number of employees are out due to the COVID-19 pandemic and the employer cannot afford to pay them all?

No, due to the passage of HR 6201, unless the employer is exempt from HR 6201.

If an employer is not mandated by HR 6201, employers may only change their sick leave policy if it is done in a manner that does not discriminate between employees because of race, sex, age, color, religion, national origin, disability, sexual preference or veteran status.

Any such changes to sick leave policies must follow the requirements of the FMLA and the ADA.

May an employee stay home under FMLA leave to avoid contracting COVID-19 in the workplace?

The FMLA protects eligible employees who are incapacitated by a serious health condition, as may be the case with COVID-19 where complications arise, or who are needed to care for covered family members who are incapacitated by a serious health condition. Leave taken by an employee for the purpose of avoiding exposure to the flu would not be protected under the FMLA.

It should be noted that mysophobia (fear of germs) is a recognized disability. If an employee indicates the disability of mysophobia, the correct employer's response would be to allow telework as a reasonable accommodation. Such an employee would NOT be entitled to FMLA leave because they would not have a serious health condition.

If an employer is forced to temporarily close his or her place of business because of the COVID-19 pandemic and chooses to lay off some, but not all, employees, what governs this decision?

In making such layoff decisions, the employer is prohibited from making these decisions based on race, sex, age, color, religion, national origin, disability, sexual preference or veterans' status.

If an employer is hiring, may it screen applicants for symptoms of COVID-19?

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job.

This ADA rule allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment.

Employers should be aware that some people with COVID-19 do not have a fever.

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Yes, an employer MUST delay the start date in this situation because an individual who has COVID-19 or symptoms associated with it cannot be in the workplace.

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Yes. An individual who has COVID-19 or symptoms associated with it cannot be in the workplace.

When the COVID-19 pandemic ends, may an ADA covered employer require employees who have been away from the workplace to provide a doctor's note certifying fitness to return to work, a medical examination, or a time period during which the employee has been symptom free?

Yes, if the employee was away from work because the employee had COVID-19 or was showing symptoms relating to it. No, if the employee was away from work because they were mandated by a federal, state, or local government order or order from a public health authority.

The employer must have a reasonable belief – based on objective evidence – that the employee's present medical condition would either (1) impair his or her ability to perform the essential functions of his job, with or without a reasonable accommodation; or (2) pose a direct threat to safety in the workplace.

As a practical matter, doctors and other health care professionals may be too busy during and immediately after this pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.

Do we have any Disability or National Origin Harassment concerns related to the COVID-19 coronavirus?

Employers cannot select employees for disparate treatment based on disability or national origin. The CDC recently warned: "Do not show prejudice to people of Asian descent, because of fear of this new virus. Do not assume that someone of Asian descent is more likely to have COVID-19."

Employers will need to closely monitor any concerns that employees of Asian descent are being subjected to disparate treatment or harassed in the workplace because of national origin. This may include employees avoiding other employees because of their national origin.

An employer may not base a decision to bar an employee from the workplace on the employee's national origin. However, if an employee, regardless of their race or national origin, was recently in China and has symptoms of the COVID-19 coronavirus, you may have a legitimate reason to bar that employee from the workplace.

Reasonable Accommodation and COVID-19 – Examples from the EEOC Guidance

An employer receives a request from an essential worker in a public agency. The worker has an underlying impairment and takes medication that suppresses their immune system. The worker requests an accommodation allowing him to reduce direct contact with people and to wear a mask in order to limit possible exposure to the virus? How should the employer respond?

If the individual has a disability under the ADA (or FEHA) that may put them at risk for complications of COVID-19, the employer must treat the request as an accommodation request under the ADA and go through the interactive process to determine if the accommodation is reasonable.

NOTE; With regard to reducing direct contact, under current orders from the California Governor, all California employees must be limiting direct contact and practicing social distancing (6 feet apart) among employees to the extent possible. This applies primarily to employees who are providing essential services, and therefore must be at work, or perform work that can be accomplished from remote locations through telework arrangements.

An employer receives a request from a worker in her 70's whose spouse is also in his 70's and has diabetes. She requests telework due to concerns about being exposed to the virus and then exposing her spouse. How should the employer respond?

The employee herself does not have a covered disability. An employer would not have to accommodate her request based on the fact that her husband has a disability. However, her age does place her in a higher risk category and the Governor's order mandates that persons age 65 and older not go to work. Additionally, all employers are encouraged to be flexible with their leave policies and accommodations during the COVID-19 pandemic. Therefore, it would be recommended that the employer allow her to telework if that is at all possible. If it is not possible to telework, possible leaves should be discussed.

An employer is aware of an employee with a known medical impairment but this employee has never needed any type of accommodation before. May the employer offer this employee the option to telework to help reduce the risk of the employee contracting the virus?

Yes. According to the EEOC, an employer may ask an employee with a known disability whether they need an accommodation such as telework, even if that employee had never received an accommodation before, as long as the employer has a reasonable belief that the accommodation is needed.

This must be done on a case-by-case basis and confidentiality must be maintained.

An employer has employees with known disabilities for which accommodations have been granted prior to the COVID-19 pandemic. One employee has back issues and requires a special standing desk and other special equipment. The other employee has low vision and has a special screen-reader on her work computer as a reasonable accommodation. How must the employer deal with these situations if the employees will be working remotely from home?

If at all possible, in the first case, the employer must provide the same type of desk and special equipment for the employee to use at home as she uses at the office. In the second situation, the employer should provide the employee with a screen reader to use at home. If this poses an undue hardship to the employer, they should discuss an alternative reasonable accommodation

Does COVID-19 emergency declarations supersede or suspend HIPAA privacy rules for Protected Health Information?

No, employers must still comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 coronavirus outbreak. The Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) issued a reminder after the WHO declared a global health emergency. In fact, the Rule includes provisions that are directly applicable to the current circumstances.

What are an employer's obligations under the HIPAA privacy rules if contacted by officials asking for emergency personal health information about an employee's?

The privacy restrictions mandated by HIPAA only apply to "covered entities" such as medical providers or employer-sponsored group health plans, and then only in connection with individually identifiable health information. Employers are not covered entities, so if you have medical information in your employment records, it is not subject to HIPAA restrictions. However, disclosures should be made only to authorized personnel, and care should be taken even in disclosures to government personnel or other groups such as the Red Cross. Further, you should be careful not to release information to someone until you have properly identified them.

How should a district or COE employer maintain medical information?

Treat all medical information as confidential and afford it the same protections as those granted by HIPAA in connection with any group health plan. In certain circumstances, plan information, may be shared with government officials acting in their official capacity, and with health care providers or officially chartered organizations such as the Red Cross. PHI can be shared with health or medical providers to help in treatment. PHI may also be shared with providers or government officials as necessary to locate, identify, or notify family members, guardians, or anyone else responsible for an individual's care, of the individual's location, general condition, or death. In such case, if at all possible, obtain the individual's written or verbal permission to disclose.

Finally, information can be disclosed to authorized personnel without permission of the person whose records are being disclosed if disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public.

These restrictions remain in effect, even after the outbreak has been declared a pandemic.

May covered entities share protected health information with public health authorities?

When there is a legitimate need to share information with public health authorities and others responsible for ensuring public health and safety, covered entities may share PHI to enable them to carry out their public health responsibilities. This may arise with the current outbreak of COVID-19. The key, as always, is to limit disclosures to the *minimum necessary* to the purpose, strictly in accordance with these parameters. Covered entities may share information *as necessary* with the Centers for CDC, as well as health departments, as appropriate for public health and safety.

SECTION TEN: Telework Considerations for Employees Working From Home or Remote Locations

May an employer encourage or require employees to telework (i.e., work from an alternative location such as home) as an infection control strategy?

Yes. An employer may encourage or require employees to telework as an infection-control or prevention strategy, including based on timely information from public health authorities about pandemics, public health emergencies, or other similar conditions. Telework also may be a reasonable accommodation.

Employers must not single out employees either to telework or to continue reporting to the workplace on the basis of race, sex, national origin, religion, sexual preference, disability or veteran's status.

Must employers pay employees their same hourly rate or salary if they are working at home during the COVID-19 pandemic?

Yes, if the telework arrangement is being provided as a reasonable accommodation to the employee because of a disability relating to the COVID-19 pandemic, or to prevent the spread of the virus, or because it is mandated by a local, state, or federal order, employers must pay their employees the same hourly rate or salary that they would have earned had they been working in the workplace, as well as any approved overtime.

What about salaried employees if the business is operating at reduced hours?

Normally, salaried workers must be paid their full salary irrespective of how many hours they work, unless the business is closed for a full workweek and the person performs no work at all. If a business is forced to shut down part of the way through a workweek, exempt workers must be paid as if they worked the full week if they worked any hours at all before the entity shut down. Note: The “emergency carve out” of allowing exempt employees to perform nonexempt work in emergency situations without putting their exempt status at risk does not come into play here because employers DO have the opportunity to plan things out.

Are employers required to cover any additional costs that employees may incur if they work from home (internet access, computer, additional phone line, increased use of electricity, etc.)?

If an employee is working from home because of a qualified disability, and the telework is a reasonable accommodation of that disability, the employer is obligated to pay for such expenses.

Moreover, in California, when employees are working from home based on a mandatory edict from their employer, business costs such as Internet access, computer, phone lines, cell phones, electricity, etc. cannot be passed on to the employees and must be reimbursed by the employer.

Employers may not be required to cover such expenses if it would be a financial hardship to the employer.

Do OSHA’s regulations and standards apply to the home office? Are there any other Federal laws employers need to worry about if employees work from home?

OSHA does not have any regulations regarding telework in home offices. The agency issued a directive in February 2000 stating that the agency will not conduct inspections of employees' home offices, will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees.

If OSHA receives a complaint about a home office, the complainant will be advised of OSHA's policy. If an employee makes a specific request, OSHA may informally let employers know of complaints about home office conditions, but will not follow-up with the employer or employee.

Employers who are required to keep records of work-related injuries and illnesses will continue to be responsible for keeping such records for injuries and illnesses occurring in a home office.

How important is it for employers to have a clear policy in place regarding employees working from home?

Essential. Employers must spell out their policy clearly and in writing. If the employer already had a telework policy in place, they should ensure it is current, up to date, and clear. If there was no official telework policy in place, they should quickly draft one and disseminate it to all employees.

Employers should also be understanding of employees who have trouble adjusting to working from home and be solution oriented.

What should be included in a telework policy?

The policy should clearly state the expectations regarding start and stop times, the extent to which employees are expected to be available, when overtime is appropriate and approved, productivity standards and whether any conference calls or virtual meetings will be required.

What is required regarding consistency?

It is very important that employers apply their telework policies consistently among all employees in their organization. This is to prevent discrimination claims down the road.

How should employees track their hours when working from home?

An electronic timekeeping system that employees can log into would be ideal. Other options would be a daily or weekly email from an employee to their supervisor attesting to the hours they worked that day or week or a written timesheet filled out by hand and turned in daily or weekly.

From a management perspective, it is much better to have the employee self-report their time to put the responsibility on them.

Should employers be flexible on work timing when employees are working from home, in light of the COVID-19 pandemic?

Yes. Employers should maintain a bit of flexibility on their employees' exact work hours given the fact that so many factors are coming into play, such as parents needed to take care of their kids while school is out.

In exchange for employer flexibility, employees should be responsible to get their work done, even if they are working at non-regular times.

Must an employee who receives an accommodation for a disability be afforded the same accommodation when working from home?

Yes. If an employee is afforded a disability accommodation when they are in the office, employers must still allow those accommodations even when the employee is working from home.

If an employer needs to provide specialized equipment for the employee to use at home, this should be a conversation between the employer and employee and the employer should accommodate the disability unless it would be an undue hardship for the employer.

Is regular communication important between managers/supervisors and employees when employees are working remotely?

Yes. “Out of sight, out of mind” can be a real problem for many remote workers. Daily communication is recommended, generally once at the beginning of the day and once at the end of the day.

Loneliness and feelings of isolation are common with remote workers, which can make them feel less motivated and less productive; regular communication will help with this.

What are some of the issues that must be discussed with employees who will be working from home?

Policies regarding confidentiality, business continuity, using their own devices for work, where employees should turn for help, and best practices for maintaining a safe workspace.

What type of communication is best between managers/supervisors and remote workers?

Face to face communications are best, such as video calls, Skype or Zoom.

It’s important for managers and supervisors to also make time for non-work-related communications with their employees, similar to what they would experience in the office setting.

What infrastructure is needed for a telework arrangement for work performed from home?

Identify the roles that are critical to your essential services and operations and determine whether those individuals can carry out their jobs while working remotely. Provide support to assist with the inevitable questions and IT problems that will arise. Implement sufficient security and privacy protocols.

How should public schools and departments prepare for a remote work activities?

- Take an inventory of the types of equipment your workers would need to get their job done and ensure they have access to them. This includes desktop computers, monitors, phones, printers, chargers, laptop or tablet, office supplies, peripherals, external backup capabilities, smartphones and access materials.
- Clearly communicate with your workers about which physical items are acceptable to be taken from the workplace and which need to stay in your location at all times.
- Communicate security protocols and work rules for maintaining confidentiality for key materials within their homes.
- Develop a remote work policy if you do not have one in place, or review and update your existing policy as it relates to this specific situation.

What should be included in a telework policy?

The policy should clearly address the expectations for maintaining operational security, continuity of key operations, and regular communication channels with both internal organization and external

(vendor) resources. Consider all aspects of their work and Ensure they understand what is expected of them.

- Will there be exemptions for “essential” personnel that need to be at a certain physical location?
- Will they need to be available at all times during working hours, or will remote meetings and appointments be scheduled ahead of time? (Take into account that your workers’ lives may be disrupted in other ways because of the COVID-19 outbreak, and therefore they may not be able to maintain normal working hours during this time or may be somewhat distracted by family or medical obligations during certain times of the day.)
- Will remote meetings take place online, over the phone, or on camera?
- Will you prohibit employees from meeting together in person during this period? How will you only restrict in-person meetings of a certain size (no more than three or five workers) and assure social distancing?
- Establish sufficient security infrastructure in place (encryption, password-protection, log-out/lock requirements, etc.) and are your workers aware of your requirements to prevent data breaches or other loss?
- Can workers perform work on their own devices, and if so, do you have a comprehensive BYOD (bring your own device) policy in place?
- Consider the impact of the California Public Records Act (CPRA) on the storage and exchange of information between and among remote locations. This includes maintaining and securing email, text messages, and other exchanges of information and documents that are part of the district or COE’s business operations. Assure that adequate backups of all business communications are maintained.
- Include an anticipated end date in your remote work announcement, and/or inform your employees that you will provide regular updates regarding the status of the remote work period. Guidance will be necessary from governmental agencies, so assure employees that the guidelines will be monitored and updated on a regular basis.

What else should employers be doing to Ensure the transition to telework maintains operational continuity and security?

Employers should review insurance policies to ensure coverage for remote work situations, ensure data privacy and security, and address systems and equipment needs of employees who may not be set up to work from home.

What are some key safeguards employers can implement to ensure data privacy and security with so many employees working remotely?

1. Permit access only through VPN or similar connection;
2. Require two-factor authentication;
3. Supply employees with secure laptops;

4. Make employees aware of phishing attacks (even more of a concern now as hackers are using the coronavirus as part of their attacks);
5. Make employees aware of where and how to report a data incident;
6. Require that entity data only be saved to the network and not personal devices;
7. Don't permit others to access the entity's systems, including the personal device that has access to the entity's systems;
8. Set devices to lock automatically for periods of nonuse;
9. Remind employees not to print sensitive corporate materials unless the reason to do so outweighs the risk;
10. Remind employees not to send sensitive or confidential data to personal email or cloud accounts.

What should administrators and managers consider when managing remote workers?

With an unprecedented number of employees working from home, including many public schools that have not traditionally embraced telework, there are many considerations that come into play. The most important guidelines are:

1. Ensure to have a clear policy in place
 - a. Employers must spell out their policy clearly and in writing.
 - b. If a policy was already in place, Ensure it's current, up to date, and clear.
 - c. If there was no "work from home" policy in place before, they should quickly draft one and disseminate it to their employees.
 - d. Clearly state the expectations regarding:
 - i. Start and stop times Ensure employees know when overtime is appropriate and approved
 - ii. The extent to which they're expected to remain available
 - iii. Productivity standards
 - iv. Whether any conference calls or virtual meetings will be required
2. Ensure to apply the "work from home" policies consistently among all similarly situated employees.
3. Track hours accurately
 - a. Employees must be paid their regular hourly rate or salary, as well as any overtime
 - b. An electronic timekeeping system that employees can log into would be ideal. Other options:
 - i. A daily email from an employee to their supervisor attesting to the hours they work
 - ii. A written timesheet filled out by hand and turned in weekly
 - c. From a management perspective, it's best to have the employee self-report their time to put the responsibility on them

4. Flexibility on work deadlines that are not “compliance driven.”
 - a. Employers should maintain a bit of flexibility on their employees’ exact work hours given the fact that so many factors are coming into play, such as parents needed to take care of their kids while school is out.
 - b. Employers should offer flexibility on work hours and employees should be responsible to get the work done at different times if needed.

5. Workers’ expenses – California
 - a. In California, when employees are working from home based on a mandatory edict from their employer, the entity’s business costs cannot be passed on to the employees.
 - i. This would include cell phones to make their phone calls or internet cost.
 - ii. These costs must be reimbursed, per the Labor Code

6. Disability Accommodations must transfer
 - a. If an employee is afforded a disability accommodation when they are in the office, employers must still allow those accommodations even if they are working remotely.
 - i. Frequent breaks for rest and self-care
 - ii. Something harder to accommodate would be if the accommodation involves specialized equipment like a special desk or equipment. The question becomes whether the employer will need to provide something like this for a worker working from home. The answer is unclear.

SECTION ELEVEN: Workplace Safety and Health

An essential services employee who is exempt from the stay at home order has tested positive for COVID-19. What should the employer do?

Send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread. Before the employee departs, ask them to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. When sending the employees home, do not identify by name the infected employee or you could risk a violation of confidentiality laws. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

The **CDC also provides the following recommendations** for most non-healthcare businesses that have suspected or confirmed COVID-19 cases:

- It is recommended to close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection to minimize potential for exposure to respiratory droplets. Open outside doors and windows to increase air circulation in the area. If possible, wait up to 24 hours before beginning cleaning and disinfection.

- Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons, focusing especially on frequently touched surfaces.
- To clean and disinfect:
 - If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection
 - For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common EPA-registered household disinfectants should be effective.
 - Diluted household bleach solutions can be used if appropriate for the surface. Follow manufacturer's instructions for application and proper ventilation. Check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted.
 - Cleaning staff should wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.
 - Gloves and gowns should be compatible with the disinfectant products being used.
 - Additional PPE might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash. Follow the manufacturer's instructions regarding other protective measures recommended on the product labeling.
 - Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area. Be sure to clean hands after removing gloves.
 - Employers should develop policies for worker protection and provide training to all cleaning staff on site prior to providing cleaning tasks. Training should include when to use PPE, what PPE is necessary, how to properly don (put on), use, and doff (take off) PPE, and how to properly dispose of PPE.
 - if employers are using cleaners other than household cleaners with more frequency than an employee would use at home, employers must also ensure workers are trained on the hazards of the cleaning chemicals used in the workplace and maintain a written program in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200).

Essential services employees with suspected but unconfirmed COVID-19 symptoms:

Take the same precautions. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.

Essential services employees who self-report that they have a known exposure to someone who is positive for COVID-19: Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.

Can an employer require an employee to notify the district or COE if they have been exposed, have symptoms, and/or have tested positive for the COVID-19 coronavirus?

Yes, you should require any employee who becomes ill at work with COVID-19 coronavirus symptoms to notify their supervisor. Employees who are suffering from symptoms should be directed to remain at home until they are symptom-free for at least 24 hours.

While outside of work, if an employee begins experiencing symptoms, has been exposed to someone that is exhibiting symptoms, or has tested positive, the employee should contact your company by telephone or email and should not report to work.

What precautions are needed for individuals who are taking the temperatures of employees?

To protect the individual who is taking the temperature, you must first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction. Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs.

If an employer learns or suspects that an employee has COVID-19, is there a responsibility to report this information to the CDC?

No. There is no obligation to report a suspected or confirmed case of COVID-19 to the CDC. The healthcare provider that receives the confirmation of a positive test result is a mandatory reporter who will handle that responsibility.

What steps should public schools take in the workplace to minimize risk of transmission between personnel who perform essential services?

Repeatedly and aggressively urge employees and others to take the same steps they should be taking to avoid the seasonal flu. For the annual influenza, SARS, avian flu, swine flu, and now the COVID-19 coronavirus, the best way to prevent infection is to avoid exposure. The messages you should be giving to your employees are:

- Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer
- Avoid touching their eyes, nose, and mouth with unwashed hands.
- Avoid close contact with others, especially those who are sick.
- Refrain from shaking hands with others for the time being.
- Cover all coughs or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and all surfaces.
- Dispose of trash safely and promptly.
- Require all individuals who are sick or have a known exposure to stay home
- Provide employees with well stocked facilities to wash their hands, including tepid water and soap, and that third-party cleaning/custodial schedules are accelerated.
- Encourage and enforce social distancing in all spaces – including restrooms and smoking areas

- Evaluate your remote work capacities and policies (see later section on Remote Work for more information). Teleconference or use other remote work tools in lieu of meeting in person if available.
- Consider staggering employee starting and departing times, along with lunch and break periods, to minimize overcrowding in common areas such as elevators, break rooms, and other metal or solid surfaces.
- Have a single point of contact for employees for all concerns that arise relating to health and safety. Maintain confidentiality to the greatest extent possible, and release PHI only as required by law, within the parameters of this emergency pandemic declaration.
- Follow updates from the CDC and the World Health Organization (WHO) regarding additional precautions.
- Review OSHA's Guidance on Preparing Workplaces for an Influenza Pandemic for additional information on preparing for an outbreak.

OSHA Guidance for Employers In Light of COVID-19 Pandemic

How are the OSHA Guidelines similar to the CDC Guidelines for employers?

The two documents and agencies are **substantially similar**. Because the CDC Guidelines were covered in depth, only the applicable portions of the OSHA Guidelines that are different or offer additional information are being covered here. Moreover, OSHA addresses issues relating to many industries that are not relevant to our clients.

What must an employer do to prepare for this continuing pandemic, in addition to developing an Infectious Disease Preparedness and Response Plan, as outlined by the CDC?

Employers should consider and address the level(s) of risk associated with their various worksites and the job tasks that workers perform at those signs and classify them as low, medium, high, or very high risk.

Such considerations may include:

1. Where, how and to what sources of the virus might workers be exposed
2. Non occupational risk factors at home and in community settings
3. Workers' individual risk factors
4. Controls necessary to address the risks

What is the "hierarchy of controls," advocated by OSHA?

OSHA uses a framework called the "hierarchy of controls" to select ways of controlling workplace hazards. This means that the best way to control a hazard is to systematically remove it from the workplace, rather than relying on workers to reduce their exposure.

During the COVID-19 pandemic, it may not be possible to eliminate the hazard; therefore, the most effective protection measures are (listed from most effective to least effective): The need

for employers to implement engineering controls, administrative controls, safe work practice controls, and personal protective equipment (PPE).

What should be considered when determining which type of control to use?

The ease of implementation, the effectiveness and the cost. In most cases, a combination of control measures will be necessary to prevent workers from exposure.

What are the engineering controls?

These involve isolating employees from work-related hazards. This is the most cost effective and does not rely on worker behavior. They include:

1. Installing high efficiency air filters.
2. Increasing ventilation rates in the workplace.
3. Installing physical barriers, such as clear plastic sneeze guards.
4. Installing a drive through window for customer service.
5. Installing specialized negative pressure ventilation in some settings.

What are administrative controls?

These involve action by the worker or employer and are typically changes in work policy or procedures to reduce or minimize exposure to the hazard. They include:

1. Encouraging or requiring sick workers to stay home.
2. Minimizing personal contact and using more virtual communications.
3. Implementing telework, if feasible.
4. Establishing alternating days or extra shifts that reduce the total number of employees at any one time.
5. Discontinuing non-essential travel to “high risk” locations.
6. Developing emergency communications plans, including a forum for answering workers concerns.
7. Providing workers with up to date education and training on COVID-19 risk factors and protective behaviors.
8. Training workers who need to use protecting clothing and equipment, including how to put it on, how to use and wear it, and take it off correctly in the context of their duties.
9. Ensuring that psychological and behavioral support is available to address employee stress.

What are safe work practices?

These involve types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to the hazard. Examples include:

1. Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
2. Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs

containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.

3. Post handwashing signs in restrooms.

What is the role of Personal Protective Equipment (PPE)?

While engineering and administrative controls are considered more effective in minimizing exposure to COVID-19, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies. Examples of PPE include:

1. Gloves
2. Goggles
3. Face shields
4. Face masks
5. Respiratory protection

All types of PPE must be:

1. Selected based upon the hazard to the worker.
2. Properly fitted and periodically refitted, as applicable (e.g., respirators).
3. Consistently and properly worn when required.
4. Regularly inspected, maintained, and replaced, as necessary.
5. Properly removed, cleaned, and stored or disposed of, as applicable, to avoid contamination of self, others, or the environment/

Whose job is it to provide the PPE?

Employers are obligated to provide their workers with PPE needed to keep them safe while performing their jobs.

What other factors come into play when determining PPE recommendations?

Geographic location, updated risk assessment, and continuing information about the virus and its spread.

Employers should consider factors such as function, fit, ability to decontaminate, disposal, and cost.

Training should address selection, use (including donning and doffing), proper disposal or disinfection, inspection for damage, maintenance, and the limitations of respiratory protection equipment.

Does the “General Duty” clause for all employers apply during the COVID-19 pandemic?

Yes. The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), “requires employers to furnish to each worker employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

What other standards are required by OSHA?

General OSHA standards and requirements still apply, which include the following:

1. Recordkeeping requirements.
2. Injury/illness recording criteria.
3. Application of standards related to sanitation and communication of risks related to hazardous chemicals that may be in common sanitizers and sterilizers.

What determines whether a workplace is low risk, medium risk, high risk, or very high risk, according to OSHA standards?

The level of risk depends in part on the following:

1. Industry type,
2. Need for contact within 6 feet of people known or suspected of being infected, OR
3. Requirement of repeated or extended contact with persons known or suspected of being infected

What are some examples of employees in very high-risk exposure workplaces?

Healthcare workers, laboratory personnel and morgue workers.

What are some examples of employees in medium risk exposure workplaces?

Workers who have frequent contact with travelers who may return from “high risk” international countries, school administrators, teachers and support staff, workers in high population density work environments, and workers in high volume retail settings.

What are some examples of employees in low risk exposure workplaces?

Workers who have minimal occupational contact with the public and other coworkers.

Is COVID-19 an “Illness” under OSHA’s Recordkeeping Rules?

OSHA’s recordkeeping rules apply only to injuries or “illnesses.” The rule defines an injury or illness as “an abnormal condition or disorder.” Illnesses include “both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.” Despite this broad definition, OSHA has essentially excluded from coverage cases of the common cold or the seasonal flu. OSHA has made a determination that COVID-19 should *not* be excluded from coverage of the rule – like the common cold or the seasonal flu – and, thus, OSHA is considering it an “illness.” However, OSHA has stated that only confirmed cases of COVID-19 should be considered an illness under the rule. **Therefore, if an employee simply comes to work with symptoms consistent with COVID-19 (but not a confirmed diagnosis), the recordability analysis would not necessarily be triggered at that time.**

What should you do with respect to reporting if an employee tests positive for COVID-19?

COVID-19 will likely not be a work-related injury unless it can be shown the employee contracted it through work or there are some extenuating circumstances. OSHA requirements focus on work-related injuries. **If someone tests positive, or contracts a mild case of the COVID-19, there is no need to report to OSHA. If someone is hospitalized and you believe they may have contracted the illness through work, report to OSHA to ensure compliance.**

If a call is placed to OSHA, **inform OSHA know you do not know yet if it is a work-related injury and you will let them know when you have more information.**

Any industrial injury claim that is submitted will be evaluated in the same manner as any other claim of workplace injury. The claim may be delayed for investigation and ultimately a determination will be made of whether it arises out of employment or was incurred in the course of employment. Ultimately, it will be accepted or denied with the same careful approach as all other claims are handled. [Cal/OSHA webpage on Requirements to Protect Workers from Coronavirus](#)

When is a confirmed COVID-19 illness a recordable OSHA event?

If an employee has a confirmed case of COVID-19, the employer must determine whether the exposure and subsequent illness was “work-related” as defined by the rule. Then, if it is work-related, the employer must, whether it resulted in a fatality, days away from work, restricted duty, or medical treatment beyond first aid). Given current protocols for treating COVID-19, it is likely that for any case that is confirmed, the additional severity criteria will be met, as affected persons are instructed to self-quarantine and stay home. The primary issue for employers therefore becomes whether a particular case is “work-related.”

A particular illness is work-related under the rule if an event or exposure in the workplace or surrounding environment, either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for illnesses that result from events or exposures in the work environment, unless certain exceptions apply. One of those exceptions is that the illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs *outside* of the work environment. Thus, if an employee develops COVID-19 *solely* from an exposure outside of the work environment, it would not be work-related, and thus not recordable.

The employer’s assessment should consider the work environment itself, the type of work performed, risk of person-to-person transmission given the work environment, and other factors such as community spread. Healthcare work environments, where job activities are more likely to result in person-to-person exposure, would present a more likely scenario of work-relatedness than non-healthcare settings. Because each work environment is different, employers must conduct an individualized assessment when a confirmed case of COVID-19 presents.

When is a confirmed COVID-19 illness reportable OSHA event?

In 2020, the definition of serious injury or illness which most likely includes COVID-19. There are also changes to the required reporting time from 8 hours of knowledge to “immediate” reporting. Late reporting to OSHA may result in a \$5,000 fine. I have attached slides from our October workshop. You can also go to the CAL OSHA website www.dir.ca.gov in order to get the most up-to-date information.

As with the recordability analysis above, if an employee has a confirmed case of COVID-19 that is considered work-related, an employer would need to report the case to OSHA if it results in a fatality or in-patient hospitalization of one or more employees. It is important to note, however, that the reporting obligation is time-limited. Thus, if a fatality due to COVID-19 occurs after 30 days from the workplace incident leading to the illness, an employer is not required to report it. Similarly, if the in-patient hospitalization occurs after 24 hours from the workplace incident

leading to the illness, an employer is not required to report. Given the nature of COVID-19 and the disease progression, this may result in fewer reports to OSHA despite expected hospitalization of cases going forward.

Has Cal/OSHA put out any other guidelines?

Yes. They have published the following additional Guidelines:

1. Health and Safety Guidance for Childcare Providers – can be found [HERE](#).
2. Interim Guidance for Protecting Health Care Workers – can be found [HERE](#).
3. Interim Guidance for General Industry – can be found [HERE](#).

SECTION TWELVE: Workers' Comp Issues that Arise in Light of the COVID-19 Epidemic

What should employers who are dealing with current pending workers' compensation claims expect in light of the COVID-19 pandemic?

Government office closings, as well as Governor Newsom's Executive "Stay at Home" order have caused courts and offices to be closed, so expect delays in the processing of workers' compensation claims.

Is COVID-19 an occupational or non-occupational disease?

A nonoccupational disease does not arise out of a person's employment and is non-compensable. Generally, a cold or flu would not be classified as an occupational disease. However, the coronavirus is likely considered a "special exposure," and would be compensable under the exceptions to the rule of non-compensability.

What are the exceptions to the rule of non-compensability?

There are two recognized exceptions to the general rule of non-compensability for nonoccupational disease. An injury resulting from a nonoccupational disease may be compensable if:

1. The employment subjects the employee to an increased risk compared to that of the general public; or
2. The immediate cause of the injury is an intervening human agency or instrumentality of the employment.

Does a worker who works with the general public have a claim for workers' comp benefits if they contract COVID-19?

Possibly. In 2018 and 2019, thousands of people in California contracted Valley Fever, a fungal infection. The Workers' Comp Board of California opined that "industrial causation of the illness for workers' comp claimants was established if the employees' risk of contracting the infection from employment was medically probably or materially greater than from the general public.

It will be difficult to prove exactly where a worker contracts the disease.

What is most likely going to be the test?

The general test in determining whether an injury “arises out of and in the course of employment” is whether the employee was involved in some activity where they were benefitting the employer and was exposed to the virus. Importantly, special consideration will be given to health care workers and first responders, as these employees will likely enjoy a presumption that any communicable disease was contracted as the result of employment. This would also include plant nurses and physicians who are exposed to the virus while at the worksite.

As for other categories of employees, compensability for a workers’ compensation claim will be determined on a case-by-case basis. The key point will be whether the employee contracted the virus at work and whether the contraction of the disease was “peculiar” to their employment. Even if the employer takes all of the right steps to protect the employees from exposure, a compensable claim may be determined where the employee can show that they contracted the virus after an exposure, the exposure was peculiar to the work, and there are no alternative means of exposure demonstrated.

Will an employee seeking workers’ comp benefits still need to provide medical evidence to support the claim?

Absent state legislation, an employee seeking workers’ compensation benefits for a coronavirus infection will still have to provide medical evidence to support the claim. Employers who seek to contest such a claim may be able to challenge the allowance if there is another alternative exposure or if the employee’s medical evidence is merely speculative.

What type of workers are most likely to be allowed to claim that illnesses from COVID-19 are an industrial injury?

Health care providers and first responders for sure. Others will be more on a case-by-case basis.

For the majority of workers, exposure and/or contraction of COVID-19 is not considered to be an allowable, work related condition.

What criteria should be considered if an employee files a workers’ comp claim arising out of an illness relating to COVID-19?

1. Was there an increased risk or greater likelihood of contracting the condition due to the workers’ occupation?
2. If not for their job, would the worker have been exposed to the virus or contracted the condition?
3. Can the worker identify a specific source or event during the performance of his or her employment that resulted in exposure to COVID-19?

Should an employer provide a claim form to an employee who has contracted COVID-19?

Based on the ruling of *Honeywell v. Workers’ Comp Appeal Board* (2005) 35 Cal.4th 24, an employer would not have to provide a claim form to an employee with COVID-19 until it knows of an injury or claim. It does not have to provide a claim form just because it “reasonably certain” of an industrial injury or claim.

Generally, the employee must ask for the claim form or tell the employer he/she believes the was contracted on an industrial basis to trigger the duty to provide a claim form. Also, because knowledge can come from “any source,” if an employer receives a medical report or any other information documenting the COVID-19 virus was contracted at work, that would also trigger the duty to provide a claim form.

Must workers’ compensation benefits be provided if an employee is quarantined?

No. Employers are not required to provide workers’ compensation benefits to an employee who is sent home during a COVID-19 quarantine period. Per Labor Code section 3208.1, an injury must cause disability or the need for medical treatment to be compensable.

Employers can choose to voluntarily provide benefits to employees. Several companies have already stated their support for providing benefits. For example, in early March, Walmart announced that they would provide two additional weeks of sick leave pay to employees who were quarantined and that absences during the time they are out would not count against attendance. Moreover, they announced that they would provide 26 weeks of paid leave to any employee with a confirmed case of the virus.

Is there any case law to support this?

Yes. In **Aromin v. Workers’ Comp Appeals Board** (1983), a nurse was exposed to chicken pox at work. She was not previously exposed. The employer notified her she could not return to work until there was no longer any possibility, she might be infectious. Applicant received three days of accrued sick leave but did not receive any TD benefits for the 10 days she was off work. Applicant did not contract chicken pox as a result of her work exposure.

The Workers’ Comp Appeals Board held that the applicant was not entitled to workers’ comp benefits because a prophylactic layoff did not constitute an injury within the meaning of the Labor Code.

Also, very recently in **Armenta v. SSA Pacific, Inc.** (2019) the applicant claimed injury to his chest, nervous system, and respiratory system as a result of “asbestos exposure.” The treating physician reported applicant had an increased risk of developing asbestos-related lung disease in the future, but this may take decades to develop. The QME concluded that the applicant had no evidence of asbestos related disease. The applicant requested an award of medical care in the form of “monitoring his substantially increased susceptibility” to asbestos.

The Workers’ Comp Appeals Board concluded that the applicant did not have a compensable injury. The applicant’s claim for monitoring of asbestosis was premature because he had not established an actual diagnosis of asbestosis or some other industrial basis to support the claim. Further, although the need for medical treatment alone may entitle an employee to workers’ comp benefits, the need for monitoring alone did not rise to the level of a compensable injury.

If an employee has a pre-COVID-19 work related injury and is on TTD, does their TTD stop or continue in light of the COVID-19 crisis?

There is no clear answer to this, but coronavirus should not be an excuse to end TTD benefits. If an employee is off work as a result of an industrial injury and also contracts coronavirus, TTD

continues. If an employee who was previously declared TTD is unable to see a doctor due to issues relating to COVID-19, TTD will likely depend on the facts that particular situation.

What if an employee contracts COVID-19 on a business trip, does that make the workers' comp claim compensable?

It depends. While an employee who contracts a disease while traveling for business may be eligible for workers' compensation benefits in many jurisdictions, the analysis will be very fact-specific. In most states, the worker will need to satisfy the test for compensability outlined above. States often differentiate between exposures that occur while "working" during a business trip versus exposures that occur during "down time." Some states create almost strict liability for any injury that occurs on a business trip, whether the employee is working or not. But again, in order to have a compensable claim, the employee must, at a minimum, establish that they had an exposure to the coronavirus while traveling for business.

This material is provided as part of your package of resources for the Hotline from Eyres Law Group

These FAQs are based on information and source material generated through 3-25-20. This is a fluid and evolving legal and public health emergency. These FAQs provide information on legal principles and practices and interactive skill building. While the information is accurate and up to date, it is not intended to, and does not constitute, legal advice on any individual situation. For specific advice on particular matters, consult the Eyres Law Group legal hotline or your district counsel.

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Through the Hotline program, we will be providing frequent updates and supplements to this resource as well as further print resources and webinars.