

# Coping with the COVID-19 Pandemic:

*What Districts Must Know for Employment Law Compliance, Public Health and Safety, and Continuity of Essential Services*

Employment and Education Law Legal Services Hotline Program  
for School Districts and County Offices of Education  
***Real World Solutions for Real-World Problems®***

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Background and Basics on the Pandemic: Key information from public health authorities at the CDC and NIH; federal legislation and state executive orders impacting your workforce; how to address Stay-at-Home order and work continuity for essential public services

Law, Regulation, and Policy: Compliance with federal and state laws, regulations, and emergency executive orders;  
Employment and Safety/Health Laws: State and Federal statutes, regulations, and emergency orders for leaves, accommodations, ongoing wages, telework, health and safety, travel restrictions, and more

Additional Issues and Resources

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## Frequently Asked Questions and Answers Resource for School Districts and COEs

### Sections

1. Background and Basics
2. Governor's Stay-at-Home Executive Order
- 3: Governor's Schools Shutdown Executive Order
- 4: Governor's Guidance for Schools (childcare and facilities)
- 5: CDC Guidance for Employers
- 6: Paid Emergency Leaves – Federal HR 6201
- 7: Other Pay and Benefits
- 8: How to Handle LOAs in Progress During Shutdown
- 9: Employment Discrimination – Accommodations and more
- 10: Managing Telework Arrangements
- 11: Safety and Health and OSHA Guidance
12. Workers' Compensation

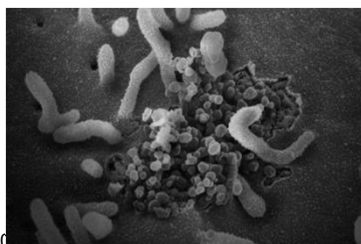
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### How Did We Get Here and How do Employers Cope with Fluid Developments?

COVID-19 Background and Basics to Keep Your District or COE  
in Compliance and Maintain Health and Safety



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## Back to Basics: What is COVID-19 and How is it Spread?

- Novel coronavirus, first observed in China and now a Pandemic.
- Spread by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes. 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 (nose, eyes, etc.). Biggest spread is by person to person interactions.

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## What Should Employers Do to Protect Employees who Must Continue to Work?

- 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).
- Encourage all workers to avoid touching their face with unwashed hands.
- 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
- After cough or sneeze, throw the tissue in the trash and immediately washing their hands for 20 seconds. Provide tissues, soap and water, hand sanitizer and no-touch disposal receptacles.

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## Proactive Steps to Stop the Spread of COVID-19

- Frequently 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.
- Increase ventilation in the workspace.
- Implement strict 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.
- Be vigilant with sanitizing between staggered shifts – particularly shared resources like copiers, keyboards on shared systems

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## STOP THE SPREAD OF GERMS AT WORK



- **COVER YOUR MOUTH AND NOSE WHEN YOU SNEEZE OR COUGH.**  
Cough or sneeze into a tissue and then throw it away; use your arm or sleeve to cover if you do not have a tissue.

**CLEAN YOUR HANDS OFTEN.**  
Wash your hands with soap and water, vigorously rubbing together front and back for 20 seconds. Or use alcohol-based hand sanitizers, rubbing hands until they are dry.



- **CLEAN SHARED SURFACES AND EQUIPMENT OFTEN.**  
Use disinfectants to clean commonly touched items such as doorknobs, faucet handles, copy machines, coffee pot handles, desktops, handrails, microwave buttons, keyboards, and elevator buttons. Germs travel fast with multiple hands touching shared surfaces.

**AVOID TOUCHING YOUR EYES, NOSE OR MOUTH.**  
Germs need an entry point, and the average adult touches his or her face once every three or four minutes. Keep hand sanitizer at your desk to use after meetings or before grabbing one of those doughnuts from the breakroom.



- **STAY HOME WHEN YOU ARE SICK AND CHECK WITH A HEALTH CARE PROVIDER WHEN NEEDED.**  
When you are sick or have flu symptoms, stay home, get plenty of rest and check with a health care provider as needed.

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## Proactive Steps to Stop the Spread among Essential Services Employees








- Discourage workers from using each other's phones, desks, offices and equipment.
- Instruct employees to cancel all non-essential work travel.
- Limit business travel to the largest extent possible.
- Cancel all live training, meetings, conferences for at least 8 weeks.
- Place posters in visible locations with instructions on hand washing, cough and sneeze etiquette and social distancing.

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## SOCIAL DISTANCING GUIDELINES AT WORK

	<b>1</b>	Avoid in-person meetings. Use online conferencing, email or the phone when possible, even when people are in the same building.
	<b>2</b>	Unavoidable in-person meetings should be short, in a large meeting room where people can sit at least three feet from each other; avoid shaking hands.
	<b>3</b>	Eliminate unnecessary travel and cancel or postpone nonessential meetings, gatherings, workshops and training sessions.
	<b>4</b>	Do not congregate in work rooms, pantries, copier rooms or other areas where people socialize. Keep six feet apart when possible.
	<b>5</b>	Bring lunch and eat at your desk or away from others (avoid lunchrooms and crowded restaurants).
	<b>6</b>	Avoid public transportation (walk, cycle, drive a car) or go early or late to avoid rush-hour crowding on public transportation.
	<b>7</b>	Limit recreational or other leisure classes, meetings, activities, etc., where close contact with others is likely.

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## What Should Individuals Do if they Have COVID-19 Symptoms?

- If coronavirus symptoms suggest the need for medical attention, contact a healthcare provider.
- Call healthcare provider if you have the following symptoms:
  - Difficulty breathing (shortness of breath)
  - Symptoms such as fever and cough are getting worse
  - You are unable to care for symptoms at home
- Those over 60 years old and/or have a compromised immune system or a chronic serious medical condition, should contact your health provider by phone. NOTE: test kits are scarce and providers are ordering stay at home for those who are not in high risk group, even with symptoms
- If need to go to the hospital, call ahead first so they can prepare for arrival. If you call 911, be sure to tell them you are experiencing symptoms of coronavirus.

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## Key Provisions of Governor Newsom's Current Stay at Home Executive Order

- 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.

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## What the Stay-at-Home Order Means for Districts and COEs

- Essential services will remain open and essential workers are allowed to go to work. Essential state and local government functions will also remain open, including law enforcement and offices that provide government programs and services.
- The essential infrastructures include: 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 Critical infrastructure attached to this webcast.
- If a county adopts issues an order that is more stringent from the Order issued by Governor Newsom, you are required to follow it.

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## Impact of the Stay-at-Home Order and other Information in this Webcast on the Essential Services Sector

- Only employees performing essential services will be working onsite or in the community.
- Continue to take all appropriate precautions for sanitizing, social distancing, and other protective measures (including PPEs where appropriate).
- Recognize that leaves and workplace accommodations may become necessary in the days and weeks ahead, if essential services employees become ill, require self-quarantine due to exposure, or have family members ill, testing positive, or self-quarantine requirements.

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## Impact of the Stay-at-Home Order and other Information in this Webcast on Employees with Non-Essential Services

- Leaves, wage issues, paid benefits, and workplace accommodations will apply fully.
- Employees may work from home (through telework arrangements) and should be provided with gainful work as much as possible. This maintains operational continuity and limits financial hardship.
- Employees working remotely may require leaves or accommodations in as community spread occurs.
- Employees who are ordered to stay at home, but with no current illness, exposure, self-isolation requirements due to known exposure, or family member situations may need the paid leave and other benefits as community spread occurs.

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

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## Governor's Executive Order Shutting Down Schools and Requiring Essential Services

Issued 3/13/20 (Friday the 13<sup>th</sup>)

For purposes of this Order, Local Educational Agency (LEA) means school districts, county offices of education, and charter schools.

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:

Continue delivering high-quality educational opportunities to students to the extent feasible through, among other options, distance learning and/or independent study; and

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## Governor's Emergency Shutdown Terms

- 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;
- Arrange for, to the extent practicable, supervision for students during ordinary school hours; and
- Continue to pay its employees.
- Order anticipated a period of weeks. That has turned into multi-month shutdown. There is great anticipation that the Governor will re-visit the terms of this order, but for now it is what districts and COEs must follow.

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## Biggest Issue: What Does Continue to Pay it's Employees Mean? 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 mean the administrative leave pay is for those providing these support services onsite or through telework.
- 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.
- 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.

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## What Does “Continue to Pay it's Employees” Mean - 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, no matter how much they work;
- 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

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## Law, Regulation and Policy: Compliance, Safety, and Financial Security for Employees and Employers



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## Key Leaves and Benefits to Protect Employees

- HR 6201 – FMLA Expansion and Emergency Sick Leave
- HR 6201- Emergency Child Care Leave
- FMLA/CFRA Leave – full 12 weeks with concurrent paid accruals
- California Labor Code leave for child care emergencies
- Disability Benefits – SDI through EDD
- Paid Family Leave Benefits – through EDD
- Unemployment Insurance Benefits
- Reasonable Accommodations – extended leave
- Education Sector – separate paid leave per Governor Executive Order
- Ed. Code leaves – applied consecutive to other leaves
- Employer policy or MOU leave accruals
- Employer discretionary paid administrative leave
- Regular and customary leaves unrelated to Covid-19 remain status quo

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Program	Why	What	Benefits	More Information	How to File
<b>Disability Insurance</b>	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.	<a href="#">Learn more about your eligibility for Disability Insurance</a>	<a href="#">File a Disability Insurance claim</a>
<b>Paid Family Leave</b>	If you're unable to work because you are <b>caring for</b> 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.	<a href="#">Learn more about your eligibility for Paid Family Leave</a>	<a href="#">File a Paid Family Leave claim</a>
<b>Unemployment Insurance</b>	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.	<a href="#">Learn more about your eligibility for Unemployment Insurance</a>	<a href="#">File an Unemployment Insurance claim</a>

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<b>Paid Sick Leave</b>	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.	<a href="#">Learn more about your eligibility for Paid Sick Leave</a>	<a href="#">If accrued sick leave is denied, file a Wage claim</a>
<b>Workers' Compensation</b>	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.	<a href="#">Learn more about your eligibility for Workers' Compensation benefits</a>	<a href="#">File a Workers' Compensation claim</a>

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## HR 6201 Emergency FMLA Expansion and Other Benefits - Primary Measures

- Two weeks of paid emergency sick leave for illnesses related to COVID-19 (to be required by all employers) (Division E, section 5102);
- 90 days of family and medical leave for eligible workers to care for their child under age 18, if the child's school or place of child care has been closed because of COVID-19 (Division C, Section 3102); and
- Enhanced unemployment insurance for workers who lose their jobs because of the outbreak and provide grants to states for processing and paying claims
- These new leaves laws should be used first before employee taps into their other available leaves per state law, policy, or MOU

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## Details of HR 6201 Emergency Child Care Leave

- The employee must have been employed for at least 30 calendar days prior to the leave. Health care providers and first responders are exempt from this requirement.
- NOTE: the usual FMLA requirements of working at least 1,250 hours and working in a location where there are 50 employees within a 75 mile radius do not apply.
- The employee must be unable to work due to the need to care for a child under the age of 18 if the child's school or place of childcare has been closed due to COVID-19.
- If the employee's hours vary, use a number that represents the average number of hours per day the employee would normally be scheduled to work.

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## Emergency Child Care HR 6201

- The employer should 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
- Employees should give the employer notice of the leave, if practicable. That requirement could be waived.
- 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.
- The employee's position should be maintained for them unless the business has had such a dramatic change in operating conditions that would make it such that employee's position is affected.

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## HR 6201 for Small Agencies Emergency Child Care

If the employer has less than 25 employees, the employer does not need to return the employee to their position if:

- The position no longer exists due to changes in the employer's economic or operating condition caused by the coronavirus emergency;
- The employer makes "reasonable efforts" to restore the employee to an equivalent position; AND
- If these efforts fail, the employer makes additional reasonable effort to contact the employee if an equivalent position becomes available.
- The "contact period" is the one-year window beginning on the earlier of the date on which the employee no longer needs to take leave to care for the child or 12 weeks after the employee's paid leave commences.

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## HR 6201

### Emergency FMLA Expansion

1. The employee is subject to a state, federal or local quarantine or isolation order relating to COVID-19 (subject to multiple interpretations);
2. The employee has been advised by a health care provider to quarantine due to concerns relating to COVID-19;
3. The employee is experiencing symptoms relating to COVID-19;
4. The employee is caring for someone experiencing symptoms relating to COVID-19;
5. The employee is caring for a son or daughter who has lost childcare due to the COVID-19 emergency

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## HR 6201

### Emergency FMLA Expansion

6. The employee is experiencing any other condition substantially similar to the coronavirus, as specified by the US Dept of Health and Human Services
- 7.. Employers who are health care providers or first responders may elect to exclude an employee from this benefit
8. This benefit is available to any employee, regardless of how long the employee has worked for the employer and they do NOT need 1,250 hours in prior 12 months

This section applies to private sector employers with fewer than 500 employees, government employers and all other non-private entity employers with more than one employee.

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## Is the Stay at Home Order a Government Ordered Quarantine or Isolation? Interpretation #1 - YES

- 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.
- Result: every individual in every sector of the economy who must stay home in California (44 million people – many of whom are employed) would receive the expanded FMLA benefits rather than unemployment benefits.
- Seems unlikely given the number of states with similar orders and the impending stimulus package with beefed up unemployment claims.

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## Is the Stay at Home Order a Government Ordered Quarantine or Isolation? Interpretation #2 - NO

- Quarantine limited to people who may have been exposed to the virus. Governments -- federal, state and local -- can order quarantines. Examples: with people who were repatriated from China or cruise ships, 14 day quarantines. Isolation is for persons actually infected or who 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, have been exposed, or at high risk. 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: individuals would be eligible for unemployment if they have no work, but neither disability nor emergency sick leave.

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## HR 6201

### Paid Benefits – Emergency Sick Leave/FMLA

- Full time employees get 80 hours, part time employees get 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.
- If the employee did not work during that 6 month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work

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## HR 6201

### Emergency Sick Leave

- Paid sick time shall cease beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time.
- Paid sick time cannot carry over from one year to the next
- An employer cannot require an employee to find a replacement to cover their hours when receiving sick leave under this act.
- ***Employees who qualify for the full 12 weeks of FMLA are eligible for that benefit and they are able to use accrued paid leave, as typically permitted by the district or COE.***

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# Amount of Compensation for FMLA Emergency Leave

Not less than the greater of the following:

- Employee's regular rate of pay, or the federal, state or local minimum wage rate.
- The paid sick leave rate may not exceed \$511 per day or \$5,110 in aggregate/
- Exception: 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
- This paid leave should be used first! An employer may not require an employee to use other paid leave provided by the employer before using the paid sick time provided under this Act.

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

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<b>(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).</b>	<b>Two-thirds of the employee's regular rate of pay.</b>	<b>\$200 per day and \$2,000 in the aggregate</b>
<b>(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.</b>	<b>Two-thirds of the employee's regular rate of pay.</b>	<b>\$200 per day and \$2,000 in the aggregate</b>
<b>(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.</b>	<b>Two-thirds of the employee's regular rate of pay.</b>	<b>\$200 per day and \$2,000 in the aggregate</b>

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## Additional Prohibitions and Rules HR 6201

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- It will be 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.
- There are harsh penalties for employers who violate this Act.
- Nothing in the Act shall diminish the rights or benefits that an employee is entitled to under federal, state or local law, under a collective bargaining agreement, or under an existing employer policy.
- Nothing in the Act shall require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for paid sick time under this Act that has not been used by the employee.

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## Traditional FMLA/CFRA for district or COE Employees who Qualify

- Employees who qualify for full 12 weeks may use it, with concurrent leave accruals for self or close family member with serious health condition. NOTE: qualifying factors are broader in HR 2601.
- Family member preventative care is broader under both PFL and Kin Care than traditional FMLA
- DFEH guidance on CFRA – may employer send employees home if they display symptoms of COVID-19 Yes, per CDC. 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.

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## DFEH Guidance on CFRA in Context of COVID-19

- Employees entitled to 12 weeks of 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. (separate child bonding leaves unrelated to COVID-19 may continue)
- 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.
- **HIPAA exception for disclosure of PHI to prevent a serious and imminent threat to health and safety.**

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## May Employer Ask about Underlying Health Conditions Due to COVID-19

The employer can send ask 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)?

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## Paid Sick Leave to Self-Quarantine

- 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.
- Employees at high risk due to age or medical conditions should err on side of self-isolation.

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## Other Paid Leave Benefits Provided by California Law

- SDI/PFL: EDD has expanded 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). *ONLY those who pay into SDI are eligible.*
- Paid Sick Leave Law for self and expanded family members – illness and preventative care. Preventative care may include self-isolation due to “at risk” category by age or chronic health condition.
- Kin Care: broader family members include spouse, domestic partner, child, parent, parent in law, sibling, grandparent or grandchild.

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## DIR/Labor Commissioner FAQs Governor Executive Order Waives all Waiting Periods for Benefits

- Paid sick leave available for preventative care.
- Employee who is quarantined may qualify for disability benefits - EDD
- Employer cannot require employee to exhaust paid sick leave during quarantine. It is the employee's choice.
- Labor Commissioner also enforces the Emergency child care leave under Labor Code section 230.8.
- Reporting time penalty doesn't apply during periods of emergency order.
- Exempt employees are entitled to a full week pay, unless work interruptions are due to a shutdown of operations.

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## Other Potential Leaves

- ADA/FEHA reasonable accommodations for individuals at high risk, with known exposure, or have symptoms of COVID-19 illness.
- ***Requires an interactive process.***
- Evaluation of “recovery within a finite and reasonable period of time,” is difficult in today’s environment; employers should exercise flexibility.
- Undue burden defense may be very difficult to establish, even for employees performing essential services. Exception would be where public health and safety would be jeopardized.
- If employee has symptoms or exposure –need to keep them off due to imminent threat to own or others health and safety.

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## Unemployment Insurance for Individuals with No Work Due to Shutdown

- Cannot collect unemployment and disability at the same time.
- Employee may collect disability benefits if they qualify and then transition to unemployment claim if the workplace operations continue to be shut down or otherwise impacted.
- Employee can start collecting unemployment benefits if laid off or hours reduced and then switch to disability claim if they become sick or need to self-quarantine.
- 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

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## Child Care Emergency under Labor Code Section 230.8 – For School Shutdown

(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.

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## What Should Districts Do about Non-COVID-19 LOAs in Progress before 3/13/20

- **PLEASE NOTE:** The following series of slides are offered as a starting point for consideration. They are based on the interpretation that the Executive order does not require full pay for all employees for the duration of the shutdown.
- 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.

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## What about other Leaves in Progress Unrelated to COVID-19?

- Employees on leaves unrelated to COVID-19 that were in place prior to the Governor's Executive Order of 3/13/20 should remain on their designated leave, with appropriate paid accruals that otherwise apply.
- For employees who have not yet started a non-COVID-19 related leave (PDL, FMLA-CFRA, Parental Leave, should be treated as customary and not the COVID-19 related leaves.
- For employees who need COVID-19 related leaves, contact the hotline for help with designation letters and other communications.
- RTW and modified duty issues for temporary restrictions unrelated to COVID-19 or intermittent leave should be handled on a case-by-case basis. Contact the hotline for assistance.

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## Other LOAs in Progress

- 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.
- A leave for the employee's serious health condition or family member care 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.

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## Other LOAs in Place

### Child Bonding/ Ed. Code Parental Leave

#### For a child bonding leave that was in progress prior to 3/13/20:

- If the employee wishes to use the bonding leave immediately upon release from PDL, she may do so.
- 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. That is their right under CFRA. The parent may then use (or resume) the bonding leave at a later time, up to the child's first birthday.
- An employee on a pre-approved unpaid discretionary or contractual LOA for the entire 2019-2020 school year, may not withdraw the leave to return to duty, even to provide essential services; particularly if the terms and conditions were a full year and a temporary employee was engaged.

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## LOAs in Progress for Accepted WC Claims

- 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.
- When an employee is released with temporary restrictions to modified duty, the District must evaluate return to work.
- If an employee is working modified duty and is unable to work because of the mandatory COVID-19 shutdown, will TD apply.

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## Determination of Ability to Accommodate Modified Duty on Accepted WC Claims

- 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.

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## What is the District's Obligation on RTW from an FMLA-CFRA Leave for Non-COVI-19 Condition

- 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.

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## Employers are Free to Provide other Paid Leave – Administrative or Discretionary

- 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 paid leave uses, the reason for the change and the circumstances, *i.e.*, that it is one-time exception for the COVID-19 coronavirus.
- Also may want to limit an employee's use for self-quarantine to 14-days (from the last known possible contact. 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.
- Policies, contracts, and supplemental negotiated MOUs will govern, and districts may choose to temporarily modify their policies.

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## FEHA Definition of Disability is Expansive to Include Much of COVID-19

- Any limitation of a major life activity;
- Limits includes making achievement of the life activity difficult;
- Major life activities include breathing, concentrating, focus, stamina;
- Treatments or mitigating measures that limit life activity are also covered;
- Working is a major life activity;
- Result: COVID-19 symptoms or positive test are clearly covered disabilities. Self-isolation from exposure is also likely a covered disability.
- Underlying health conditions that place someone at increased risk of serious illness from exposure are also likely covered. This includes COPD, asthma, immune disorders, treatment for cancer or other chronic health conditions, are all a basis for employee to request a reasonable accommodation for modified schedule, work from home, or leave.
- Failure to engage in an interactive process is itself unlawful.

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## Interactive Processes Still Required with Requests for Accommodation

- If not feasible in person due to social distancing, consider telephone or online meeting.
- Evaluate all forms of reasonable accommodation – modified schedule, work from home, extended leave, alternative duties.
- This applies even to employees providing essential services.
- Also applies to individuals working remotely, who later request an accommodation.
- Be practical: it is very difficult to get health care providers to generate certifications, work restrictions, or even notes in this climate.

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## EEOC Guidance Regarding COVID-19 Pandemic – Updated 3/21/20

- 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.

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## Key Aspects of EEOC Guidance on ADA and COVID-19

- 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. No medical questions restriction is suspended.
- 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.
- May not require telework from home for individuals who are ill, as an infection control technique. May allow it as an accommodation if employee requests it due to increased risk of complications should the individual be exposed or contract COVID-19.

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## Key Aspects of EEOC Guidance

- Asking why an individual 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.
- May require employees to adopt infection control practices such as regular handwashing, cough and sneeze etiquette and social distancing to adhere to the CDC and public health authorities' directives.
- 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.

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## EEOC Recommends Flexibility in Leave Policies

- Employer may not change sick leave policies per 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.
- Flexibility in granting extended leave for a variety of reasons – physical and mental health, significant risk factors for serious complications from COVID-19 and other considerations merit extended leave – paid or unpaid.
- Some leaves will be indefinite duration during Pandemic and health department orders.

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## EEOC Guidance Emphasizes Flexibility

- 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.
- 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, but may well be entitled to leave as a reasonable accommodation, particularly with known risk factors.

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## EEOC Guidance on RTW After Pandemic Ends

- 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. Consider local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.

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## What about Fitness for Duty to Return to Work from Leave?

- 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.
- Do not require a negative COVID-19 test result before allowing an employee to return to work In most situations people are not even being tested. Only those with severe illness are being tested at this time.
- No. Health care providers are extremely overwhelmed with the pandemic and may not be able to provide such documentation in a timely manner.

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## Be Careful about Discrimination Apply Policies Consistently

- 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.
- 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.

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## Be Mindful of Potential Discrimination or Harassment for all Protected Characteristics

- Individuals of Asian descent are targeted by references to “Chinese virus” or “Wuhan virus.”
- Slurs, disparate treatment, racial or ethnic commentary, disparaging remarks, bullying, or other forms of verbal, physical, or visual harassment will be aggressively pursued.
- Disparagement or disparate treatment, including bullying or isolation for individuals with symptoms (exception of course is social distancing), but disparaging remarks or gossip should be prohibited.
- Mocking of individuals who request accommodation due to mental health or fear.
- Failure to engage in interactive process

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## Strong Non-Discrimination and Retaliation Provisions of California Law

- Retaliation protection applies for taking or requesting available leave or inquiring about options under every California law.
  - Applying for SDI, PFL, other Labor Code leaves, unemployment insurance.
  - Rebuttable presumption of retaliation if threats or adverse action occur shortly after protected activity.
  - Requesting a reasonable accommodation, regardless of whether it is granted..
  - Complaining about discrimination or harassment due to disability or national origin.
  - Other forms of discrimination and harassment -
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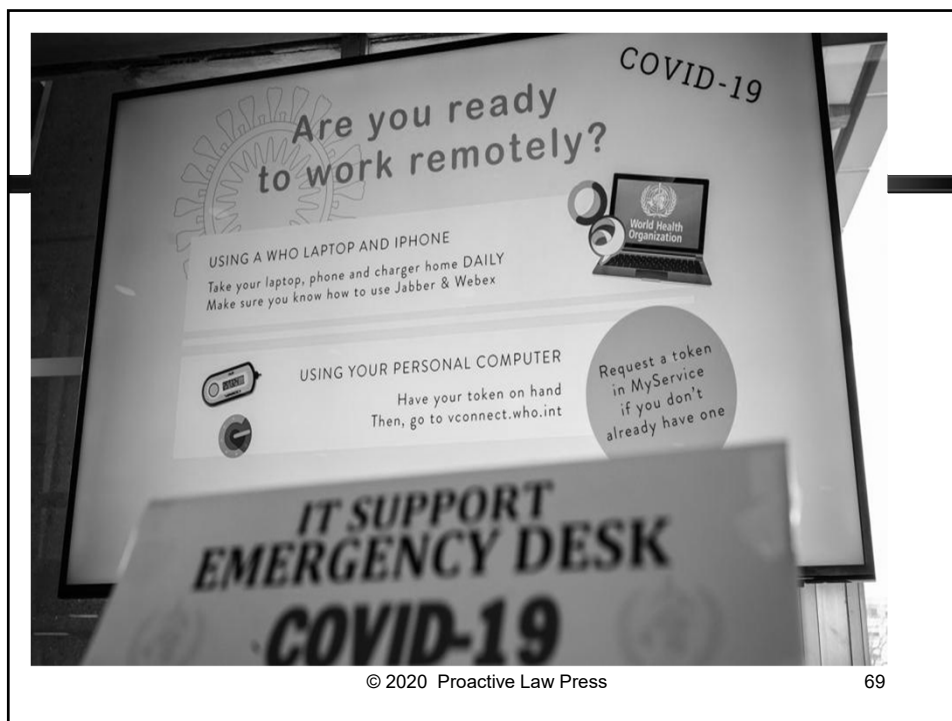
## A Word about Pre-Employment Processes During Pandemic

- Is anyone really hiring, you may ask? Yes, to replace employees performing essential services.
- Pre-employment strength and agility or other pre-employment medical screenings will be difficult to perform, as many of the clinics are NOT performing these tests at this time due to concerns about spreading COVID-19. If you cannot get a pre-employment screening, you may have to use your best judgment on whether or not to hire the individual. Temporary, short term assignments may be an option.
- **BEWARE: Once you let an employee start work, all pre-employment conditional offers are satisfied and you cannot go back and take the employee off work for a test after the shutdown is over.**

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## Considerations in Managing Telework During the Pandemic

- 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. This is for both essential and non-essential services.
- Districts 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.
- Under California Labor Code, 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.

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## Telework Arrangements

- 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.
- 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 district shut down.

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## Telework Policies Should be Clear and Specific

- 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.
- Apply telework policies consistently among all employees in their organization. This is to prevent discrimination claims down the road.
- Timekeeping is critical for both wage and hour and managing work outflow. Face to face communications via Zoom, Skype or video calls can keep employees on track.
- Maintain flexibility during Pandemic due to the stressful conditions.

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# Telework Preparation

- 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.

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## What Should Telework Policy Contain?

- Expectations for operational security, continuity of key operations, regular communication and impact of Public Records Act on remote business communications, documentation management and backups
- 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.)
- Remote meetings over phone or on camera?

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## Telework Best Practices for Ergonomics Encourage Employees to Consider

- CDC recommends careful directions for work at home to clean, disinfect, and sanitize workspace and maintain social distance.
- Use a good chair. If necessary use firm pillows for back/leg support, hips and knees should be at 90 degrees.
- Raise the chair (kitchen tables and desks may be too high), you don't want to reach up to the keyboard and mouse on the table or desk. Use a pillow as a seat cushion to raise your height if needed.
- Support feet on a phone book, step stool, etc., if they don't firmly touch the ground while sitting.

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## Best Practices for At-Home Workstations

- Raise monitor or laptop using books, old shoe boxes, etc. to have top of monitor level with eyes or just slightly lower, don't look down. If you wear transition lenses, your monitor height may need to be slightly lower.
- Use an external keyboard and mouse. It is recommended that the monitor is separated from the keyboard/mouse. The top of the monitor should be at or slightly below eye level, shoulders relaxed with the elbows around 90 degrees accessing keyboard and mouse.
- Take breaks for stretching whether you are home or at work, frequent short breaks (2-4 minutes) with any prolonged/continuous computer activity of more than 30-40 minutes. (Utilize timers or reminders on computer or smart watches if needed.)

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## Follow CDC and OSHA Requirements

- 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.
- 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.

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## OSHA Requirements See details in FAQs

- Hierarchy of controls
- Engineering controls
- Administrative controls
- Safe work practices
- PPE's – Personal protective Equipment
- Determining risks: low, medium, high or very high
- Recordkeeping Requirements
- Reporting Requirements

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# OSHA Requirements PPE's Very Important

- Gloves, Goggles
- Face shields, Face masks
- Respiratory protection

All types of PPE must be:

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

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## More about PPEs

- Employers are obligated to provide the PPEs needed for safe performance of the job. Shortages are rampant and healthcare professionals must use their best judgment on handling the situation until more PPEs are available.

CAL/OSHA has specific and comprehensive updated guidance documents

- Health & Safety Guidance for Childcare Providers
- Interim Guidance for Protecting Healthcare Workers
- Interim Guidance for General Industry
- Communication of current hazards, new and unanticipated hazards, and hazards under normal operating conditions and foreseeable emergencies remains paramount.

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## Recordkeeping, Recording and Reporting

- 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.
- 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).
- 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.

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## Specific Directions for Districts and COEs on OSHA Reporting

- OSHA has stated that should be considered an illness under the rule. 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.
- 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.**

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## OSHA Reporting

- 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. U
- 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](#)

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## Workers' Compensation and Industrial Injury Benefits

- 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.

Exceptions to non-compensability for non-occupational disease. An injury resulting from a nonoccupational disease may be compensable if:

- The employment subjects the employee to an increased risk compared to that of the general public; or
- The immediate cause of the injury is an intervening human agency or instrumentality of the employment.

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## When will an Exposure Potentially be Covered by WC?

- If the employment places an employee in a position of greater risk to the coronavirus than the general public, the courts could also find an employee's exposure to the coronavirus compensable. Doctors, nurses, or other health care workers, who are required to treat patients with the coronavirus could potentially file their own workers' compensation claim if they contract the virus.
- Employees who are required to work close to large numbers of people could also argue they are subject to an increased risk compared to that of the general public.
- Absent state legislation an employee seeking WC 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 if there is another alternative exposure or if the employee's medical evidence is merely speculative.

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## Criteria to Consider in a WC Claim for COVID-19

- Was there an increased risk or greater likelihood of contracting the condition due to the workers' occupation?
- If not for their job, would the worker have been exposed to the virus or contracted the condition?
- Can the worker identify a specific source or event during the performance of his or her employment that resulted in exposure to COVID-19?
- Industrial injury benefits do not apply to being sent home due to quarantine. COVID-19 quarantine period. Per Labor Code section 3208.1, an injury must cause disability or the need for medical treatment to be compensable.

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## What if Claim is for Contracting COVID-19 on Business Travel?

- 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.

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## Will a "Stress" Claim Based on COVID-19 be Compensable for Industrial Injury?

- What if an employee claims stress or anxiety from having to perform "onsite" essential services due to fear of contracting COVID-19?
- Requiring employees who provide essential services onsite is likely a good faith personnel action that will not be compensable under WC precedents. Absent any state law changing this for COVID-10, it is solid law.
- If an employee claims stress, or any type of mental illness and specifically states that it arises out of the workplace, do provide them with the appropriate claim information. It is their right to make a claim.
- Like physical injury or illness claims alleged to stem from COVID-19, any claim will be investigated through the normal process and decisions made on delay, denial, or acceptance based on objective standards.

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## Additional Resources and Anticipated Updates

Watch for more about Telework, Travel Restrictions,  
Workplace Safety Protocols, Reasonable  
Accommodations Processes and Leave  
for Essential Services Staff

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## A Word About this Material

This handout accompanies a presentation for school districts and county offices of education. While the information is accurate and up to date, it is not intended to, and does not constitute, legal advice on a specific matter.

You can reach the Eyres Law Group schools legal services Hotline for questions on specific matters:

[PEyres@Eyreslaw.com](mailto:PEyres@Eyreslaw.com)

Direct line: 602-448-4051

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