



CORONAVIRUS FAQs for California Employers

With many California employers wondering what their workplace obligations are in the wake of the Coronavirus outbreak (COVID-19), we developed some FAQs. Please also visit our [Additional Resources page](#) for more information and guidance.

Please keep in mind that the [CDC](#), [Cal-OSHA](#), federal [OSHA](#) and the [California Stay-At-Home guidance](#), along with local public health authorities, should be where employers turn for specific workplace safety guidance.

Q: On March 8th, Governor Newsom ordered California State's public schools to cancel classes through March 31st and possibly through the end of the school year. Many of our employees have school-aged children. What happens next?

A: The federal Families First Coronavirus Response Act provides Emergency Paid Sick Leave and Emergency Paid Family Leave for these purposes, along with an employer payroll tax credit. For more information on these leaves, please see [Emergency Leave - Families First Coronavirus \(COVID-19\) Response Act \(FFCRA\) - Fact Sheet](#).

Under California Paid Sick Leave, employees also 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 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, vacation or sick leave for their absences associated with COVID-19?

A: Employees may elect to use any available PTO or vacation for their absences associated with COVID-19. 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](#).



In addition, federal Emergency Paid Sick Leave and Emergency Paid Family Leave state that an employee may choose to use accrued paid leave first before taking these federal leaves, but an employer cannot require an employee to use it. See [Emergency Leave - Families First Coronavirus \(COVID-19\) Response Act \(FFCRA\) - Fact Sheet](#).

Q: What can employers do if an employee is out of Paid Time Off and any other Paid Leave 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 accrued 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.

[Federal legislation passed](#) on March 18 also provides paid time off.

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: Federal legislation requires employers with fewer than 500 employees to provide paid Emergency Family and Medical Act Leave. See [Emergency Leave - Families First Coronavirus \(COVID-19\) Response Act \(FFCRA\) - Fact Sheet](#).

In addition, employees may also be entitled to time off if they or family member suffers from a COVID-19 serious health condition. While mild cold or flu symptoms may not qualify, complications certainly [could](#).

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: CalWARN notice requirements (75+ employees) are triggered by even temporary layoffs, while federal WARN (100+ employees) is triggered generally by layoffs that are more than six months.

However, while CalWARN still applies, Governor Newsom has issued an [executive order](#) stating that notice requirements have been relaxed to be “as soon as practicable” (instead of 60 days). More on the suspension can be found [here](#).

The notices must include all of the normal WARN Act information plus:

- (1) The basis for reducing the notification period, including reference to being due to “business circumstances that were not reasonably foreseeable as of the time of the notice would have been required.”
- (2) The following statement: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at <http://www.labor.ca.gov/coronavirus2019>.”

See also CEA’s [Layoffs, Furloughs and More - Fact Sheet](#).

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.

Pay attention to local ordinances that may require employees to “shelter in place” and work remote or may require business temporary closure.

See also CEA’s [Remote Work - Fact Sheet](#) and [Remote Work Policy – Sample](#).

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

A: Employers should not discipline 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 be specifically protected under the Federal Families First Coronavirus Response Act, 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 in addition to federal or state paid leave?

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: Consider any state or local “shelter in place” ordinances that may apply.

The State of California is ordering all individuals living in the State to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors. There is a list of essential businesses and positions, as well as some FAQ from the State, which can be found [here](#).

In addition, 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. Employers should follow state, local and CDC guidance on work restrictions.

If an employee in an essential business 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 or call us at 800.399.5331 if you have any questions. Our team is here to support employers!