**FAQ FOR CALIFORNIA EMPLOYERS**

\*\*\*The situation involving coronavirus is rapidly changing. The information below is subject to change as governments and public health officials continue making recommendations, orders and/or new legislation or local measures are proposed or adopted. \*\*\*

1. **The World Health Organization officially declared the coronavirus (COVID-19) a global pandemic**. **What is a pandemic?**

A pandemic is characterized as an epidemic that has reached global proportions. The term describes the magnitude of the spread of the disease, not its severity.

1. **What is the best way to deal with the coronavirus?**

There is not a one-size fits all approach to managing employees or a business during the coronavirus. The situation is rapidly changing, and it is important to stay up to date on guidance from the Center for Disease Control (“CDC”), remain flexible and monitor where cases are being reported. Local conditions will influence decisions made by public health regarding community-level strategies and, ultimately, affect your business. In addition, it is advisable to: (1) establish a response plan that is flexible, well-informed, tailored to the essential aspects of your business and complies with the requirements of the U.S. Occupational Safety and Health Administration (“OSHA”); (2) develop an employee communication plan; and (3) establish and distribute a policy on employee travel.

1. **How do I stay up to speed on the coronavirus pandemic?**

Monitor the CDC’s website for guidance to businesses and other updates as the situation progresses. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

The California Division of Labor Standards Enforcement includes FAQs regarding laws enforced by the Labor Commissioner’s office. <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

The Occupational Safety and Health Administration (OSHA) recently published Guidance on Preparing Workplaces for COVID-19, which outlines steps that employers should take. <https://www.osha.gov/SLTC/covid-19/>

Cal/Osha has also issued guidance on requirements to protect workers from coronavirus. <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

The EEOC’s Pandemic Preparedness In The Workplace And The Americans With Disabilities Act Guidance (“EEOC Guidance”) has important information on handling an influenza pandemic. <https://www.eeoc.gov/facts/pandemic_flu.html>

1. **Does the way we handle the coronavirus implicate any laws?**

Yes. Many laws may be implicated by the way you handle the coronavirus pandemic. Some of the considerations include:

* Health and safety issues under OSHA and Cal/OSHA, which is the California state program that is responsible for protecting the health and safety of workers.
* Discrimination and leave considerations under various laws, including the Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (“ADA”), the Fair Employment and Housing Act (“FEHA”), the Family Medical Leave Act (“FMLA”), the California Family Rights Act (“CFRA”), California Paid Sick Leave law and local sick leave ordinances.
* Employee Privacy Concerns.
* Immigration Considerations.
* Wage and hour considerations based on the Fair Labor Standards Act (FLSA) and California’s wage and hour laws, including the California Labor Code.
1. **My business has 10 employees or less, am I covered by anti-discrimination laws?**

While employers with 10 total employees or less are not covered by Title VII, the ADA, FMLA or CFRA, FEHA will apply and prevents discrimination, retaliation or harassment, including based on disability or medical condition.

1. **Can we ask employees where they traveled?**

According to EEOC Guidance, during a pandemic, an employer does not need to wait for an employee to develop symptoms before inquiring about where an employee may have traveled, even for personal reasons. Rather, per the Guidance, an employer may inquire if the employee has traveled to any location where post-travel self-quarantine has been recommended by the World Health Organization, the CDC, or state or local public health officials. Employers may also restrict asymptomatic employees who have visited such locations from returning to the workplace until after the recommended self-quarantine period.

1. **Can we encourage employees who are sick to stay at home?**

Yes. The CDC advises employers to encourage employees who have symptoms of coronavirus to stay home and not come to work.

In addition, the CDC also recommends that employers encourage healthy hygiene practices in the workplace (such as washing hands with soap and water) and ensure routine cleaning or disinfecting of frequently touched objects.

1. **Can we encourage employees of a specific race or age to stay home due to coronavirus?**

No. If you are covered by anti-discrimination laws, you cannot make determinations about who should or should not come to work or how to otherwise treat employees during this coronavirus pandemic based on protected characteristics such as race or age.

1. **Can we institute a temporary remote work policy due to coronavirus?**

Yes; however, whether you implement a remote work policy likely depends on many factors, including, the nature of your business and what makes sense for your employees.

1. **If hourly, non-exempt employees work remotely, do we have to pay them?**

Yes. Hourly, non-exempt employees should track their time working at home as if they reported to work and be paid accordingly. If an employee works overtime, the employee should be compensated for the overtime hours performed.

1. **Can we ask an employee to leave work if they exhibit symptoms of coronavirus or the flu?**

Yes, the CDC recommends that employees who exhibit acute respiratory illness symptoms (i.e. cough, shortness of breath) be asked to leave the workplace.

1. **Do we need a sick leave policy for coronavirus?**

Yes, the California Paid Sick Leave (“PSL”) law requires all employers to have a sick leave policy regardless of the coronavirus pandemic. As an alternative to paid sick leave, employers can also have a paid time off policy so long as an employee can use the paid time off for the same minimum number of days and for the same reasons as paid sick leave under the PSL law. In addition, local jurisdictions, including, Berkeley, Emeryville, Oakland, Los Angeles, San Francisco, San Diego and Santa Monica have paid sick leave ordinances that may impose different obligations on employers than the PSL law.

In addition, the Families First Coronavirus Response Act was passed by the U.S. House of Representatives before 1:00 a.m. on March 14, 2020 and, among other things, it mandates paid sick leave for employers with less than 500 employees for specified uses related to coronavirus. The U.S. Senate is expected to take up the bill and its current form is likely to change. There also is a San Francisco plan for additional paid sick leave. The sick leave requirements at the federal, state and local level are in flux and the requirements are changing. You should stay up-to-date with news announcements in this area.

1. **Can we force employees to use California Paid Sick Leave if they have the coronavirus?**

No. Under the California Paid Sick Leave law, you cannot require employees to use paid sick leave; however, an employee can decide to use paid sick leave if he or she chooses, and you can require that they take a minimum of two hours of paid sick leave.

If you are covered by a local paid sick leave ordinance, you should refer to the local sick leave ordinance to confirm whether it has different rules regarding use requirements or restrictions. You also should monitor developments at the federal level regarding paid sick leave.

1. **If we experience a temporary shutdown of all business functions, do hourly non-exempt employees need to be paid during the shutdown?**

It depends. If the employee is subject to a contract, policy or collective bargaining agreement that requires you to pay the employee, payment may be required. If there is no contract or policy governing the employment relationship that requires payment, an hourly non-exempt employee who neither reports to work nor performs any work at home during the temporary shutdown does not need to be paid.

1. **If we experience a temporary shutdown of all business functions, do exempt employees need to be paid during the shutdown?**

It depends. If the employee is subject to a contract or policy that requires you to pay the employee, it may be required. Moreover, in general, if an exempt employee performs any work during a workweek, the individual should be paid his or her full salary for that week. If an exempt employee performs no work during a workweek and there is no contract or policy requiring payment, pay is not required for that week.

1. **Do we need to pay non-exempt employees who report to work and are sent home because the employee exhibits symptoms of coronavirus?**

Yes, you should provide reporting time pay to non-exempt employees. In general, when a non-exempt employee reports to work on a scheduled workday and is not put to work or is furnished with less than half of the employee’s usual or scheduled day’s work, the non-exempt employee should be paid the greater of: (1) half the usual or scheduled day’s work (up to four hours) or (2) two hours at the employee’s regular rate of pay.

1. **are there any instances in which reporting time pay will not apply?**

Reporting time pay will not apply if operations cannot commence or continue when it is recommended by civil authorities, when there is an act of God or some other cause not within the employer’s control (i.e. an earthquake).

1. **My business is experiencing a slowdown due to coronavirus, is there an alternative to layoffs?**

You may be able to apply for the Unemployment Insurance (UI) Sharing Program, which enables businesses to minimize or eliminate the need for layoffs, keep trained employees and swiftly prepare when business conditions improve.

For more information, visit the following website: <https://edd.ca.gov/Unemployment/Work_Sharing_Program.htm>

1. **If my business is planning a closure or layoffs due to coronavirus, are there resources?**

Rapid Response is a program that assists companies who face potential layoffs or plant closures. You can contact your local America’s Job Center of California for more information about Rapid Response services. <https://www.edd.ca.gov/Office_Locator/default.htm>

1. **Is there anything I can do if my business is having trouble filing state payroll reports and/or depositing state payroll taxes?**

Employers who experience a hardship due to the coronavirus can request up to a 60-day extension of time from the California Employment Development Department (EDD) to file state payroll reports and/or deposit state payroll taxes without interest or a penalty. More information about the tax assistance can be found here: <https://www.edd.ca.gov/about_edd/coronavirus-2019.htm>

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1. Revise if the publisher will be different than Legal Access of Alameda [↑](#footnote-ref-1)