

## COVID-19 Pandemic—California Publishes “Employer Playbook for a Safe Reopening”

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### **The Employer Playbook Sets Forth Guidance to Help Employers Prepare for Reopening Their Businesses and Support a Safe, Clean Working Environment**

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#### **SUMMARY**

**Updated October 7, 2020.** On September 25, 2020, the California Department of Public Health (“CDPH”) revised its COVID-19 [Employer Playbook](#) (the “Playbook”) to require employers to report cases of COVID-19 to the local health department (“LHD”) in the jurisdiction in which they are located and the LHD where the infected workers reside when there are three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period. The revised Playbook also aligns the minimum criteria for returning to work with CDC guidance. Finally, the revised Playbook incorporates references to California’s Blueprint for a Safer Economy, issued on August 31, 2020, which made a number of changes to the previously issued Resilience Roadmap, and the recently passed SB 1159, which codified Executive Order N-62-20 regarding workers’ compensation. These revisions have been incorporated below.

As part of California’s effort to reopen non-essential businesses closed in connection with COVID-19, the CDPH published the Playbook to “give employers the tools they need to open safely and mitigate risks associated with COVID-19.”

On July 13, 2020, in response to a significant increase in the spread of COVID-19, the State Public Health Officer ordered the statewide closure of operations in certain high-risk sectors per a Public Health Order.

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The July 13, 2020 Public Health Order was superseded on August 28, 2020 by a Public Health Order that provided new modifications and guidance in the form of an updated framework for reopening.

On August 31, 2020, California released the Blueprint for a Safer Economy, which provides guidance on opening businesses and activities in light of the COVID-19 pandemic. Following the Blueprint, Counties progress along a tiered track—which allows for the loosening and tightening of restrictions on activities—based on the testing positivity and adjusted case rates from the last three weeks of each County:

1. Tier 1 (Purple): Widespread
2. Tier 2 (Red): Substantial
3. Tier 3 (Orange): Moderate
4. Tier 4 (Yellow): Minimal

The information and guidance provided in each tier for industries and businesses offers residents and businesses the tools for navigating the requirements of the tier system. Additional guidance for specific industries and business sectors has been provided by the State to help employers navigate reopening their businesses in Appendix A of the [Playbook](#).

At any time, state and county public health officials may work together to determine targeted interventions or county-wide modifications necessary to address impacted hospital capacity and drivers of disease transmission, as needed. Employers should regularly review their county website or consult their county or local health department to ensure they have the most up-to-date information about the current regulations in their jurisdiction.

The Playbook states that it is not intended to revoke or repeal any worker rights, either statutory, regulatory, or collectively bargained, nor is it a substitute for any existing safety and health-related regulatory requirements, such as those of California Division of Occupational Safety and Health (“Cal/OSHA”). Cal/OSHA has published interim safety and health guidance, entitled “[Cal/OSHA General Guidelines on Protecting Employees](#).” Employers should also be aware of the United States Centers for Disease Control’s (“CDC”) reopening guidance for employers, which is available [here](#).

In addition to outlining possible steps employers should take to ensure the safety of employees and the public, the Playbook outlines processes to identify new cases of COVID-19 in the workplace and, when they are identified, to intervene quickly and work with public health authorities to halt the spread of the virus. The Playbook’s guidance is detailed below.

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### DEVELOPMENT OF WORKPLACE PLAN AND INDUSTRY-SPECIFIC GUIDANCE

Regardless of whether an employer’s business operations were interrupted as a result of COVID-19, all employers in California must develop a written workplace plan that:

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- Is specific to the employer's workplace;
- Identifies all areas and job tasks with potential exposure to COVID-19;
- Includes control measures to eliminate or reduce such exposure;
- Maintains healthy business operations;
- Maintains a healthy work environment;
- Provides effective training for employees; and
- Encourages employees to give input into an effective workplace plan.

Employers should seek input from their employees regarding workplace plans and should collaborate with employees (as well as any applicable union) on how to provide important COVID-19 information.

The CDPH has prepared checklists and detailed industry-specific guidelines for businesses that are permitted to reopen to consult in developing their workplace plans. In addition to performing a detailed risk assessment and creating a workplace plan, as described above, all facilities must:

- Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and when to stay home;
- Set up individual control measures and screenings;
- Put disinfection protocols in place;
- Establish physical distancing guidelines;
- Establish universal face covering requirements (with allowed exceptions) in accordance with [CDPH guidelines](#); and
- Review the statewide industry-specific guidance and checklists issued by CDPH and Cal/OSHA.

The industry-specific guidance provides details on the topics to be covered in a worksite plan and is designed to meet the needs of each industry sector, but is also customizable to meet the needs of each individual business within each sector. CDPH and Cal/OSHA have published industry-specific reopening guidelines for businesses in the following industries: [agriculture & livestock](#); [auto dealerships and rentals](#); [childcare programs and providers](#); [communications infrastructure](#); [construction](#); [campgrounds and other outdoor recreation](#); [day camps](#); [energy & utilities](#); [food packing](#); [gambling facilities](#); [general workforce](#); [grocery and other retail](#); [gyms and fitness](#); [hair salons and barbershops](#); [health care facilities](#); [hotels & lodging](#); [life sciences](#); [limited services \(e.g., auto repair, car wash, cleaning/janitorial, pet grooming, landscaping, laundromats\)](#); [logistics & warehousing](#); [manufacturing](#); [mining and logging](#); [mortuary and funeral homes](#); [movie theatres and family entertainment](#); [museums and other exhibitions](#); [music, film & TV production](#); [office workspaces](#); [personal care services](#); [place of worship](#); [professional sports \(without live audiences\)](#); [public transit and intercity passenger rail](#); [real estate](#); [restaurants](#); [schools and school-based programs](#); and [shopping centers and malls](#).

## EMPLOYEES WHO TEST POSITIVE FOR COVID-19<sup>1</sup>

If an employer learns that a worker has either tested positive for COVID-19 or has COVID-19 symptoms, the employer should:

- Make sure that the affected worker does not remain at work;
- Work with their LHD to follow guidance about isolation or quarantine, possible testing, and when it is appropriate for the affected worker to return to work; and
- Ensure that the employee is aware of flexible leave policies, which employers should establish support the need for employees to be able to be off work for the protection of others.

Employers should be proactive about identifying positive cases of, or employees with symptoms of, COVID-19 and keep in mind that even a single positive case may quickly develop into an outbreak. If an outbreak does occur, employers may need assistance from their LHD to plan and coordinate a response that meets the needs of the workplace.

The necessary steps to responding to a positive case of COVID-19 or an outbreak should be included in the employer's worksite plan, including:

- What employees should do if they are having symptoms;
- The importance of communicating and coordinating with the LHD;
- Understanding reporting requirements for reporting to Cal/OSHA;
- Testing and contact tracing in the workplace;
- Guidelines for determining what a "close contact" is;
- Confidentiality rights of employees;
- Cleaning and disinfecting workspaces;
- When it is appropriate to return to work; and
- Re-evaluating the workplace plan to prevent further cases and outbreaks.

Employers must take the following steps to prepare for the possibility of workplace COVID-19 cases or outbreaks:

- Designate a workplace infection prevention coordinator (to the extent one has not already been designated) to implement COVID-19 infection prevention procedures and to manage COVID-19 related issues among employees.
- Ensure that sick leave policies are sufficiently generous and flexible to enable employees who are sick to stay home without penalty and ensure that employees are aware of such policies. As applicable, employers should also make their employees aware of the following leave entitlements:
  - **Private employers with fewer than 500 employees.** Through December 31, 2020, the federal Families First Coronavirus Response Act ("FFCRA") requires employers with fewer than 500 employees to provide up to 80 hours of paid leave to employees for COVID-19-related reasons.

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Under the FFCRA, covered employers must provide notice to their employees of this benefit. Further details on the FFCRA can be found below in the Summary of Leave section.

- **Employers with 500 or more employees in the food sector.** [Executive Order N-51-20](#) requires certain employers to provide paid sick leave to food sector employees. Covered employers must provide notice to their employees of this benefit. Additional information on food sector worker paid leave benefits is available [here](#) and below.
- **California Family Rights Act.** Employees may be entitled to up to 12 weeks of job-protected leave under the California Family Rights Act (“CFRA”) for their own serious health condition, or to care for a spouse, parent, or dependent child with a serious health condition. Additional information on the CFRA is available [here](#) and below.
- Instruct employees to stay home and report to the employer if they are having symptoms of COVID-19, were diagnosed with COVID-19, or are awaiting test results for COVID-19.
- Develop mechanisms for tracking suspected and confirmed cases among employees in coordination with your LHD.
- Identify contact information for the LHD in the jurisdiction where the workplace is located, and notify the LHD if there is a known or suspected outbreak in the workplace.

### A. COMMUNICATION OF IDENTIFIED CASES OF COVID-19

Employers should take into account the following considerations in reporting cases to the LHD:

- LHDs regularly transmit and protect confidential health information. Securely sharing confidential information about employees with COVID-19 is critical for the LHD to provide comprehensive support to the employer and protect the health of the community.
- Employees in a workplace may live in counties/jurisdictions outside of where the workplace is located. When the case reporting threshold is met (*i.e.*, when there are three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period), employers must notify the LHD in any jurisdiction where a COVID-19 positive worker resides..
- Typically, the LHD in the jurisdiction where the workplace is located gives guidance to the employer on managing an outbreak.
- Communicate with the LHD on how frequently the LHD expects updates from the employer on newly identified cases and symptomatic employees in the workplace.
- Share a roster of all employees with the LHD in the jurisdiction where the workplace is located.
  - An employer may be asked by the LHD to provide additional information on the employees, including job description, location, work schedule, city and county of residence, and other details that could help inform the investigation and determine which other employees in the workplace may be at risk of COVID-19 infection.

In addition, the LHD in the jurisdiction where the workplace is located may have specific criteria for case reporting requirements. Employers should follow the specific instructions of their LHD, if available.

Employers should take into account the following considerations when communicating identified cases of COVID-19 to employees. Employers should include employee representatives in the development of their communication strategies.

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- **Confidentiality.** Employers must make every effort to maintain the confidentiality of employees with suspected or confirmed COVID-19 infection when communicating with other employees. Employers should refer to the guidelines issued by the California Department of Fair Employment and Housing (“DFEH”) and Equal Opportunity Employment Commission (“EEOC”). Below is a more detailed description of an employer’s confidentiality obligations.
- **Notification to Employees.** Employers must notify all employees who were potentially exposed to the individuals with COVID-19. Employers should work collaboratively with employees to gain access to healthcare necessary to address the employee’s exposure, which may be especially important for those with high-risk medical conditions (e.g., immune compromise or pregnancy). The CDC’s list of individuals who need to take extra precautions with regard to COVID-19 is available [here](#).
- **“Close Contacts.”** Persons who spent 15 minutes or more within six feet of an individual with COVID-19 infection during their infectious period, which includes, at a minimum, the 48 hours before the individual developed symptoms, should be given instructions on home quarantine and symptom monitoring, information regarding the closest COVID-19 testing sites, and referral to their LHD.
- **Employees Who Are Sent Home.** Provide any employees who are sent home before or during a shift with information about what to expect after they are sent home (e.g., instructions to contact their medical provider or LHD about testing, information regarding sick leave rights under federal, state, and local laws and company policies, and return-to-work requirements).
- **Asymptomatic Employees Who Are Not “Close Contacts.”** In some outbreaks, but not all, employees who were never symptomatic and did not have close contact with any of the laboratory confirmed cases may continue to work, as long as the employer has implemented all control measures as recommended by public health authorities, Cal/OSHA, or other regulatory bodies. The LHD will make this determination based on strategies being used to control the outbreak and identify new cases.
- **Contract/Temporary Employees.** If the facility uses contract or temporary employees, identify who (host or contractor employer) should communicate information and instructions to these individuals.
- **All Employees.** All employees in the workplace should follow all instructions for infection prevention and outbreak management measures from the host employer, the LHD where the workplace is located, and the LHD where they reside.

### B. EMPLOYEE CONFIDENTIALITY

DFEH guidance requires that an employer must keep confidential any employee health information obtained, including keeping employee medical files separate from the employee’s personnel file. DFEH has published responses to frequently asked questions related to CFRA leave, which are available [here](#). The EEOC’s guidance largely mirrors DFEH guidance, and further details on EEOC’s guidance can be found in our client memorandum, [“EEOC Releases Updated Guidance to Employers Regarding ADA-Compliant Practices During the COVID-19 Crisis.”](#)

In order to ensure compliance with applicable privacy laws, employers should not identify COVID-19 positive employees by name in the workplace. In addition, correspondence notifying employees of a COVID-19 positive case or suspected positive case should be written in a way that does not disclose the health status of the worker because employers are not permitted to confirm the health status of or

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communicate about an individual worker's health. The Playbook includes the following sample communication to employees, which can be communicated orally or sent by e-mail or another form of written communication:

- “[Employer] has learned that a worker at [office location] tested positive for COVID-19. The worker received tested results on [date]. This email is to notify you that you may have been exposed to the novel virus. You should contact your local public health department for guidance and any potential actions to take based on individual circumstances or if you develop COVID-19 symptoms.”

### C. PREVENTING FURTHER SPREAD IN THE WORKPLACE

Employers should take the following actions in order to prevent the further spread of COVID-19 in the workplace after a case has been identified:

- Employers should seek guidance from the LHD to develop a testing strategy to determine who needs to be tested. If testing is limited, or not recommended, the LHD may recommend alternative methods for controlling the outbreak, including but not limited to tracing all close contacts of confirmed cases and instructing those individuals to quarantine, conducting [sample pooling](#) (group testing) or temporarily closing the workplace and quarantining all employees.
- Employers should provide information to the LHD on the confirmed COVID-19 case employees in the workplace, including job titles, work areas, close contacts in the workplace, dates of symptom onset, and shifts worked while infectious.
- Employers should work with the LHD to establish if the employer, LHD, or both will conduct interviews of the cases to determine their close contacts. The interviews of employees with laboratory-confirmed COVID-19 test results should be conducted by phone to determine when their symptoms began, the shifts they worked during their infectious period, and to identify other employees with whom they had close contact during their infectious period.
- Close contacts should be instructed to quarantine at home for 14 days from their last known contact with the worker with COVID-19 and should be tested for COVID-19. Employers should use employment records to verify shifts worked during the infectious period and other employees who may have worked closely with them during that period. While at home, close contacts should self-monitor daily for COVID-19 symptoms (e.g., fever, chills, shaking chills, cough, difficulty breathing, sore throat, congestion or runny nose, fatigue, body or muscle aches, loss of taste or smell, nausea or vomiting, diarrhea, loss of appetite). As discussed below, subject to variation by the LHD and with limited exceptions for employees who work in a critical infrastructure industry, the CDC currently recommends that close contacts should remain quarantined for the full 14-day period, even if the close contact receives a negative test during that 14-day period.

### D. WORKPLACE CLEANING GUIDELINES

Employers need to complete the following cleaning actions after a worker with COVID-19 has been to work:

- The work areas of infected employees should not be entered by employees until the work areas have been cleaned and disinfected with products approved by the United States Environmental Protection Agency (“EPA”) for COVID-19. The EPA’s list of approved disinfectants for use against COVID-19 is available [here](#). Work should be performed by cleaning staff trained on the safe use of disinfectants and supplied with all required and recommended PPE.

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- Perform ongoing enhanced cleaning/disinfection of work areas when a worker with COVID-19 is identified, following CDC recommendations. The CDC's recommendations for cleaning and disinfection of facilities with suspected or confirmed cases of COVID-19 are available [here](#).
- Continue to identify and regularly clean and disinfect frequently touched surfaces throughout the workplace, such as doorknobs, equipment, and handrails.
- Employees should not share headsets or other objects that may come into contact with their face, mouth, or nose.
- Minimize sharing of other equipment between employees; for equipment that must be shared, conduct frequent cleaning between worker use.
- Train employees on safe use of cleaners and disinfectants and provide necessary protective equipment.

Employers should regularly check for and follow new and updated guidance on their specific industry.

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### RETURNING TO WORK

Employers should consult with their LHD and the most recent CDC guidance to determine when a confirmed case may be released from home isolation and return to work. The CDC's return-to-work guidance is available [here](#) and summarized below. While LHD guidance may recommend a strategy similar to the CDC's guidance, some variations may occur by jurisdiction and outbreak and, thus, employers should regularly consult their LHD's website for additional guidance.

- **Symptomatic Positive:** employees with symptoms who are laboratory confirmed to have COVID-19.
  - A worker may return to work if at least one day (24 hours) has passed since his or her last fever, defined as resolution of fever without the use of fever reducing medications and improvement in symptoms (e.g., cough, shortness of breath) **and** at least 10 days have passed since symptoms first appeared.
- **Asymptomatic Positive:** employees who never had symptoms and are laboratory confirmed to have COVID-19.
  - A minimum of 10 days has passed since the date of their first positive COVID-19 test. If they develop symptoms, then the criteria for a Symptomatic Positive worker applies.
- **Symptomatic Negative:** employees who had symptoms of COVID-19 but a negative test result.
  - Employees should use the same criteria for return to work as Symptomatic Positive employees.
- **Asymptomatic Negative:** employees who never had symptoms but were tested due to close contact with a laboratory confirmed case patient and were negative.
  - Employees should quarantine at home for 14 days after the last known close contact with the case patient. Symptoms can develop even after testing negative within 14 days after exposure.
  - The LHD may consider allowing earlier return to work only for a worker in a critical infrastructure industry in which the essential operations of the workplace would be compromised by quarantine of the worker and no alternate staff can perform the same role.
- **Symptomatic Untested:** employees who had symptoms of COVID-19 but were not tested.



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- While testing is highly recommended, if the worker cannot be tested, he or she should use the same criteria for return to work as Symptomatic Positive employees.
- **Asymptomatic Untested:** employees who had close contact to a laboratory-confirmed case patient at work, home, or in the community and do not have symptoms **or** refuse or are unable to be tested after close contact with a laboratory-confirmed case, despite recommendation for testing from LHD or a healthcare provider, and do not have symptoms.
  - Employees should be quarantined at home for 14 days after the last known close contact with the case patient.
  - While testing is highly recommended, if testing has not occurred, the LHD may consider allowing a worker who had close contact to a confirmed case to continue to work only in a critical infrastructure industry in which the essential operations of the workplace would be compromised by quarantine of the worker and no alternate staff can perform the same role.
- Employees who develop symptoms of COVID-19 while in quarantine should contact their healthcare provider. Even if they are not tested, the same criteria for return to work should be used as laboratory-confirmed cases.

As noted above, the LHD may determine that some employees who are asymptomatic and either tested negative or were not tested may return to work sooner than 14 days where the 14-day quarantine would compromise essential operations by considering certain criteria specific to the workplace and worker:

- The worker is able to wear a surgical mask throughout the workday, except while eating, and comply with all infection prevention procedures. A cloth face covering may also be used in the event of mask shortage.
- The facility has implemented all best practice infection prevention procedures, as determined by the LHD.
- Pre-screening to assess worker temperature and symptoms prior to starting work has been implemented, ideally before entering the facility.
- The worker is able to self-monitor for temperature and symptoms at home and work.
- The worker is able to maintain a minimum of six feet of distance from other employees in the workplace. Employers should note, however, that six feet does not prevent all transmission of COVID-19.
- Physical barriers are in place between fixed worker work locations to supplement distancing.
- Cleaning and disinfection of all areas and shared equipment can be performed routinely in the workplace.

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## EDUCATING EMPLOYEES

Employers should ensure that all employees have a basic understanding of COVID-19, how the disease spreads, symptoms, and ways to prevent or minimize the spread. CDC guidance concerning how COVID-19 spreads is available [here](#), and CDC guidance concerning the symptoms of COVID-19 is available [here](#). Employees should take the following steps to protect themselves at work:

- **Employer Policies.** Follow the policies and procedures of the employer related to illness, cleaning and disinfecting, work meetings, and travel.

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- Stay home if sick, except to get medical care.
- Employees should inform their supervisor if they or their colleagues develop symptoms at work. No one with COVID-19 symptoms should be present at the workplace.
- **Physical Distancing.** Practice physical distancing by keeping at least six feet away from fellow employees, customers, and visitors when possible, even when in or around break rooms, water coolers, and/or non-work areas.
- **Face Coverings.** Wear cloth face coverings, especially when physical distancing is not possible. Cloth face coverings are intended to protect other people, *not* the wearer.
- **Hygiene.** Wash hands often with soap and water for at least 20 seconds, especially after blowing nose, coughing, sneezing, or having been in a public place.
  - Use hand sanitizer that contains at least 60% ethanol (preferred) or 70% isopropanol (if the product is inaccessible to unsupervised children) if soap and water are not available.
  - Never use hand sanitizers with methanol due to its high toxicity to both children and adults.
  - Avoid touching eyes, nose, and mouth.
  - To the extent possible, avoid touching high-touch surfaces in public places—e.g., elevator buttons, door handles, handrails (to the safest extent possible), etc.
  - Where possible, avoid direct physical contact, such as shaking hands, with people.
  - Minimize handling cash, credit cards, and mobile or electronic devices when possible.
- **Travel.** Employees should avoid all non-essential travel.
- **Public Transportation.** Employees who travel to and from work using public transportation, ride sharing, taxis, or carpool should familiarize themselves with the CDC's guidance on protecting oneself when using public transportation, which is available [here](#). That guidance includes, *inter alia*, the use of face coverings, practicing physical distancing where applicable, and washing hands with soap and water for at least 20 seconds before and after using such transportation.

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## REGULATIONS AND GUIDANCE FOR REPORTING CASES OF COVID-19

### A. RECORDING CASES OF COVID-19

California employers that are required to record work-related fatalities, injuries, and illnesses must record a work-related COVID-19 fatality or illness like any other occupational illness. Generally, employers with more than 10 employees must record and report work-related injury and illness records unless the employer is classified in one of the North American Industry Classification (“NAICS”) codes listed in Appendix A to California Code of Regulations § 14300.2. An employer should consult California counsel if it is unsure whether it is required to record work-related fatalities, injuries, and illnesses.

To be recordable, an illness must be work-related and result in one of the following:

- Death;
- Days away from work;
- Restricted work or transfer to another job;
- Medical treatment beyond first aid;

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- Loss of consciousness; or
- A significant injury or illness diagnosed by a physician or other licensed health care professional.

If a work-related COVID-19 case meets one of these criteria, then covered employers in California must record the case on their 300, 300A, and 301 or equivalent forms.

### B. REPORTING COVID-19 CASES TO CAL/OSHA

In addition to recordkeeping requirements outlined above, employers must also report any serious illness, serious injury, or death of a worker that occurred at work or in connection with work to Cal/OSHA within eight hours of when they knew or should have known of the illness. A serious illness includes, *inter alia*, any illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing. This means that if a worker becomes ill while at work and is admitted as an in-patient at a hospital—regardless of the duration of the hospitalization—the illness occurred in a place of employment and, thus, the employer must report this illness to the nearest Cal/OSHA office. Serious illnesses also include illnesses contracted “in connection with any employment,” which can include those contracted in connection with work but with symptoms that begin to appear outside of work. If a COVID-19 illness meets the above definition of serious illness, employers are required to report it immediately but not later than eight hours after the employer knows or with diligent inquiry would have known of the serious illness. Employers are also subject to federal OSHA reporting requirements. Details on federal OSHA reporting requirements can be found in our blog post, [“OSHA Issues Enforcement Guidance on Recording COVID-19 Cases and on Its Intention to Consider Good Faith Attempts to Comply with OSHA Requirements During the COVID-19 Pandemic.”](#)

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## SUMMARY OF LEAVE BENEFITS

### A. CALIFORNIA FAMILY RIGHTS ACT

Under the CFRA, employees may be entitled to up to 12 weeks of job-protected leave for their serious health condition or to care for a spouse, parent, or dependent child with a serious health condition. COVID-19 qualifies as a serious health condition if it (1) results in inpatient care or continuing treatment or supervision by a health care provider, or (2) leads to certain conditions, such as pneumonia. Employees who otherwise qualify are eligible for job-protected leave under the CFRA if they:

- work for an employer with at least 50 employees within 75 miles of their worksite;
- have worked there for at least a year; and
- have worked at least 1,250 hours in the year before they require time off.

The DFEH has published responses to frequently asked questions related to CFRA leave, which are available [here](#).

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## B. PAID SICK LEAVE

In California, employees earn paid sick leave from the first day of employment, and employers must provide employees with a notice that states how paid sick leave accrues when the employee is hired. California's paid sick leave laws also have strong anti-retaliation provisions to protect employees who request and/or use paid sick leave. Employees may be eligible for paid sick leave as described below:

- **California Paid Sick Leave.** Under California law, employees accrue a minimum one hour for every 30 hours worked, which an employer may cap by a policy at not less than 48 hours of sick leave per year; and may cap use of paid sick leave at a minimum of three days or 24 hours of accrued sick leave per year. Employers may also provide policies that allow for greater accrual and use of paid sick leave. The California Department of Industrial Relation (“DIR”) has published responses to frequently asked questions related to California paid sick leave laws generally, which are available [here](#), and FAQs on the relation between those laws and COVID-19, which are available [here](#).
- **California COVID-19 Supplemental Paid Sick Leave.** Assembly Bill 1867 codifies Executive Order N-51-20, which provided supplemental paid sick leave to food sector workers, and requires private employers that employ 500 or more employees in the United States to provide California employees with paid sick time for COVID-19-related absences. Further details on this law can be found in our blog post, [“California Mandates COVID-19 Supplemental Paid Sick Leave Through the End of 2020 For Employers with 500 or More Employees In the United States.”](#)
- **Leave Under the Families First Coronavirus Response Act (“FFCRA”).** The FFCRA is enforced by the United States Department of Labor (“DOL”) for businesses with fewer than 500 employees. A worker may be eligible for this leave depending on the size of the employer, among other factors. DOL has published responses to frequently asked questions concerning FFCRA leave, which are available [here](#). Further details on FFCRA leave can also be found in our client memorandum, [“Families First Coronavirus Response Act—Employer Takeaways,”](#) and in the following blog posts:
  - [“Employer Obligations to Provide Leave Related to School Closures During Coronavirus Pandemic”](#);
  - [“U.S. Department of Treasury, IRS, and U.S. Department of Labor Announce Plan to Implement Paid Leave and Tax Credit Provisions of the Families First Coronavirus Response Act”](#);
  - [“U.S. Department of Labor’s Wage and Hour Division Issues Initial Guidance and Model Employee Notice Regarding the Leave Provisions of the Families First Coronavirus Response Act: Part I”](#);
  - [“U.S. Department of Labor’s Wage and Hour Division Issues Additional Guidance on Leave Provisions of the Families First Coronavirus Response Act: Part II”](#);
  - [“U.S. Department of Labor’s Wage and Hour Division April 3, 2020 Guidance on Leave Provisions of the Families First Coronavirus Response Act: Part III”](#); and
  - [“U.S. Department of Labor Issues New COVID-19 Guidance on FLSA, FMLA, and FFCRA Leave.”](#)
- **Local Paid Sick Leave laws.** Certain localities also have paid sick leave laws, many of which have been enacted in response to COVID-19. If employees are subject to local sick leave ordinances, the employer must comply with both state and local laws, which may differ in some respects. The employer must provide the provision or benefit that is most generous to the worker. For example, both Los Angeles and San Francisco have enacted local ordinances that provide additional paid leave. Details on Los Angeles’s supplemental paid sick leave can be found in our blog post, [“The](#)

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[City of Los Angeles Mandates COVID-19 Supplemental Paid Sick Leave For Employers with 500 or More Employees Within Los Angeles or 2,000 or More Employees Within the United States.](#) Details on San Francisco’s public health emergency leave can be found in our blog post, [“San Francisco Mandates COVID-19 Public Health Emergency Leave For Employers with 500 or More Employees.”](#)

### C. CALIFORNIA DISABILITY INSURANCE AND PAID FAMILY LEAVE

Employees who may not have paid sick leave benefits available to them may be eligible for disability insurance (“DI”) benefits or Paid Family Leave (“PFL”) benefits. Employees who are unable to work because of being infected with, or a suspicion of being infected with, COVID-19 may be eligible for DI benefits. Employees who have lost wages when they need to take time off work to care for a child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner who is seriously ill with COVID-19 may be eligible for PFL benefits. Both DI and PFL benefits require the worker to submit a medical certification to qualify. California’s Employment Development Department (“EDD”) has published responses to frequently asked questions concerning DI and PFL benefits, which are available [here](#).

### D. REGULAR AND PANDEMIC UNEMPLOYMENT BENEFITS

Individuals who have lost their job or business or have had their hours reduced for COVID-19 related reasons may be eligible for wage replacement benefits under the California unemployment insurance program or the federal Pandemic Unemployment Assistance (“PUA”) program. The EDD has provided additional information concerning unemployment benefits, including federal PUA, which is available [here](#). Further details on the federal PUA program can also be found in our client memoranda, [“Coronavirus Aid, Relief, and Economic Security Act—Key Employer Takeaways”](#) and [“Coronavirus Aid, Relief, and Economic Security Act: U.S. Department of Labor Issues Guidance on Unemployment Provisions.”](#)

### E. WORKER’S COMPENSATION BENEFITS

Under [Senate Bill No. 1159](#), which codifies the previously released [Executive Order N-62-20](#), certain employees who contracted a COVID-19-related illness between March 19 and July 5, 2020 are presumed to have contracted the illness at work, making them presumptively entitled to employees’ compensation benefits. This statute remains in effect through January 1, 2023. DIR has published responses to frequently asked questions concerning Executive Order N-62-20, which are available [here](#). Further details on Executive Order N-62-20 can also be found in our blog post, [“California Expands Employees’ Compensation in Response to COVID-19 Pandemic.”](#)

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## ADDITIONAL INFORMATION

To stay informed of litigation and regulatory developments that affect the workplace, [click here](#) to subscribe to our *Legal Developments Affecting the Workplace* [blog](#).

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ENDNOTES

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- <sup>1</sup> The Playbook states that the guidance on managing outbreaks and returning to work is *not* intended for use in managing or preventing outbreaks in healthcare, congregate living settings, or other workplaces where the California Aerosol Transmissible Diseases (“ATD”) standard applies. Employers operating healthcare facilities should, instead, review the following CAL/OSHA guidance: [Hazard Alert: COVID-19 PPE Availability](#); [Interim Guidance on Severe Respirator Supply Shortages](#); [Interim Guidance for Protecting Hospital Workers from Exposure to Coronavirus Disease \(COVID-19\)](#); and [Interim Guidance for Protecting Workers at Skilled Nursing and Long-term Care Facilities](#).

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