

Today's Speaker



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Glen Drouin had a 13-year career with his family-owned business followed up by a 20-year career in Human Resources with a national company before starting his own HR consulting firm Harbor HR. Glen's extensive knowledge and skillset has assisted numerous businesses throughout his 20-year career in Human Resources, employee and management development, and company culture shaping.



Business Action Steps For COVID-19

Presented by Harbor HR & CLCA Insurance Solutions

HARBOR HR

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Solutions

Today's Topics

- Minimizing employee exposure
- Methods for prevention
- Be prepared for the return back to normal
- Responding to business changes
- What Cal-OSHA wants to maintain employee safety
- Navigating employee requests during the pandemic

Why this stuff is important

- Doing all you can during this pandemic shows your company cares.
- The internal and external marketing is important, you don't want your reputation to suffer.
- The financial wellbeing of your company is at stake.

California COVID-19 Information

- Executive Order signed by Governor Newsom on March 19th and is still in effect.
- 58 counties had a variety of declarations, some expired and some still in place.
- Be aware of your specific county regulations, some require masks others do not.
- Fortunately, landscaper contractors are considered essential businesses.
- Paycheck Protection Program funds still available.

California Resilience Roadmap



STAGE 1: Safety and preparedness

Make workplaces safe for our essential workers.



STAGE 2: Lower-risk workplaces

Gradually reopen retail (curbside only), manufacturing & logistics. Later, relax retail restrictions, adapt & reopen schools, child care, offices & limited hospitality, personal services.



STAGE 3: Higher-risk workplaces

Adapt and reopen movie theaters, religious services, & more personal & hospitality services.



STAGE 4: End of Stay Home Order

Reopen areas of highest risk: e.g. Concerts, conventions, sports arenas.

COVID-19 Updated Symptom List

Symptoms may appear 2-14 days after exposure to the virus. People with these symptoms may have COVID-19.

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle pain
- Sore throat
- New loss of taste or smell
- Nausea, vomiting, or diarrhea

COVID-19 Emergency Warning Signs

If someone is showing any of these symptoms, seek emergency medical care immediately.

- Trouble breathing
- Persistent pain or pressure on the chest
- New confusion
- Inability to wake or stay awake
- Bluish lips or face

Symptoms of Coronavirus (COVID-19)

Your symptoms can include the following:

Fever



If you have COVID-19, you may have mild (or no symptoms) to severe illness.

Symptoms can appear 2-14 days after you are exposed to the virus that causes COVID-19.

Cough



Seek medical attention immediately if you or someone you love has **emergency warning signs**, including:

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion or not able to be woken
- Bluish lips or face

Shortness of breath



This list is not all inclusive. Please consult your medical provider for any other symptoms that are severe or concerning.



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[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

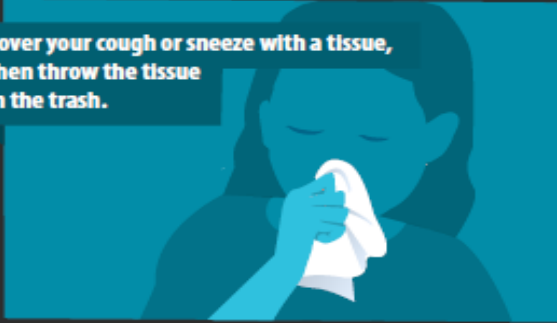
Stop the Spread of Germs

Help prevent the spread of respiratory diseases like COVID-19.

Avoid close contact with people who are sick.



Cover your cough or sneeze with a tissue, then throw the tissue in the trash.



Avoid touching your eyes, nose, and mouth.



When in public, wear a cloth face covering over your nose and mouth.

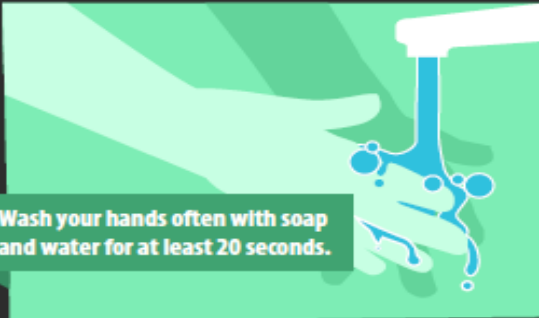
Clean and disinfect frequently touched objects and surfaces.



Stay home when you are sick, except to get medical care.



Wash your hands often with soap and water for at least 20 seconds.



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

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CDC (Center for Disease Control) Posters

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

The Psychological Impact of COVID-19

- Work on being empathetic when possible. Employees have varying degrees of fear associated with the virus.
- Customers or work locations may have a heightened sense of government orders, important to make sure employees follow COVID-19 guidelines.
- News stations are full 100% COVID-19 right now and people are finding it difficult to escape this uncomfortable reality. Therefore, be aware that stress levels are high, and employees may do uncharacteristic things.

Minimizing your employee exposure

California expects you to make sure your business is taking steps to keep your employees safe. What do you need to do?

- Perform a detailed risk assessment and implement a site-specific protection plan
- Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them.
- Implement individual control measures and screenings.
- Implement disinfecting protocols.
- Implement physical distancing guidelines.

Minimizing your employee exposure...continued

Written Site Specific Protection Plan

- Designate a person at each job site or facility.
- What measures will be taken to prevent the spread of the virus.
- Training and communication with employees.
- A process to check for compliance and to document and correct deficiencies.
- A process to investigate COVID-19 cases.
- Update the plan as necessary to prevent further cases.

Minimizing your employee exposure...continued

Topics for Employee Training

- Information on COVID-19, preventing spread, and who is especially vulnerable.
- Self-screening at home, including temperature and symptom checks. CDC considers someone to have a fever at 100.4 degrees.
- Importance of not coming to work if you have any COVID-19 related symptoms.
- When to seek medical attention.
- The importance of hand washing.
- The importance of physical distancing, both at work and off work.
- Proper use of cloth face covers.

Minimizing your employee exposure...continued

Individual Control Measures and Screening

- Symptom screenings and/or temperature checks.
- Encourage workers who are sick or exhibiting symptoms of COVID-19 to stay home.
- Encourage frequent handwashing and use of hand sanitizer.
- Provide disposable gloves to workers using cleaners and disinfectants when needed.
- Strongly recommend cloth face covers.
- Restrict non-employee personnel on the job sites, conduct screenings and encourage the use of face masks or covers.

Minimizing your employee exposure...continued

Cleaning and Disinfecting Protocols

- Perform thorough cleaning in high traffic areas.
- Frequently disinfect commonly used surfaces.
- Clean and sanitize shared equipment between each use.
- Clean touchable surfaces between shifts or between users.
- Require workers to wash hands or use sanitizer after using shared equipment.
- Sanitize PPE at the end of the shift.
- Avoid sharing phones, work tools, etc. wherever possible.
- Keep sanitary facilities stocked.
- Use products approved for use against COVID-19 on the EPA approved list.
 - <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

Minimizing your employee exposure...continued

Physical Distancing Guidelines

- Implement measures to ensure workers are at least six feet apart.
- Adjust on-site meetings to ensure physical distancing.
- Limit the number of workers on the jobsite.
- Stagger employee breaks, if needed to maintain physical distancing protocols.
- Reconfigure break areas for physical distance.
- Avoid congested areas at lunch.

Methods for Prevention

COVID-19 Infection Prevention is important in the workplace, take the necessary steps below to mitigate exposure potential.

- Frequent washing of hands.
- Do not allow employees to shake hands or hug.
- Keep 6 feet of social distancing at all times.
- Adjust on-site meetings to ensure physical distancing.
- Limit the number of workers on the jobsite.
- Stagger employee breaks.
- Avoid congested areas at lunch.
- Encourage workers to drive to job sites separately.
- Discourage sharing of food & water.
- Provide single use water bottles.

Be prepared for the return back to normal

Most experts predict this will be a long term change and things may take a while to get back to normal.

- Define clearly the working environment expectations with clients/customers/vendors on how you need them to interact with employees.
- Using video or telephone conferencing may be needed more frequently.
- Can your office staff work from home or do they need to come back to the office?
- Define how you will navigate customer traffic in your office.

Be prepared for the return back to normal...continued

What do you need when hiring back employees.

- A good time to make sure all new hire paperwork is completed properly.
 - Give them W-4, DE-4, and update I-9 documents.
 - Review employee files for accuracy.
 - Update job descriptions as needed.
 - Update employee handbook to show COVID-19 policy and potentially telecommuting policy for office staff if applicable.
 - Document all business change updates, such as return to normal working hours, hourly rates, and salary adjustments.
 - Be sure vacation and/or sick policies are reimplemented correctly.

Responding to business changes

Having a business continuity plan will be important if they reopen and we have a second “stay in place” order.

- What staffing changes will you need to make immediately?
- What jobs need to be adjusted or modified along with pay rates?
- How will you get needed supplies?
- How will you communicate to customer and vendors?
- What financial resources do you have to maintain the business?
- Company IT information secure?
- What did you learn the first time that you can use the next time around?

What CAL/OSHA Wants

CAL/OSHA has its own guidelines and you always want to keep updated on the most recent requirements.

- Actively encouraging sick employees to stay home.
- Sending employees with acute respiratory illness symptoms home immediately.
- Providing information and training to employees on:
 - Cough and sneeze etiquette
 - Hand hygiene
 - Avoiding close contact with sick persons
 - Avoiding touching eyes, nose, and mouth with unwashed hands
 - Avoiding sharing personal items with co-workers (i.e. dishes, cups, utensils, towels)
 - Providing tissues, no-touch disposal trash cans and hand sanitizer for use by employees
- Performing routine environmental cleaning of shared workplace equipment and furniture.

What CAL/OSHA Wants...continued

- Make sure you have an updated Injury Illness Prevention Program to include information on employee training and preventing the spread of COVID-19.
- Cal/OSHA Consulting recommends using individual water bottles to avoid continuous touching of water coolers.
- Ask employees questions about their health prior to work or do temperature checks.
- Continue to do other necessary trainings such as Heat Illness & Hydration Training.
- Continue to provide shade and necessary breaks.
- Cal/OSHA and OSHA consider COVID-19 a new hazard and it has to be addressed.

Navigating employee requests during the pandemic

Families First Coronavirus Response Act

- Emergency Paid Sick Leave
- Emergency FMLA Leave

Workers Compensation

- Governor Newsom signed a new executive order that essential workers who contract COVID-19 did so in the course of their employment and therefore are eligible for workers' comp benefits.
- Claims can be dated back to March 19, and this will be in place for 60 days.

Unemployment Benefits

- Employees can be paid up to 39 weeks up to \$450 weekly and eligible for the additional \$600 weekly benefit through the end of July.

Employees not wanting to come to work

HR 6201: Families First Coronavirus Response Act

- **Two Primary Provisions:**
 - Emergency Paid Sick Leave
 - Emergency Paid Family Medical Leave
- **Common Provisions:**
 - Effective 4/1/2020-12/31/2020
 - Leave requirements apply to private employers with less than 500 employees.
 - Potential hardship exemption for small businesses.
 - Requirement to post/disseminate notice
 - Tax credits available
 - Employer-provided health insurance must continue during leave on same terms as if work continued.
 - The DOL will not bring enforcement actions against any employer for violations of the Act occurring within 30 days of the enactment of the FFCRA (April 1 – April 30, 2020).
 - Employer must make reasonable, good faith efforts to comply with the Act.

HR 6201: Families First Coronavirus Response Act

<https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA.pdf>

HR 6201: Families First Coronavirus Response Act - Continued

Potential Small Business Hardship Exemption

- Applies only to expanded FMLA leave and sick leave taken due to employee's child's school/day care closure.
- Employer with less than 50 employees may claim exemption if providing leave would jeopardize the viability of the business as an ongoing concern.

HR 6201: Families First Coronavirus Response Act - Continued

Hardship Exemption Available If:

- Provision of leave would result in business expenses and financial obligations exceeding available business revenues and cause business to cease operating at a minimal capacity;
- Absence of employee(s) requesting leave would entail a substantial risk to the business' financial health or operational capabilities because of the employee's specialized skills, knowledge or business or responsibilities; or
- There are not sufficient workers who are able, willing and qualified who will be available to perform labor/services provided by employee(s) requesting leave and such labor/services are needed for business to operate at minimal capacity.

HR 6201: Families First Coronavirus Response Act - Continued

Notice Requirements

- FFCRA requires notice be provided to current employees by 4/1/2020. Did you do that?
- Must post in a conspicuous place easily visible to employees
 - Post at worksite if employees do not report to office
 - Placement in binder not sufficient
- For teleworking employees, email, direct mail, or post on internal/external employee website.
- DOL working on translated notices
 - Spanish version available
 - Currently no requirement to post in multiple languages

HR 6201: Families First Coronavirus Response Act – Continued – Notice Requirement



The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20

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HR 6201: Families First Coronavirus Response Act – Continued – Notice Requirement Poster Hyperlink

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

HR 6201: Families First Coronavirus Response Act - Continued

Emergency Paid Sick Leave Act

Qualifying reasons for Paid Sick Leave

Available to all employees (no length of service requirement) unable to work/telework because of the employee:

1. Is subject to a federal, state or local quarantine/isolation order.
2. Has been advised by a health care provider to self-quarantine for COVID-19 related concerns.
3. Is experiencing symptoms and seeking diagnosis.
4. Is caring for someone else subject to (1) or (2).
5. Is caring for a child whose school/care provider has closed/is unavailable due to COVID-19.
6. Is experiencing any other condition substantially similar to COVID-19 as specified by Department of Health and Human Services.

HR 6201: Families First Coronavirus Response Act - Continued

Amount of Emergency Paid Sick Leave Available

- Full time employees entitled to up to 80 hours paid sick time.
- Part time employees entitled to leave for average number of hours typically worked.
- Employees with unknown/varying schedules entitled to leave for average number of hours worked over prior six-month period.
 - If six-month history is not applicable, average is based on number of hours agreed to at time of hire or average number of hours worked over entire length of employment.

HR 6201: Families First Coronavirus Response Act - Continued

Emergency Paid Sick Leave Wage Amount

- Employees are entitled to regular rate of pay for leave related to employee's own needs (i.e. reasons 1,2,or 3)
 - Sick leave pay capped at \$511 per day/\$5,110 aggregate.
- Employees are entitled to two-thirds regular rate of pay for sick leave related to others' needs (i.e. reasons 4,5,6)
 - Sick leave pay capped at \$200 per day/\$2,000 aggregate.

HR 6201: Families First Coronavirus Response Act - Continued

Other Emergency Paid Sick Leave Issues

- Unused paid sick leave is not paid out upon separation of employment and does not carry over from year to year.
- After first day of paid sick leave taken, “reasonable notice procedures” can be required.
- Unlawful to discriminate against an employee who takes paid sick leave.
- FLSA remedies apply to breach of paid sick leave provisions of FFCRA.
- Current paid sick leave balances are not impacted, FFCRA emergency paid sick leave is an additional amount.
- Cannot require employee to use existing paid sick leave before using FFCRA paid sick leave.

HR 6201: Families First Coronavirus Response Act - Continued

Emergency Family and Medical Leave Expansion Act

- **Eligibility:** FMLA provisions apply to employees who have worked at least 30 days prior to leave.
- **Limited Application:** To qualify, eligible employee must be unable to work/telework *due to a need to care for a child (under 18) if child's school/place of care/childcare provider is closed or unavailable due to a public health emergency*; fewer bases for eligibility for FMLA than for PSL

HR 6201: Families First Coronavirus Response Act - Continued

Emergency FMLA Leave Details

- Eligible employees may take up to 12 weeks of job protected leave.
- First 10 days (two workweeks) of leave may be unpaid.
 - Employee may elect to substitute accrued vacation, personal leave, medical or paid sick leave (including paid sick leave under FFCRA).
- After 10-day period, employee entitled to compensation at no less than two-thirds regular rate of pay.
 - Capped at \$200 per day/\$10,000 aggregate (10 weeks = 50 days x \$200 per day = \$10,000)

Non-COVID-19 related FMLA leaves remain unpaid

HR 6201: Families First Coronavirus Response Act - Continued

Unable To Work

As to both paid sick leave and expanded FMLA:

- “Unable to Work” means the employer has work for an employee but one of the COVID-19 qualifying reasons prevents the employee from being able to work, either at normal worksite or by means of telework.

Unable v. Unwilling to Work

- Employee who has work available e.g. works for an Essential Business but chooses not to come to work may be unwilling but not unable to work and therefore not eligible for paid sick leave or expanded FMLA.
- However, employee may be “unable to work” if the employer has work for employee but the employee is in imminent danger or is sick, caring for a family member who is sick, obeying a quarantine order, or absent due to some other legally protected reason, such as a medical condition protected by the Americans with Disabilities Act.
 - “imminent danger” –Occupational Safety and Health Act defines “imminent danger” to include “any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm . . .”
 - employees whose job requires close contact with the public or other employees and who contends employer does not provide protection may argue they are in imminent danger

HR 6201: Families First Coronavirus Response Act - Continued

Right to Return to Work

Per DOL Guidance:

- Employee entitled to be restored to same or equivalent position upon return from leave.
- However, employees are not protected from employment actions, such as layoffs, that would have affected employee regardless of whether leave taken.
 - Employer must be able to demonstrate employee would have been laid off even if she/he did not take leave.
- Note: Additional requirements apply to small employers (less than 25 employees) under expanded FMLA.

HR 6201: Families First Coronavirus Response Act - Continued

Small Employer Job Restoration Exception

If employer has less than 25 employees, it may refuse to return employee to work if all of the following conditions exist:

1. Position no longer exists due to COVID-19 related economic/operating conditions.
2. Employer made reasonable efforts to restore employee to same/comparable position.
3. Employer makes reasonable efforts to contact employee if equivalent position becomes available.
4. Employer continues to make reasonable contact efforts for one year from earlier of (a) date leave concludes or (b) 12 weeks after leave began.

Employer Tax Credits

- Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under FFCRA.
 - Qualifying wages = wages paid to an employee taking leave under FFCRA for qualifying reason, up to appropriate per diem and aggregate payment caps.
- Tax credits also extend to amounts incurred to maintain health insurance coverage.
- DOL Guidance: Employers are not required to provide leave if materials sufficient to support tax credit have not been provided.
 - DOL advises employers to consult IRS forms, instructions, etc. for appropriate documentation.

Employer Tax Credits

Tax Credit Examples

Example #1:

- Employer payroll is \$50,000. FICA 941 tax liability is \$7,650. Emergency paid sick leave is \$10,220. Payroll tax liability for that pay period is zero and business can apply for expedited or accelerated refund from IRS.

Example #2:

- Employer payroll is \$90,000. FICA 941 tax liability is \$13,770. Emergency FMLA is \$8,000. Payroll tax liability for that pay period is \$5,770.
- FUTA (940), SUI (ETT), and workers compensation will still be applicable tax liabilities on these FFCRA wages.
- Equivalent amounts are available to self employed individuals.
 - Credits will be claimed on their income tax returns and will reduce estimated tax payments.

Employer Tax Credits

FFCRA (Families First Coronavirus Response Act)

Request for Emergency Paid Sick Leave

Employee Name: _____ Date: _____

Title: _____ Manager: _____

Requested Leave Start Date: _____ End Date: _____

The amount of emergency paid sick leave being requested is _____ hours.

I CERTIFY THAT I AM UNABLE TO WORK (OR TELEWORK) FOR THE FOLLOWING REASONS:

1) I am subject to a federal, state, or local quarantine or isolation order related to COVID-19.
Name of the government entity issuing the order: _____

2) I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
Name of the advising healthcare provider: _____

3) I am experiencing symptoms of COVID-19 and seeking a medical diagnosis.

4) I am caring for an individual who is subject to either number 1 or 2 above.
Name of person I am caring for and our relationship: _____
Name of the government entity issuing the order: _____
OR
Name of the advising healthcare provider: _____

5) I am caring for my child(ren) whose primary or secondary school or place of care has been closed, or my childcare provider is unavailable due to COVID-19 precautions; and,
 I attest that no other suitable person is available to care for my child during the requested period of leave.

Name(s) and age(s) of child(ren): _____

Name of closed school(s) or place(s) of care: _____

6) I am experiencing another substantially similar condition specified by the Secretary of Health and Human Services.

I certify that the above information is truthful and understand that misrepresenting my need for leave is grounds for discipline, up to and including termination.

Employee Signature: _____ Date: _____

Manager Signature: _____ Date: _____

Workers Compensation

- On May 6th, 2020, Governor Newsom signed an executive order for payments of workers compensation for employees who get COVID-19.
- Employee must test positive for COVID-19 and test must be confirmed within 14 days.
- Not available if working from home.
- Not sure how this will impact experience modification rates if used for this purpose.

Unemployment Benefits

- Furloughed, laid off, or employees working partial hours are entitled to up to 39 weeks (up from 26 weeks) of unemployment benefits.
- Employees also receive the additional Federal unemployment of \$600 per week.
- Employees working part-time can still receive State unemployment as long as they do not earn more than \$600 week.
- If employees earn even \$1 of State unemployment, they still qualify for the Federal unemployment of \$600.
- Federal unemployment available through the end of July.

Employees not wanting to come to work

- Potential responses when employee who has work available and is not sick or otherwise prevented from working informs employer he/she does not feel safe coming to work and stops coming to work
- Treat as:
 - Voluntary resignation
 - Request for leave
 - Change to temporary unpaid status

COVID-19 Industry Guidance Resources

<https://covid19.ca.gov/pdf/guidance-construction.pdf>

<https://covid19.ca.gov/pdf/checklist-construction.pdf>

Questions and Answers



**THANKS EVERYONE! Take
care and be safe.**

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