

COVID-19: The Moving Target of Compliance



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Today's Webinar

Yes! The Power Point Deck will be Available!

www.mcha.net

Follow up with questions:

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(I have been slow. Sorry!)

Monterey County

California Public Health Officer

“The risk of COVID-19 infection is still real for all Californians and continues to be fatal. That is why every business permitted to open should take every step humanly possible to reduce the risk of infection by following the state guidelines.”

COVID-19 Industry Guidance

When the County is granted permission to reopen certain industries, those industries are to comply with the guidance drafted by the CDPH and CalOSHA.

COVID-19 INDUSTRY GUIDANCE: HOTELS AND LODGING

<https://covid19.ca.gov/pdf/guidance-hotels.pdf>

COVID-19 INDUSTRY GUIDANCE: DINE-IN RESTAURANTS

<https://covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf>

COVID-19 INDUSTRY GUIDANCE: RETAIL

<https://covid19.ca.gov/pdf/guidance-retail.pdf>

If the County issues guidance, the more protective / restrictive is to be followed.

Monterey
County –
Purple Tier

“Widespread”

Many non-essential indoor
business operations are closed.

Subject to state-wide curfew.

Hotels & Lodging

Purple Tier (“Widespread”):

- Open with modifications
- Fitness centers can be open outdoors only with modifications
- Indoor pools, hot tubs, saunas and steam rooms must close

Red Tier (“Substantial”):

- Open with modifications
- Fitness centers can open to 10% capacity
- Indoor pools, hot tubs, saunas, and steam rooms must close



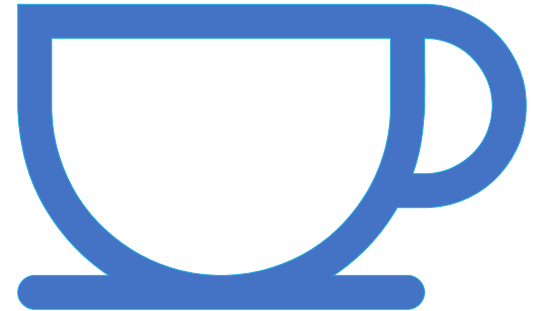
Restaurants, Bars, Wineries

Purple (“Widespread”):

- Restaurants and wineries: Outdoor only with modifications
- Bars, breweries, and distilleries: Closed

Red (“Substantial”):

- Restaurants:
 - Indoor with modifications
 - Capacity must be limited to 25% or 100 people, whichever is less
- Wineries: Outdoor only with modifications
- Bars, breweries, and distilleries: Closed





Cal/OSHA New Emergency Standard

Cal/OSHA – New Emergency Standard Coverage

New standard applies to all employees and places of employment.

Does not apply to:

- Places of employment with one employee who does not have contact with other persons
- Employees working from home
- Employees already covered by CalOSHA's aerosol transmission standard (health care facilities, labs, etc.)

Cal/OSHA Emergency Standard

If employee off work for COVID and has exhausted paid time off, employer to maintain employee's earnings

Written COVID-19 Prevention Program (WCPP)

Notice of Exposure and Cases

Physical Distancing

Face Coverings

Cal/OSHA
Emergency
Standard

Testing Requirements

Return to Work Criteria

Outbreaks

Employer-Provided Housing and
Transportation

COVID Time Off Programs

Why is the employee not working?



The employer is closed.



The employee cannot work.

The employer is closed.

- Unemployment Assistance
- Pandemic Unemployment Assistance

Employer open;
employee can't
work

Concern about risk of contracting COVID.

Unable to work due to non-COVID reason.

Unable to work due to own COVID-related issue.

Unable to work due to other COVID-related issue.

Employee concerned about risk

- If the person refuses because of fear or risk, their eligibility for Unemployment Benefits rests with the EDD.
- Respond to EDD queries only - no affirmative acts (don't contact the EDD unless contacted by them).

Absence unrelated to COVID

California Paid Sick Leave

Employer's own sick leave / PTO programs

FMLA/CFRA

FEHA disability reasonable accommodation
leave

(All the other leaves: organ and bone marrow
donation, literacy, USERRA, etc.)

Vacation / PTO

Employee's COVID-related reason

Employee tests positive

Employee shows symptoms

Employee exposed and directed to quarantine

Send employee home or direct them not to come in

If Positive Test:

- Notify appropriate employees (comply with CalOSHA and FEHA)
- Notify Public Health (CalOSHA and local public health requirements)
- Clean and disinfect (CalOSHA and local public health requirements)
- Plan for return

Positive COVID Test / Symptoms

Wage and Hour Compliance

The Labor Commissioner has made no exceptions for COVID – so all wage and hour rules must be followed!

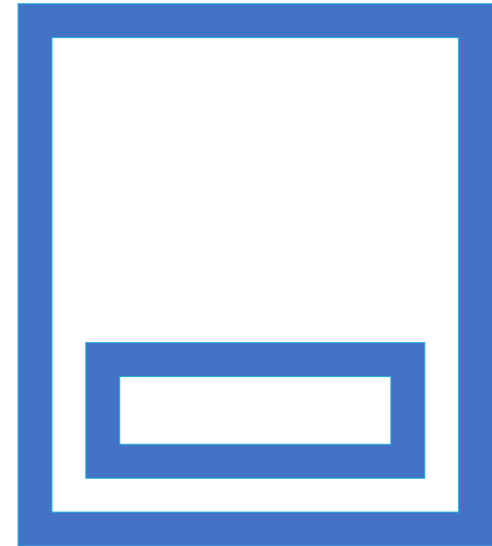
Failure to comply with wage and hour issues – even during a crisis – can lead to class actions and PAGA lawsuit.

Wage and Hour Compliance

Compensable Time – *Remember Starbucks!*

Waiting to go through screening is compensable time.

Consider staggering start times.



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

*Home screening? Temperature Check?
Remember Tilly's!*

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.

Wage and Hour Compliance

What if an Employee Tests Positive?

Do not identify (name) the individual to others. Medical privacy laws are in effect.

Notify all employees or use a shared facility or are “near” (“6-15-48”) a positive individual: “We learned that an employee at [location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances.”

This notice is not required by law, but it is “approved” by the DFEH to protect employee safety and privacy while still protecting your company.

Employer must report suspected outbreaks (3 or more cases within 14 days) to the Monterey County Health Department - COVID 19 Call Center: 831-769-8700.

Notify Public Health

Employee's Own COVID Reason

California Paid Sick Leave

Employer – provided sick leave / PTO

Less than 500 employees

- FFCRA
- Unpaid Time off through FMLA/CFRA or FEHA

Over 500 employees:

- California Supplemental Paid Sick Leave
- Unpaid Time off through FMLA/CFRA or FEHA

Families First Coronavirus Response Act

Employers with less than 500 employees.

- Potential exceptions if small employer (but be careful).

Up to 80 hours of Paid Sick Leave for:

- own COVID-related time.
- to care for child whose school/child care is closed.
- to care for individual with COVID or symptoms

Up to 12 weeks (2 weeks Paid Sick Leave plus 10 weeks LOA) to care for child whose school/childcare is closed.

FFCRA

Different benefit amounts based on reason for time off (own illness, caring for other, child at home).

Certification requirements:

- Employee must identify health care provider or public health official who diagnosed COVID or required quarantined
- Different certification for “Child at Home” leave

Payroll tax credit for amount paid out.

- Employee can choose to take FFCRA OR paid time off you provide.
- You want them to use the FFCRA time if eligible as it “free” to employer.

Program runs through December 31, 2020.

FFCRA - PSL

Certification requirements for Paid Sick Leave not related to child whose school/childcare is closed: Employee must identify health care provider or public health official who diagnosed COVID or required quarantined

Supplemental Paid Sick Leave

California AB 1867 (September 9, 2020 – December 31, 2020)

Private employers with more than 500 employees nationwide must provide up to 80 hours of SPSL to employees to use for COVID purposes.

- “Up to” 80 hours because based on # of hours employee works in a 2-week period.
- ~FFCRA

Employee caring for other re COVID

Employee caring for family member who is ill or quarantined

- California Paid Sick Leave
- Employer – provided sick leave / PTO
- Less than 500 employees
 - FFCRA
 - Unpaid Time off through FMLA/CFRA or FEHA
- Over 500 employees:
 - California Supplemental Paid Sick Leave
 - Unpaid Time off through FMLA/CFRA or FEHA

Employee with child whose school/daycare closed

- FFCRA

FFCRA - EFMLA

Employers with less than 500 employees.

- Potential exceptions if small employer (but be careful).

Up to 80 hours of Paid Sick Leave for:

- to care for child whose school/child care is closed.
- to care for individual with COVID or symptoms

Up to 12 weeks (2 weeks Paid Sick Leave plus 10 weeks LOA) to care for child whose school/childcare is closed.

FFCRA - EFMLA

Certification requirements for Expanded FMLA: Identify child, school, and closure order. And: “I certify that I am unable to work (and unable to telework) because I am caring for a child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19. I further represent that *no other suitable person will be caring for my child* during the period for which I am talking Federal Paid Sick Leave or Expanded FMLA.”)

CARES Payroll Protection Program

- Loans originated between February 15 and June 30, 2020.
- Most firms with at most 500 employees are eligible.
 - Hotel or restaurant, where each location of the business has at most 500 employees, may also be eligible for PPP.
- If loan used for payroll, payroll-related costs, rent, utilities, etc., for 8-week period, loan is forgiven
- Cannot use PPP funds to pay the sick leave under FFCRA!

CARES Act

November 24, 2020:

Treasury Secretary Mnuchin set to place the \$455b in unspent Cares Act money back from the Fed into Treasury's General Fund, where his successor (Janet Yellen) essentially cannot reach it without a new round of Congressional approval.

Not PPP loans money.

Signals no new CARES-like programs until new Administration.

Employees at Work

Prepare Your Workplace

	Before reopening, facilities must:
Perform	Perform a detailed risk assessment and implement a site-specific protection plan
Train	Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them
Implement	Implement individual control measures and screenings
Implement	Implement disinfecting protocols
Implement	Implement physical distancing guidelines

Cal/OSHA – AB 685

Requires employers who receive notice of potential exposure to their workforce of COVID-19 must, within one business day, give written notice all employees at a worksite

- Notice of potential exposures
- Information about COVID-19 related benefits and protections
- Information about the disinfection and safety measures that will be taken at the worksite in response to the potential exposure.

Employers must notify local public health agencies of outbreaks within 48 hours of becoming aware of the outbreak (3+ lab-confirmed cases of COVID among employees who live in different households within a two-week period).

Sunsets January 1, 2023.

Workers' Compensation – SB 1159

Codifies Gov. Newsom's Executive Order N-62-20 and adds 2 new rebuttable presumptions re COVID illness and occupational injury.

Presumptions (including some specific to first responders/health care workers).

Workers' Compensation – SB 1159

For other employers:

Rebuttable presumption applies only if the employee works for an employer with 5+ employees and the employee tests positive for COVID within 14 days after reporting to work during an outbreak at workplace.

Workers' Compensation – SB 1159

“Outbreak”:

100 or fewer employees and 4 test positive

More than 100 employees, 4% test positive

Worksite ordered to close by public health, CalOSHA, etc.

Wage and Hour Compliance

Meal and Rest breaks – continue to provide the opportunity.

State Public Health Guidance: “Stagger employee breaks, in compliance with wage and hour regulations, maintain physical distancing protocols.”

- Reconfigure, restrict or close breakrooms and create alternative space for breaks where physical distancing is possible.
- Set up outdoor areas with sufficient distancing if possible.

PPE for Workers – SB 275

Healthcare employers (clinics, outpatient, doctor's office, home health, etc.) must maintain an inventory of new and unexpired PPE to cover 45 days of surge consumption.

Effective January 2023.

PPE for Workers – AB 2537

Expands existing laws that require an employer to furnish “employment and a place of employment that is safe and healthful for the employees and to establish and implement an effective IIPP.

Public and private employers of workers in a general acute care hospital must provide to employees who provide direct patient care or provide services that directly support personal care with PPE.

Employer must also ensure that the employees use the PPE supplied to them.

Employer must maintain a supply of equipment in an amount equal to 3 months of normal consumption.

Thank you!

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