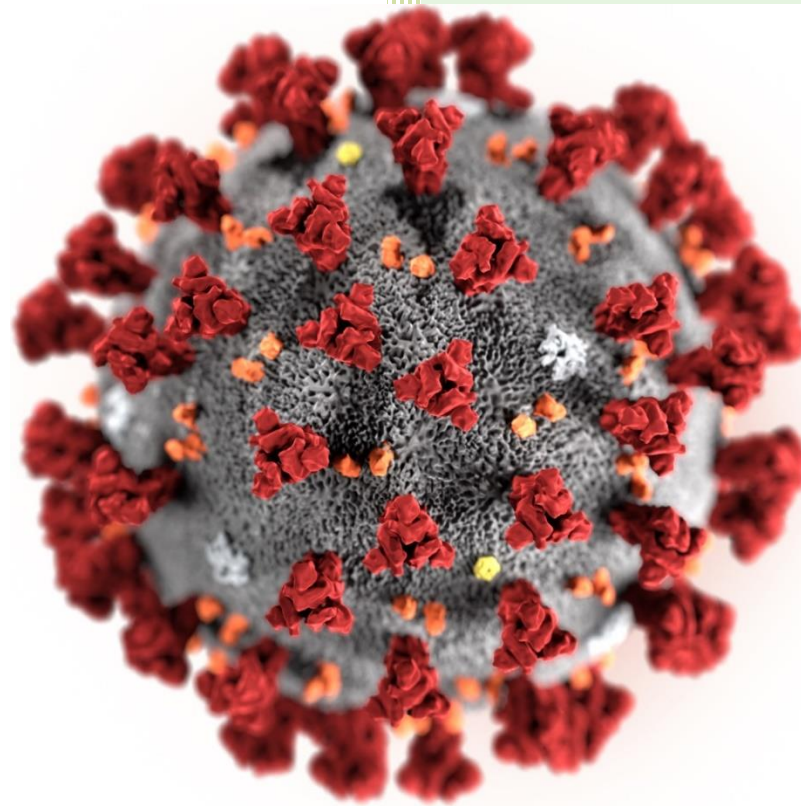


COVID-19

Sagaser, Watkins & Wieland PC- Fact Sheet



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COVID-19 Issues

Protection of Employees

- ❖ Employers have an obligation under OSHA to provide a safe workplace – that includes providing employees as much protection as possible from COVID-19.
- ❖ Employers should have a policy outlining symptoms (Fever 100.4 or higher, cough, shortness of breath or difficulty breathing), sanitation procedures (wash hands with soap for 20 seconds, hand sanitizer, cover mouth and nose with tissue when sneezing or coughing – use elbow or shoulder if no tissue), and keeping 6’ distance from others as much as possible.
- ❖ Employers should have a policy that employees should stay home if they have symptoms or have been in close contact with someone with symptoms – employees that appear sick should be sent home (failure to follow direction to go home would result in discipline) – employer may take temperatures (use scanning type thermometer).
- ❖ Employees who are diagnosed with COVID-19 must be sent home **IMMEDIATELY**, other employees who may have had contact must be informed of possible exposure, but the employer may not disclose identity of ill employee – this situation would require report of this potential work-related illness on OSHA 300 log.

- ❖ Make sure water and soap are readily available to employees, as well as hand sanitizer if possible. Cleaning staff should use appropriate disinfectants when cleaning facility.



- ❖ Employees that should be kept out of the workplace include those with symptoms, those awaiting test results, those caring for someone with COVID-19, those that have traveled overseas or from an area in US with high risk (e.g. Seattle, NY, etc.) – they should self-quarantine for 14 days.
- ❖ Employees that can work from home should be directed to do so – make sure they understand they need to track hours if they are non-exempt and take breaks and meal periods in accordance with the law.

Labor Law Issues

Use of California Paid Sick Leave

- ❖ Employee is entitled to use what is available – Employees are entitled to 3 days or equivalent; Employer cannot require use; Employer cannot require doctor’s note to justify use or return-to-work.

Use of California and Child Care Activities Leave

- ❖ Employees of employers with 25 or more employees at worksite are entitled to up to 40 unpaid hours of leave per year (i.e. to address a child care provider or school emergency) – applies when there is a school closure, may be required to use vacation.

FMLA/CFRA

- ❖ Employees that qualify would be entitled to use for their own serious medical condition or to care for family member. Additional obligations exist under new federal law (see below).

Reporting Time Pay

- ❖ **What pay, if any is required if an employee is sent home on a regularly scheduled workday?**

Reporting time pay applies (minimum of 2 hours pay/maximum of 4 hours). Reporting time would not apply if operations are stopped by emergency declaration (but would still apply if employer had time to give notice to employees not to report).

- ❖ Pay for non-exempt employees who are laid off/furloughed: Non-exempt employees only need to be paid for hours worked; may use accrued unused vacation (employers may want to modify policy that requires advance notice for vacation request).
- ❖ Pay for exempt employees who are laid off-furloughed: Exempt employees must be paid their salary for any workweek when they perform work, unless absence is due to personal reason or illness covered by sick leave pay.

Working from Home

- ❖ Non-exempt employees must track hours and follow meal and rest period policies. Employers should have a policy that states those requirements. Employees must be reimbursed for expenses related to work-at-home (i.e. internet cost, cell phone, etc.). Reimbursement policy can be a set amount to cover additional costs over employee regular costs, etc.

Layoff Issues

- ❖ Best practice under California law is to layoff with tentative return-to-work date. Labor Commissioner will likely conclude that this is not a termination and would not require payout of accrued vacation or PTO. But should provide final paycheck with all accrued wages on last workday to avoid risk. However, under the recent federal Families First Coronavirus Response Act, there is a concern that laid off employees with a return to work date may still count as employees under federal law and allow employees that work for employers with less than 500 employees to be eligible for federal paid sick leave and expanded FMLA leave. If employer wants to avoid that risk, it may be a better approach to lay off employees with no return date, so there is a clear separation of employment. In that case employer must pay out all accrued vacation or PTO.
- ❖ Federal, state, and local governments continue to propose new laws, regulations, and orders to combat COVID-19 which may affect the best approach and each company is unique with different considerations as to the best course of action. Accordingly, if you are considering laying off or furloughing employees, it is highly recommended you speak with your [Sagaser, Watkins & Wieland attorney](#).
- ❖ For employers subject to CA WARN (75 or more employees employed at least 6 months in past 12 months), requirement for 60 days written notice is waived if employer complies with specific requirements of the Executive Order N-31-20.

Benefits Available to Employees

Disability Leave

- ❖ If employee is required to be off work due to their own medical condition, they may be entitled to state disability benefits. Employees can apply online, but must submit medical documentation, including diagnosis. May also apply if employee is quarantined. If COVID-19-related, EDD will waive 7-day waiting period.

Paid Family Leave

- ❖ If employee needs to stay home to care for ill or quarantined family member, they may be eligible for Paid Family Leave (up to 6 weeks – 8 weeks effective July 1, 2020). Must provide medical documentation.

Unemployment Insurance Benefits

- ❖ Employee would be eligible if laid off or hours are reduced; may be eligible if need to stay home because child care is required because of school or child care closing; employee may be eligible if they choose to stay at home due to health conditions or age and fear of virus contagion.

State of California and Local Shelter in Place Orders

Essential Business

- ❖ Essential industries can still operate. If you have questions regarding whether you can operate as an essential business, [call your Sagaser, Watkins & Wieland attorney](#).

- ❖ **We are an essential business that is not required to close our business, but have more than 10 employees working in certain areas, what do we need to do?**

Comply with Social Distancing Requirements. This requirement applies to workplaces and areas where employees may congregate.

- Maintain (6) feet of distance with other people.
 - Review and implement telework alternatives.
 - Separate/spread out employees' workstations and/or rotate the number of employees that are allowed to work in the office at any given time.
 - Limit meetings to ensure compliance with social distancing (i.e. have employees call in by phone, video, etc.).
 - Eliminate all non-essential interaction with outside visitors.
 - Eliminate all non-essential business travel.
 - Post notices/reminders around the facility/office to remind employees (near restrooms, break areas, conference rooms, etc.).
- ❖ **We are an essential business and our employee is refusing to come to work due to the "Shelter in Place" order, what can we do?**

Normal attendance rules are applicable unless employee is over the age of 65, has a compromised immune system, is a parent of a child affected by school/day care closure, has been told to self-quarantine (certified by a Health Care Provider), is caring for an ill or quarantined family member (certified by a Health Care Provider), on other protected criteria. Simply being afraid to work is not sufficient, but prior to issuing disciplinary action up to and including termination, [please review with your Sagaser, Watkins & Wieland attorney](#).

Families First Coronavirus Response Act - Effective April 1, 2020

Paid Sick Leave-Employers with Fewer Than 500 Employees

- ❖ Leave entitlement is up to 80 hours.
- ❖ May use if employee is subject to quarantine/isolation order, waiting for a diagnosis, or advised by a health care provider to self-quarantine.
 - Pay at regular rate. Cap on wages: \$511 per day or \$5,110 in total.
- ❖ May use if employee is caring for an individual who is subject to quarantine/ isolation order, caring for their child due to closure of school or child care provider, or if employee is experiencing any other substantially similar condition specified by Secretary of Health and Human Services.
 - 2/3's regular rate. Cap on wages: \$200 per day or \$2,000 in total.
- ❖ Exception for healthcare providers or emergency responders if they choose.

Expanded FMLA- Employers with Fewer Than 500 Employees

- ❖ Employee eligible if they have worked for at least 30 calendar days (exception for healthcare providers & employers with less than 50 employees if providing leave would jeopardize viability of business).
- ❖ Leave entitlement is up to 12 weeks of job-protected leave, for an employee who is unable to work or telework to care for child under 18 if school or place of care is closed.
- ❖ Paid Leave – first 10 days are unpaid (may apply Federal Emergency Paid Sick Leave if eligible, may use vacation/PTO or sick leave) – rate of compensation is 2/3's of employee's regular rate of pay based on the number of hours regularly scheduled (or if hours vary week to week to the extent employer is unable to calculate, based on the average number of hours worked over the past 6 months prior to leave).
 - Cap on paid leave is \$200/day, \$10,000 in total.

- ❖ Employers with 25 or more employees must reinstate employee (under 25 may be excluded if position no longer exists but employer must make effort to return employee to work for up to a year following leave).

Reimbursement for Employers

- ❖ Refundable tax credits allowed against employer portion of social security taxes - Refund if paid sick leave and paid family leave costs exceed taxes owed. Reimbursement included for cost of continuing health insurance.



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