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From: California Grain and Feed Association <info@cgfa.org>
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To: Donna Boggs
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Coronavirus Questions? California Administrative Agencies Have Answers

So far CA Legislature is continuing with business as usual. Senator Atkins released a statement that they are actively monitoring but continuing the work of the legislature as planned.

Each local County Health Officer is managing the local county response based on actions and cases on the ground. Therefore, if you have operations within a specific county, please keep monitoring the local health officers website and press announcements.

Governor and his Office of Emergency Services are managing the actions on the state level.

By Seyfarth Shaw LLP on March 10, 2020
POSTED IN OSHA SERIES

By Shireen Wetmore, Kerry M. Friedrichs, Benjamin D. Briggs, and Ilana R. Morady

Seyfarth Synopsis: The Department of Labor Standards and Enforcement, the Employment Development Department, and CalOSHA now have FAQs addressing how the COVID-19. coronavirus affects California businesses.

Perhaps you, like an author of this post, enjoy reading updates on COVID-19 (the shorthand for “coronavirus disease 2019”) while wearing a mask on airplane flights. Or maybe you’re not a coronavirus nerd but are just curious. How long does it take to [properly wash my hands](#)? Should I wear a mask? Is the coronavirus in my county? My neighborhood? If I feel a cold coming on, should I go to the doctor or call in sick? Or should I keep coming to work unless I get more serious symptoms? For these kind of questions, your best online source is the [CDC website](#).

But what if you’re that most beleaguered of entities, a California employer? Where can you turn?

Below we have collected guidance issued to date by various California administrative agencies. We also highlight some of the potential inconsistencies between the guidance from these agencies. Take a dollop of hand sanitizer (if you can find any) and read on...

DLSE Issues Guidance for Employers

The Labor Commissioner’s Office has released [FAQs](#) on Laws Enforced by the Labor Commissioner [\[https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm\]](https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm) and the intersection with COVID-19, addressing key topics including sick leave and reporting time pay.

What about sick leave for employees who are quarantined? The guidance from the Division of Fair Labor Standards and Enforcement opines that employees are entitled to use available California Paid Sick Leave not only for illness due to COVID-19, but also for “preventative care.” Time spent in self-quarantine may qualify as preventative care if ordered by civil authorities.

Once sick leave is exhausted, employees may be able to use vacation or other paid time off if the employer’s policies would otherwise permit it.

Employers **must not** require that quarantined employees use their paid sick leave, but may set a two-hour minimum for each use of paid sick leave.

Employers **must not** ask about medical information, but may ask about recent travel to high-risk countries and may require that employees report such travel.

Shutdowns and Supply Chain Disruptions

Supply chain disruptions caused by quarantines in China, Italy and elsewhere may curtail operations by California businesses. Telling employees to stay home may trigger certain obligations for employers. For example, reporting time pay requirements may apply even if the reason for sending employees home relates to COVID-19 exposure, with certain exceptions when a quarantine is ordered by civil authorities.

If exempt salaried employees perform any work during a week in which the company is shut down, they may still be entitled to a full week’s salary, if they were ready and able to work but did not do so because the employer did not make work available.

EDD Guidance On Wage Replacement and Payroll Disruptions

The Employment Development Department (“EDD”) has also issued [guidance for employees](#), in line with the DLSE guidelines, discussing how employees can replace wages lost due to coronavirus-related absences, through short term disability or unemployment insurance.

Employees may be able to claim short term disability while sick or quarantined, or paid family leave while caring for a sick or quarantined family member. In the event of a layoff or hours reduction, employees may also be entitled to UI payments as well.

Employers considering layoffs or work reductions because of COVID-19 should consult programs such as the [EDD's Work Sharing Program](#), which permits employers to reduce hours for employees, while providing wage replacement through UI, without laying off workers or removing them from the payroll.

The EDD also offers tax assistance to employers affected by COVID-19, including 60-day extensions to file state payroll reports or to deposit state payroll taxes without penalty or interest.

CalOSHA Advice on Making A Plan to Protect Workers

Last month we [blogged](#) about CalOSHA's guidance on protecting workers from COVID-19 under the Aerosol Transmissible Diseases (ATD) standard, which applies to the healthcare industry and other establishments where risk of exposure to aerosol transmissible diseases may be higher, such as laboratories, correctional facilities, homeless shelters, and drug treatment programs.

Now, CalOSHA has issued interim guidance to general industry employers on how to protect workers from COVID-19. The guidance confirms the Division's position that even employers not covered by the ATD standard must, under the CalOSHA regulatory scheme, protect employees from COVID-19 to the extent the disease is a hazard in the workplace. CalOSHA does not indicate whether employers should currently consider COVID-19 a hazard, but the analysis is essentially based on reasonable anticipation. In other words, can you reasonably anticipate that your employees are at risk of being exposed to the virus? Given the current state of affairs, CalOSHA appears to believe the answer is likely yes for most employers. So, what to do?

CalOSHA opines that general industry employers should implement measures to prevent or reduce infection hazards, such as implementing [CDC recommendations](#), and also provide training to employees on their COVID-19 infection prevention methods.

The CDC's infection prevention measures include:

- Actively encouraging sick employees to stay home
- Sending sick employees, particularly those with respiratory illness symptoms, home immediately
- Training employees on important topics such as:
 - Hand hygiene,
 - Cough and sneeze etiquette,
 - Avoiding close contact with sick persons
 - Avoiding touching eyes, nose, and mouth with unwashed hands
 - Avoiding sharing personal items with coworkers
 - Checking the [CDC's Traveler's Health Notices](#)
- Providing tissues, no-touch disposal trash cans, and hand sanitizer for use by employees
- Performing routine environmental cleaning of shared workplace equipment and furniture

CalOSHA also encourages employers to implement the CDC's recommendation for creating an infectious disease outbreak response plan. Such plans may include canceling group activities or events, increasing telecommuting opportunities, and other methods of minimizing exposure among employees (and with the public). The guidance notes that employer responsibility for addressing the COVID-19 hazard arises from the CalOSHA Injury Illness Prevention Plan standard (8 CCR 3203). Thus, CalOSHA will argue that an employer's failure to address the potential COVID-19 hazard could result in liability. The guidance also suggests that certain employers may be required to provide Personal Protection Equipment (PPE) under the CalOSHA PPE standard (8 CCR 3380) or to implement administrative and engineering controls under the Control of Harmful Exposures standard (8 CCR 5141).

This CalOSHA stance is significant, because CalOSHA is suggesting that some general industry employers may have to provide respirators, such as N95 masks. **Yet employers cannot distribute these masks without implementing procedures such as medical clearance and fit testing.** If you are considering the use of respirators in the workplace, or have employees who wish to wear them voluntarily, contact your favorite Seyfarth attorney for further guidance. Note that surgical masks are not considered respirators and hence are not subject to CalOSHA regulatory requirements, but the guidance reminds employers that surgical masks do not protect persons from airborne infectious diseases and cannot be relied upon for novel pathogens.

The guidance also highlights some risks for employers. For example, the CDC guidance encourages employers to inform fellow employees when an employee has been exposed to COVID-19. Yet employers must be cautious and maintain confidentiality consistent with the requirements of the Americans with Disability Act ("ADA") and California laws. As highlighted by the DLSE guidance above, employers must not ask about medical information and should be careful in addressing concerns (and suspicions) about an employee's health, symptoms, or potential exposure to COVID-19.

Legislation in the Pipeline

Assemblywoman Lorena Gonzalez of San Diego (of [AB5 fame](#)) has authored Assembly Bill 3123, a bill seeking to protect workers facing quarantine because of COVID-19. Her bill aims to provide job protection for quarantined employees who miss work, allow employees to use sick leave while quarantined, and to provide additional protection for parents whose children's schools are closed. This latter provision may become increasingly important as many [schools across California](#) [<https://www.sacbee.com/news/local/article241009211.html>], including the entire Elk Grove School District, the fifth largest in the state, are closing their doors in an effort to prevent spread of COVID-19.

Just the Beginning

Politicians and health experts alike are warning that the outbreak is likely to expand, with school closures, supply chain disruptions, and related economic upheaval continuing in the coming weeks and months. Other California agencies are working to provide guidance for employers, as well as various federal and local agencies. We anticipate that these guidelines will evolve and be updated over the course of coming weeks. We will continue to update this blog with new developments. Check back for updates and consider reaching out to your employment counsel as you prepare to address the impacts of the novel coronavirus on your company and workers.

Stay safe, wash your hands, and feel free to contact the authors or any other member of our dedicated Coronavirus Task Force with any questions or to let us know what your company is doing about COVID-19.

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