

California Administrative Agencies Issue Guidance for Employers Regarding the Coronavirus

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California administrative agencies recently published information to guide both employers and employees on employment-related issues raised by the 2019 novel coronavirus, also known as COVID-19. The Division of Labor Standards Enforcement (“DLSE”) has published [Frequently Asked Questions](#), and the Employment Development Department (“EDD”) has set up a [webpage](#) with [Frequently Asked Questions](#) and other information. Highlights are summarized below. Given the increased cases of the coronavirus in the United States and California, employers should familiarize themselves with these resources.

Paid Sick Leave/Paid Time Off

If an employee has paid sick leave available, the employee must be permitted to use that sick leave for absences due to the coronavirus. This is so if the employee is ill or if the employee’s family member is ill. Paid sick leave also covers preventative care, which may include self-quarantine as a result of potential exposure. However, employers may not *require* that employees use paid sick leave in the case of a quarantine. The guidance does not reflect if there is a difference for a mandatory or voluntary quarantine.

Although employers may ordinarily require employees to use paid sick leave for covered purposes (e.g., the illness of an employee or family member), we believe it would be wise to make the use of paid sick leave *optional* in connection with the coronavirus in light of the agencies’ guidance that employers may not require employees to use paid sick time in connection with quarantines or school closures with no stated exception for overlapping situations where the employee or family member is also sick.

In addition, if an employee does not have paid sick leave available, employees may use other vacation or paid time off in accordance with an employer’s policies.

School Closures

If an employee’s child’s school or day care is closed for reasons related to the coronavirus, an employee may take paid sick leave or other paid leave available, as discussed above. Employees at worksites with 25 or more employees are also entitled to

up to 40 hours of unpaid leave per year for school activities and school-related emergencies, which would include the closure of a school or day care facility. Whether employees may use paid sick time or other paid time off in connection with a school closure will be determined by the employer's policies.

As noted above, we believe it would be wise for employers not to require employees to use paid sick time for coronavirus-related reasons. Instead, we believe this should be made optional to employees. And the use of vacation may be required if that is consistent with an employer's policies.

Travel

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

The DLSE's Frequently Asked Questions also state that employers may not inquire into areas of medical privacy.

Reporting Time

If an employee reports to work for a regularly scheduled shift but is not permitted to work at least half of that shift, reporting time pay is due. The employee must be compensated for half of the scheduled shift, with a minimum of two hours and a maximum of four hours of reporting time pay due. There is no exception in the law or guidance for an employer determining that the employee appears to be sick. Therefore, if an employee reports to work and the employer sends the employee home due to visible symptoms or recent travel to a high-risk area, reporting time pay should be issued.

Reporting time pay is *not* required when (1) the employee requests to go home sick, or (2) operations cannot commence or continue as a result of a recommendation by civil authorities. However, the declaration of a state of emergency, standing alone, would not excuse the reporting time pay obligation.

More information on reporting time pay can be found [here](#).

Exempt Employees

Employers must pay exempt employees performing any work during a workweek their full weekly salaries if they do not work the full workweek because the employer failed to make work available. Exempt employees who perform no work in a full workweek generally do not need to be paid their salaries for that week.

An employer may not deduct from an exempt employee's salary for absences of less than a full day for personal reasons or sickness. However, the employer may take partial-day deductions from an employee's sick leave bank so that the employee is paid for his or her sick time by using accrued sick leave, in accordance with the above discussion of paid

sick time. If an exempt employee does not have paid sick time available, no salary deduction may be made for missing a partial day.

State Disability Insurance

The EDD advises that if an employee is unable to work due to medical quarantine or illness related to the coronavirus, as certified by a medical professional, short-term State Disability Insurance (“SDI”) benefit payments may be available to the eligible worker who has a full or partial loss of wages. Additionally, [Governor Newsom’s March 12, 2020, executive order](#) (“Executive Order”) waives the one-week unpaid waiting period for claims related to COVID-19, so employees may begin to collect SDI benefits during the first week they are out of work.

Paid Family Leave

If an employee is unable to work due to caring for an ill or quarantined family member with COVID-19, as certified by a medical professional, the employee may apply for Paid Family Leave benefits (“PFL”) from the state. This benefit is currently limited to six weeks but will increase to eight weeks as of June 1, 2020.

Unemployment Insurance

Partial wage replacement benefit payments may be available to workers who lose their job, have their hours reduced, or are temporarily unemployed but expect to return to work for the same employer for reasons related to the coronavirus. If a worker is temporarily laid off but expects to return to work, the normal requirement to actively seek work will be waived, but the worker must remain able, available, and ready to work during the period of unemployment. The EDD guidance also suggests that it may consider unemployment benefits on a case-by-case basis for employees who have to miss work due to the shutdown of a child’s school. The [Executive Order](#) eliminated the one-week waiting period for unemployment insurance claims related to COVID-19, so employees may be eligible for benefits right away.

Finally, while employees are not eligible to collect SDI and unemployment insurance benefits at the same time, employees can apply for unemployment insurance if business operations are shut down or hours reduced while they are out on disability. Similarly, if an employee becomes ill while collecting unemployment insurance, and is eligible, the employee can apply for disability insurance, which may provide a greater benefit. The employee’s unemployment insurance claim would then be suspended for the period of disability.

Workers’ Compensation

Employees who are unable to work because they were exposed to and contracted COVID-19 on the job may be eligible for workers’ compensation benefits.

EDD Employer Assistance

Employers considering layoffs or work reductions because of the coronavirus may wish to examine the EDD's Work Sharing Program, which permits employers to reduce hours for employees, while providing wage replacement through Unemployment Insurance, without laying off workers or removing them from the payroll. The EDD also offers tax assistance to employers affected by the coronavirus, including 60-day extensions to file state payroll reports or to deposit state payroll taxes without penalty or interest. More information about the Work Sharing Program may be found [here](#).

What California Employers Should Do Now

- Devise a coronavirus game plan. Consider how to handle employees who report to work with symptoms or who have traveled to high-risk areas. Consider how paid sick time and other paid time off benefits will be administered.
- Notify employees who are on reduced hours or an unpaid status that they may qualify for benefits from the state, including SDI, PFL, and/or unemployment insurance.
- Visit Epstein Becker Green's [Coronavirus Resource Center](#) for additional information and links, and be sure to check out our recent Advisory, "[Department of Labor Issues OSHA, Wage/Hour, and FMLA Guidance Addressing COVID-19](#)," as well as its "[Summary of Family and Medical Leave Act FAQs Regarding COVID-19 and Other Public Health Emergencies](#)," which addresses guidance regarding federal leave laws that employers should consider during this coronavirus pandemic.

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