

# COVID-19 and the Workplace: What California Employees Need to Know

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Presented by



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# Questions & Continuing Education

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## Questions?

Type your question by using the Q&A chat pod and they will be answered as time allows.

## CLE

CLE is approved in CA, PA, NY, TX and IL.

# Today's Presenters

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# Today's Topics

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- Shelter-In-Place Orders
- Essential Businesses
- Layoffs and Furloughs
- Warn Act
- Benefits Available to Employees
- Telecommuting
- Government Resources

# Shelter-In-Place Orders

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## **California's Statewide Order - <https://covid19.ca.gov/img/Executive-Order-N-33-20>**

- On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence.
- Exceptions:
  - The Order also provides that citizens will be allowed to engage in essential activities such as grocery shopping, visiting pharmacies and exercise as long as people maintain a safe social distancing space of six feet.\*
  - Work for essential businesses and government services\*\*



# Other California Orders

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**In addition to the Governor's Executive Order - Municipalities have issued their own orders.\***

## **San Francisco**

- Businesses are directed to cease all non-essential operations at physical locations
- Prohibitions on gatherings of any number of individuals
- Ordering cessation of all non-essential travel

## **Business Closures in Los Angeles**

- LA Mayor ordered all L.A. bars to close and all restaurants to stop dine-in services
- The order also applies to movie theaters, gyms and fitness centers
- Essential businesses like pharmacies and food banks remain open
- The order will run until at least March 31, 2020.



# Other California Orders (cont'd)

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## **Business Closures in San Diego**

- San Diego County has ordered all bars that do not serve food and all dine-in restaurants to close.
- Restaurants are allowed to serve food only via drive-thru and pick up orders
- Non-essential personnel are prohibited from entering hospitals or long term care facilities

## **Other California Measures**

- Ban on Dine-in Eating
  - Orange, San Bernardino and Ventura counties
- Bar Closures
  - Orange, San Bernardino and Ventura counties and Palm Springs



# Essential Business Exempt from Executive Order N 30-20

The Department of Homeland Security issued guidance to support State, Local and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions needed to operate resiliently during the COVID-19 pandemic response



<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>



# Essential Business Exempt from Executive Order N 30-20 (cont'd)

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- Practical Pointer - Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
- Practical Pointer - When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.
- Practical Pointer - employers should provide essential workers with “Essential Service” documentation that they can have on their person if stopped or questioned by authorities.

# Essential Business Exempt from Executive Order N 30-20 (cont'd)

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**These “Essential Service Letters” should be printed on Company Letterhead and include the following:**

- The nature of the enterprise and why it is essential to the maintain services and functions needed to operate resiliently during the COVID-19 response
- The nature of the employee’s duties
- That the enterprise has deemed the employee essential under the CISA guidance and applicable State Order



# Layoffs and Furloughs

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## **Distinction between Layoffs and Furloughs -**

- Layoff - A layoff occurs when an employee's employment is terminated for lack of work. The layoff may be temporary (e.g., caused by seasonal or adverse economic conditions) or permanent. Separated employees are typically able to collect unemployment benefits.
- Furlough - A furlough is considered to be an alternative to layoff in which case the employee's employment is not terminated but employees are placed on an unpaid leave while the business is closed indefinitely or until a date certain. An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services.



# Layoffs and Furloughs (cont'd)

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## **Pre-Layoff Planning Considerations:**

Have alternatives to a layoff been considered, such as:

- A voluntary resignation program;
- Across the board salary reductions;
- Reduced work hours;
- Sabbaticals;
- A brief shutdown;
- Early-out packages;
- Retraining; or
- Reassigning employees.



# Layoffs and Furloughs (cont'd)

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## **WARN Act**

### **Federal WARN – No Changes**

### **California WARN**

- Governor Newsom has suspended the 60 day notice requirement of the WARN Act in response to the COVID-19 pandemic.\*
- Employers who must enact layoffs, however, must still provide as much notice as possible and must provide written notice of the layoff.
- The notice of layoff must include the following language: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at [labor.ca.gov/coronavirus2019](https://www.dir.ca.gov/coronavirus2019).”

More information available at: <https://www.dir.ca.gov/dlse/WARN-FAQs.html>



# Benefits Available to Employees

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- **Unemployment Insurance**

- Where an employer has reduced hours or shut down operations due to COVID-19, employees can file an Unemployment Insurance (UI) claim.
  - UI provides partial wage replacement benefit payments to workers who lose their job or have their hours reduced, through no fault of their own.
  - Persons 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 they claim and meet all other eligibility criteria. If eligible, benefits can range from \$40-\$450 per week.
- The Governor's Executive Order waives the one-week unpaid waiting period, so workers can collect UI benefits for the first week they are out of work.



# Benefits Available to Employees

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- **Disability Insurance**

- Employees who contract the virus may be eligible for disability payments between 60-70% of wages, up to \$1,300 per week.
- Governor Newsom has waived the one-week waiting period

- **Paid Family Leave**

- California PFL provides 60-70% of worker's wages, up to \$1,300 per week to care for an ill or quarantined family member.

- **Reduced Work Hours Unemployment**

- Employees are eligible for partial wage replacement if they are laid off or have their hours reduced in response to COVID-19



# Benefits Available to Employees (cont'd)

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## **San Francisco Paid Sick Leave**

- New guidance was issued on March 24, 2020 which supersedes the OLSE's March 16, 2020 guidance.
- The new guidance provides (in part):
  - policies or practices that require a doctor's note or other documentation for the use of paid sick leave of three or fewer consecutive work days shall be deemed unreasonable.
  - Employers may not require a doctor's note or other documentation for the use of paid sick leave taken pursuant to the Paid Sick Leave Ordinance during the duration of the Local Health Emergency regarding Novel Coronavirus Disease 2019.

More information available at: <https://sfgov.org/olse/san-francisco-paid-sick-leave-coronavirus-0>



# Benefits Available to Employees (cont'd)

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## Los Angeles Paid Sick Leave

- On March 18, 2020, the city of Los Angeles issued new guidance on use of sick leave.
- The new guidance allows employees to use accrued sick leave for:
  - purposes of quarantine,
  - for employees who are *65 or older* or have a serious chronic medical condition as described by the Centers for Disease Control,
  - for taking time off *or loses regular or scheduled work hours* due to temporary ceasing of business operations,
  - for providing care for family member who is not sick but quarantined, and
  - for taking time off to care for child due to school closure, etc.

More information available at:

<https://wagesla.lacity.org/sites/g/files/wph471/f/PSLCOVID20200318.pdf>



# Benefits Available to Employees (cont'd)

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## **Emeryville Paid Sick Leave**

- Emeryville's Paid Sick Leave Ordinance must allow covered employees to use accrued sick leave in the following situations:
  - for purposes of quarantine,
  - for employees falling within the definition of “vulnerable population,”
  - for taking time off due to temporary ceasing of business operations,
  - for providing care for family member who is not sick but quarantined, and
  - for taking time off to care for child due to school closure, loss of regular childcare

More information available at:

(<https://www.ci.emeryville.ca.us/DocumentCenter/View/12679/Emeryville-PSL-GuidanceCoronavirus-final>)



# The Families First Coronavirus Response Act

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The FFCRA amends the FMLA for employers ***with less than 500 employees*** to:

- Provide **12 weeks of leave to eligible employees who are unable to work or telework due to their need to care for a child** if the child's school or child care facility is closed or the child's care provider is unavailable due to a public health emergency.
  - The **first 10 days of the Emergency FMLA may be unpaid** during which the employee may substitute available accrued sick or vacation time for the unpaid leave period
  - **After the first 10 days, employers must provide eligible employees with paid leave at two-thirds the employee's regular rate** for the number of hours the employee would normally be scheduled to work.
- ✓ Pay under this section is limited to \$200 per day and \$10,000 in aggregate for the employee



# The Families First Coronavirus Response Act (cont'd)

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- The Act also requires covered employers to provide up to 80 hours of Emergency Paid Sick Leave at the employee's regular rate to employees who cannot work or telework because they are:
  - (1) Quarantined or ordered to self-isolate by health authorities or a health care provider due to COVID-19,
  - (2) Experiencing COVID-19 symptoms and seeking a medical diagnosis,
  - (3) Caring for an individual (note: this does not need to be a family member) who is ordered or advised to self-isolate due to COVID-19,
  - (4) Caring for their child whose school or child care facility is closed or whose childcare provider is unavailable due to a COVID-19 public health emergency, or
  - (5) Experiencing a substantially similar condition as specified by the Secretary of Health and Human Services.
- ✓ Paid sick leave wages are limited to \$511 per day up to \$5,100 total per employee due to the employee's own quarantine, isolation or symptoms, and to \$200 per day up to \$2,000 total to care for others.



# The Families First Coronavirus Response Act (cont'd)

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On March 24, 2020, the Department of Labor provided additional guidance on the FFCRA issuing the following:

- FFCRA: Employer Expanded Family and Medical Leave Requirements
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- FFCRA: Employee Expanded Family and Medical Leave Rights
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- FFCRA: Questions and Answers
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

# Telecommuting Considerations

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**Q. Must employers reimburse employees for expenses incurred while teleworking?**

**A. Yes. California employers are required to reimburse employees for “all necessary expenditures or losses incurred by the employee” in the course of the employee’s job, as well as for any expenses arising out of an employer’s directive. Cal. Labor Code section 2802.**

This question is likely to be implicated if employees are asked to work from home. Employers should be careful to delineate between necessary expenses and other expenses that may not be necessary. For example, a portion of required technology expenses associated with work-required internet and phone usage, printing, faxing, etc. would require reimbursement, but expenses related to costs associated with meal times likely are not “necessary” even if an employer regularly provides employees with complimentary meals as part of their job.

Employers should draft a clear statement of what will be considered necessary expenses for reimbursement purposes and that also allows employees to raise concerns about expenses that do not appear on the employer’s list that employees feel should be reimbursable. Employers can then assess expense requests as necessary.



# Telecommuting Considerations (con't)

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

**A. 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.**

**Note:** Employers should be aware that if an employer's operations are not halted but instead just slowed and, as a result, an exempt employee's job duties are altered during the pandemic and the employee's "primary duties" for any one workweek are more properly classified as non-exempt, then that employee should be considered non-exempt for the week. This status change will result in the employee having a right to meal and rest periods and being subject to overtime pay as any non-exempt employee.



# Telecommuting Considerations (con't)

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## **Other considerations for Nonexempt Employees Teleworking During the Pandemic**

During the COVID-19 pandemic, employers who ask or permit their nonexempt employees to work remotely will need to take steps to properly track and record the “hours worked” by these employees to minimize risks of overtime and missed meal and rest break claims under federal and state wage and hour laws.

Employers should put into place clear policies and rules regarding teleworking that set forth the employer’s standard working hours, time reporting (including clocking in and out) and recordkeeping requirements, and that make clear employees are still subject to the employer’s meal and rest period requirements and overtime rules while working from home.



# Government Resources for Businesses

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<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

[https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)

<https://www.osha.gov/Publications/OSHA3990.pdf>

<https://www.dol.gov/agencies/whd/flsa/pandemic>



# The Future of Work in California

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- These are unprecedented times and the laws are changing at the most rapid pace ever seen in America. New laws are being implemented hourly.
- Unemployment claims have hit 3.3 million
- As California is one of the hardest hit, it could see the brunt of this impact.

# Upcoming Webinars

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## **COVID-19 in the California Workplace: The First 90 Days**

April 2, 2020

**Register:**

## **Discrimination and Harassment: New Decade, New Frontiers, New Protections – Are You Ready?**

April 29, 2020

**Register:** <https://www.cozen.com/events/2020/discrimination-and-harassment-new-decade-new-frontiers-new-protections-are-you-ready->

