



## CORONAVIRUS FAQs for California Employers

With many California employers wondering what their workplace obligations are in the wake of the Coronavirus Outbreak, abbreviated COVID-19, we developed some FAQs. Please keep in mind that the [Centers for Disease Control \(CDC\)](#) the [Occupational Safety Health Administration \(OSHA\)](#), [CalOSHA](#), along with local public health authorities, should be where employers turn for specific workplace safety guidance.

Click [here](#) for CalOSHA's Guidance on Preparing Workplaces for COVID-19 and click [here](#) for CDC's Interim Guidance for Businesses and Employers. You can also read our last alert regarding the Coronavirus [here](#).

**Q: On March 8<sup>th</sup>, Governor Newsom ordered California State's public schools to cancel classes through March 31st. Many of our employees have school-aged children. What happens next?**

A: Under California Sick Leave, employees have a right to use sick time for a closure of their child's school (or daycare) due to this public health emergency. Since public schools are now closed, employers should consider allowing employees to work remotely, if their job duties allow for it. Employers with 25 or more employees at the same location are also covered by California School Activities Leave (Labor Code 230.8, 233) which allows for up to 40 hours per year of protected time off for emergency school closures.

**Q: May an employer send employees home who exhibit symptoms of COVID-19?**

A: Yes. With the WHO's declaration of COVID-19 being classified as a pandemic, the [EEOC has stated](#) that employers can require employees exhibiting any symptoms associated with COVID-19 to leave or not report to work. Employers do need to be careful to apply such practice consistently and in a manner that does not discriminate against any protected classes.

**Q: What are your obligations if an employee has contracted or been directly exposed to COVID-19?**

A: If you have an employee who has contracted COVID-19, that employee should be sent home immediately. It is also advised to seek information about who they may have come into close contact with through their work. Employers should share non-identifying information with other employees who work at the same location, as they are at increased health risk. Any employee that has come into close contact with the infected employee should also be sent home for 14 days. For specific guidance how to deal with COVID-19 positive employees, please reach out to the local health authority.

**Q: May an employer require an employee to use any available PTO or vacation/sick leave for their absences associated with COVID-19?**

A: Employers may require employees to use any available PTO or vacation for their absences associated with COVID-19. Commonly, employers have policies in place that state employees must use all available paid time off before utilizing unpaid time off. However, under California Paid Sick leave employers cannot required employees to use PSL (or PTO if the employer has combined PSL and PTO) under any circumstance, including for the COVID-19. The Department of Industrial Relations has issued [guidance for employers](#).

**Q: What can employers do if an employee is out of Paid Time Off and is absent from work due to COVID-19 related symptoms?**

A: This answer depends on whether an employee is exempt or non-exempt.

- For non-exempt employees, employers must compensate employees for all hours worked. If a non-exempt employee working remotely, then the employee must be compensated for all hours worked. However, if a non-exempt employee is absent from work and does not perform any services, the employee does not need to be paid for that time.
- Exempt employees, on the other hand, should receive their full salary during any day or any week where work is performed, with limited exceptions. You may make partial day deductions from an employee's sick leave or vacation/PTO bank but exempt employees must be paid for any day or week they perform work. If an exempt employee has not yet accrued any sick leave or vacation/PTO or has exhausted all of their accrued time, there can be no salary deduction for a partial day absence.
- Deductions from salary may also be made if the exempt employee is absent from work for a full day or more for personal reasons *other than* sickness and accident, so long as work was available for the employee, had they chosen to work.

**Q: Do employers have to pay employees if the company shuts down for a specified time due to COVID-19?**

A: Like the previous FAQ, this answer depends on whether employees are exempt or non-exempt. If an employer shuts down their offices/facilities, non-exempt employees do not need to be paid when work is not being performed. However, for exempt employees, the general rule is that exempt employees need to be paid for all weeks in which some work is performed. Therefore, if offices/facilities are shut down for partial weeks, exempt employees receive their full salary. However, if offices/facilities are shut down for a full week, employers are not required to pay exempt employees for weeks where no work is performed – it is unlikely that exempt employees will perform no work – use caution when deducting exempt employee pay.

**Q: Could COVID-19 trigger FMLA or CFRA for eligible employees?**

A: Potentially. As a reminder, there are statutory family leave laws that generally allow eligible employees to take up to 12 protected weeks off for certain health or family-related reasons. If your company has 50 or more employees it is covered under FMLA/CFRA. Employees are eligible for FMLA/CFRA leave if they have been with the company for at least 12 months (not necessarily consecutive), and have worked at least 1250 hours in the 12 months prior to the requested leave.

One of the reasons an eligible employee can take FMLA and/or CFRA leave is for serious health conditions related to the employee or the employee's immediate family members. Coronavirus could be considered a "serious health condition" under FMLA and CFRA. If eligible employees are unable to work due to COVID-19 related symptoms, they should be provided with the FMLA/CFRA paperwork. CEA members can use the [Leaves of Absence tool kit](#) to assist in this process.

**Q: If employers are faced with having to close facilities or lay off employees due to COVID-19, are those employers required to give notice to employees?**

A: If employers do have to close facilities or lay off employees due to COVID-19, employers need to determine whether the [Worker Adjustment and Retraining Notification Act \(WARN\)](#) or [California's companion law applies](#). These laws require covered employers to provide written notice before a plant shutdown or covered mass layoff. The law does have an exception to the notice provision for "unforeseeable business circumstance" that is caused by some sudden, dramatic, and unexpected action

or conditions outside the employer's control. There is a good argument that COVID-19 would be considered an unforeseeable business circumstance. However, even with that exception triggered, employers still give employees notice of such layoffs or closures as soon as practicable. It is important to understand your obligations under these laws before closing a facility or laying off employees.

**Q: May employers encourage or require employees to work remotely as a disease prevention strategy?**

A: Yes. Employers may encourage or require employees to work remotely as prevention strategy. Employers still need to be mindful that such policies and practices must be applied in a non-discriminatory manner. Employees should be told to contact their supervisors to see if remote work is feasible based on their job descriptions. Be sure to carefully craft remote worker /telecommuting processes in relation to the unique circumstances COVID-19 presents if you do not want to make such policies precedent setting.

**Q: May employers discipline employees who are in violation of the company's attendance policy due to COVID-19 related absences?**

A: Employers should strongly consider not disciplining employees who are in violation of attendance policies because of COVID-19, as the health and safety of all employees is important in the face of a pandemic. Some of the absences may also be specifically protected under California Sick Leave, School Activities leave, and/or CFRA and FMLA which would prohibit using those absences against them. Further, if employers relax their attendance policy in the face of COVID-19, employers will not create a precedent for non-coronavirus related absences as long as it is clear the relaxed policy is specific to COVID-19 related illnesses only.

**Q: May an employer restrict business travel?**

A: Yes. Employers may restrict business travel and should prohibit all unnecessary travel per Department of State's [advisory](#). Employers should develop and communicate plans in regards to both global and domestic travel. While employers should not limit employees' rights to personal travel, employers can implement self-quarantine upon an employee's return but this policy must be applied consistently.

**Q: Is there anything employers can do to help ease the financial burden COVID-19 has caused employees?**

A: Yes. Employers can consider advancing PTO/Vacation accruals to cover COVID-19 related absences. Employers may also decide to increase employee sick leave accruals or potentially frontload more sick leave hours to employees specifically for COVID-19 purposes. Other employers are letting employees use accrued vacation for COVID-19 purposes if they have separate sick and vacation policies and the employee does not have sick time available. Employers can consider implementing a catastrophic leave bank where employees donate PTO or sick hours to give to employees who are absent from work due to COVID-19. Of course, there are many other options to consider, but these are the most common we are seeing right now. Be sure to consult an HR Advisor for assistance in understanding the implications of each of these options and whether they will work for your business. The Employment Development Department has issued [guidance on wage replacement](#) as well.

**Q: Can an employee refuse to come to work due to their concerns over COVID-19?**

A: In most circumstances, no. Under OSHA rules, an employee can refuse to come to work if they believe they are in imminent danger, which is defined as threat of death or serious physical harm. The employee



would need to show that there is a high risk of death or serious physical harm in their immediate future if they were to come to work as opposed to a generalized fear. This is a high burden for employees to meet, especially if employers are following the workplace recommendations provided by the CDC and OSHA. However, if an employee is refusing to come to work, it may be worth seeking guidance from an HR Advisor or legal counsel.

**Q: Can I require an employee that has recently traveled (personal or for business) to a high risk area to stay at home for a period of time after they return.**

A: Because COVID-19 has been declared a pandemic, employers do not have to wait until an employee develops symptoms to ask about potential exposure. If the CDC or local health authorities recommends that individuals traveling to an affected area stay home for a period of time, then employers may do the same. It is recommended you obtain information from the CDC if you have any employees in that situation.

CEA is actively monitoring this situation, and will continue to provide additional guidance as this situation may rapidly change. Please do not hesitate to email [CEAinfo@employers.org](mailto:CEAinfo@employers.org) or call us at 800.399.5331 if you have any questions. Our team is here to support employers!