

COVID-19 Resource Center

Resources for Businesses and Employers

The COVID-19 pandemic is unprecedented in modern society with businesses, employers and all levels of the government responding rapidly to minimize disruptions. Delfino Madden attorneys are responding by advising clients on a wide variety of issues related to COVID-19 and have contributed to these Frequently Asked Questions. We will be updating this page frequently.

Employment Law

What questions can employers ask employees related to COVID-19?

Employers are normally limited in what they can ask about an employee's private medical condition. However, both the federal Employment Opportunity Commission (EEOC) and California's Department of Fair Employment and Housing (DFEH) have confirmed that, during the pandemic, employers may ask employees if they are experiencing COVID-19 symptoms, and may also take employees' temperature for the limited purpose of evaluating an employee's risk to others in the workplace.

Further guidance from DFEH relating to the COVID-19 pandemic is located [here](#).

Additional guidance from the EEOC is located [here](#).

Also keep in mind that if the employer is subject to the California Consumer Protection Act (CCPA), the employer has an obligation to provide notice to its employees of the information being gathered and the purpose for the collection.

The California Attorney General has indicated that it still intends to commence enforcement of the CCPA on July 1, 2020.

Which employers are allowed to keep their jobsites open during state and local closures?

A business's ability to keep its physical jobsites open depends upon whether it operates as an essential business.

California's stay-at-home order exempted individuals working in critical industries. The Department of Public Health's guidance, including a list of workers considered essential critical infrastructure workers, is located [here](#).

Many counties and cities implemented their own stay-at-home or shelter-in-place orders before the California stay-at-home order took effect and may continue to maintain and/or modify their orders even after California's stay-at-home order is lifted. As a result, it is important to consider how both the state and local orders affect your business.

What can employers do to help mitigate the risk of exposure to COVID-19 when operating a physical jobsite?

The Centers for Disease Control and Prevention (CDC) created a resource page for businesses and employers to obtain materials and information related to the pandemic. The resource page is located [here](#).

Employers should also implement a social distancing protocol. Santa Clara County created a helpful template, which is available [here](#).

What are an employer's obligations regarding face coverings and other personal protective equipment?

Several local governments issued orders mandating face coverings during the pandemic for individuals who may come into contact with the public. While some of these orders require employers to pay for the cost of face coverings used by employees, others are silent as to cost. In California, employers are required to reimburse employees for necessary work-related expenses. Face coverings and other protective equipment should be treated as part of an employee's uniform, and should be provided for on the same basis. If an employer requires employees to wear face coverings or other protective equipment—either in response to a government order or as a result of the employer's own safety precautions—the employer should pay for and/or reimburse employees for these items if the requirement will cause employees to incur an expense, e.g., specific kinds of face coverings, face coverings of a particular style or color, or face coverings of a certain aesthetic. In such cases, we recommend providing for face coverings directly to employees in sufficient quantities to permit employees to wash/rotate or replace (if disposable) as appropriate.

Employers should also remember their obligations to reasonably accommodate individuals with disabilities, medical conditions and religious accommodation needs. This includes individuals who may have specific needs related to pregnancy, and may involve modified face coverings and other protective equipment, among other potential accommodations.

What are the new leave laws that went into effect during the pandemic?

Effective April 1, 2020, with certain limited exceptions, the federal Families First Coronavirus Response Act (FFCRA) applies to private employers with fewer than 500 employees and government employers. The FFCRA provides covered employees with: (1) up to 80 hours of paid/partially paid time off for six specific circumstances resulting from

COVID-19 under the Emergency Paid Sick Leave Act; and (2) up to 10 additional weeks of protected and partially paid time off for childcare needs created by the COVID-19 pandemic under the Emergency FMLA Expansion Act. Employers will receive a payroll tax credit for qualified payments, subject to designated caps. Effective March 25, 2020, employers must post a notice informing employees of their FFCRA rights. The federal Department of Labor (DOL) posted form notices in multiple languages and provided additional information about the FFCRA, including responses to Q&A, [here](#).

On April 16, 2020, Governor Gavin Newsom signed Executive Order N-51-20. The Order provides up to 80 hours of supplemental paid sick leave to employees in the food sector industry for certain reasons related to COVID-19 and provides additional time during the workday for handwashing. The order applies to food sector employees such as those working in agriculture, at grocery stores and for food delivery services, among others, who are part of the state's essential infrastructure workforce and have continued to work outside of the home during the pandemic. It is limited to covered employers who have 500 or more employees in the United States, effectively applying to food sector employers in California who were not previously covered by the FFCRA, and is in addition to sick leave that may be available under California Labor Code section 246. California's Executive Order is effective immediately and throughout the duration of the state's stay-at-home order(s). It also permits employees to continue receiving paid leave until the need for leave is exhausted if they are using it when the stay-at-home order ends. The Labor Commissioner will make a model notice available for employers to post. The text of California Executive Order N-51-20 can be located [here](#).

Several localities have issued their own municipal ordinances providing paid sick leave to employees of certain employers not covered by the FFCRA for reasons related to COVID-19, including [San Francisco](#), [Los Angeles](#) and [San Jose](#). Additional municipalities may follow.

If you missed our previous alerts on legislation and issues related to COVID-19, you can find them [here](#).

Several existing leave laws and requirements related to reasonable accommodation may provide employees with protected time off outside of or in addition to these new COVID-19 protections.

What can employers do to reduce their payroll when experiencing financial challenges as a result of COVID-19 closures and other related consequences?

Employers may find it necessary to conduct layoffs or furloughs during the pandemic. These decisions are never easy and carry with them additional risks. Before conducting layoffs or furloughs, consult with our employment group about your obligations and risks.

Among other factors to consider, employers must examine the nature of the employment relationship (at-will, contractual, collective bargaining agreement, etc.), notice requirements and payment obligations for furloughed and laid off employees. In addition, a reduction in force could impact eligibility for forgivable loans under the Paycheck Protection Program.

Employees may be eligible for unemployment insurance benefits as a result of layoffs or furloughs. More information from the California Employment Development Department (EDD) is located [here](#).

How might employment actions impact an employer's eligibility for forgivable loans under the Paycheck Protection Program?

The amount of forgiveness under the Paycheck Protection Program (PPP) depends on how a borrower uses the loan proceeds during the eight-week period. That period begins on the date the lender makes the first disbursement of the loan to the borrower, which must be no later than 10 days after the loan is approved. At least 75% of the loan must be

used for payroll costs (wages and benefits), which may be forgiven provided the employer maintains certain wage and headcount levels during the loan period (the other 25% forgiveness relates to specified non-payroll costs such as rent, mortgage or utilities).

It is permissible for companies to provide paid leave under the FFCRA during the eight-week loan period of the PPP. However, any wages or healthcare expenses paid pursuant to the FFCRA during that period are not included in payroll costs toward the amount of the loan forgiveness, and PPP loan proceeds may not be used for FFCRA payments for which a tax credit is allowed. In other words, no double dipping is allowed.

In addition, a reduction in full-time equivalent staffing and/or a reduction in salaries during the eight-week period may reduce the amount of forgiveness.

Corporate and Nonprofit

What entities are covered by the CARES Act and especially the Paycheck Protection Program (PPP)?

On March 27, 2020, the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” was passed by the House of Representatives and signed by President Trump. In addition to providing relief to families, COVID-19 relief may be available to qualifying businesses (both for profits and non-profits) under the Act. One principal component is the Paycheck Protection Program Loan that provides businesses funds that may be used for eligible payroll expenses, rent, benefits and utilities during the period from February 15, 2020 through June 30, 2020.

The U.S Senate Committee on Small Business and Entrepreneurship published a [helpful summary of the CARES Act](#) with a particular focus on the interests of small to medium size businesses.

Nonprofits should also take note that COVID-19 relief may be available under the Act. The National Council of Nonprofits recently published a [helpful summary of CARES Act provisions](#) of interest to nonprofits.

On April 23, 2020, the House of Representatives passed an additional stimulus package which President Trump signed on April 24, 2020. This legislation is expected to add approximately \$300 million to the Paycheck Protection Program to provide additional support to small businesses and hospitals. We will update this post once the final bill is available. Businesses considering applying for a PPP loan are encouraged to contact their lender as soon as possible because funds available are likely to be depleted quickly.

We have an event scheduled soon - can we cancel it without incurring significant cancellation fees?

The force majeure provision operates to relieve a party of contractual obligations where performance is impaired due to events outside the party’s control. Often a force majeure provision includes language requiring the affected party to recommence performance once the force majeure event ends, thus a party is not excused from performance entirely.

The scope of the provision ultimately depends on the specific language used – does it excuse performance when it becomes impossible or illegal, or when it becomes commercially impracticable? And, are the parties excused from performing altogether or just until performance can recommence? Likewise, the types of events triggering a force majeure provision must be specifically listed in the clause (such as Acts of God, war, explosions, labor strikes, fire, transportation or power outages or stoppages).

Our Board is required to hold public meetings but what should we do because we are also subject to the shelter in place order, social distancing guidelines and prohibitions on large gatherings?

On March 4, 2020, Governor Newsom issued [Executive Order N-25-20](#) which, among other things, authorized local legislative bodies and state bodies to hold public meetings via teleconference. The meetings must also be made accessible telephonically or by other electronic means to the public. As a result, all provisions of the Bagley-Keene Act and the Brown Act are waived that expressly or impliedly require the physical presence of members of the body or other individuals or the public. The notice requirements under these Acts still apply.

I have a trademark deadline coming up for filing a document or paying a fee to the US Patent and Trademark Office (USPTO) - is there a way to obtain an extension?

Section 12004(a) of the CARES Act authorized the Director of the USPTO to “toll, waive, adjust, or modify” various timing deadlines related to certain patent or trademark-related documents and fees.

On April 28, 2020, the Director of the USPTO extended the filing deadline to June 1 for certain documents or fees which otherwise would have been due between March 27, 2020 and May 31, 2020. For any situation not expressly covered in the [notice](#) from the Director, a request or motion for an extension or reopening of time may be made.

Webinars

Past Webinars

- [Sacramento Metro Chamber Human Resources Roundtable: Steps to Re-Entry](#). Presented by Jennifer Madden, Delfino Madden and Amelya Stevenson, HR business consultant, May 19, 2020.
- [Preparing for a Returning Workforce Amid COVID-19 as California Reopens](#). Presented by Monica Hans Folsom and Shaye Schrick, Delfino Madden, on May 6, 2020.
- [COVID-19 and the Impact on Employees](#). Presented by Jennifer Madden, Delfino Madden, for the CalAsian Chamber on April 21, 2020.
- [Sacramento Bee Facebook Live with the Metro Chamber](#). Presented by Amanda Blackwood, CEO, Metro Chamber, and Jennifer Madden, Delfino Madden, on April 7, 2020.
- [COVID-19: Legal Implications for Employers During and After the Pandemic](#). Presented by Dan Coyle and Shaye Schrick on March 27, 2020.

Upcoming Webinars

TBD

Recent Updates

Recent Updates

- [Employment Law Update: Remote Work Reminders During the Pandemic](#) (August 13, 2020)

- [Employment Law Update: Sacramento and California COVID-19 Orders](#) (July 14, 2020)
- [Employment Law Update: Mandatory Face Coverings](#) (June 19, 2020)
- [Legal Update: COVID-19](#) (April 24, 2020)
- [COVID-19 Supplemental Paid Sick Leave](#) (April 17, 2020)
- [Families First Coronavirus Response Act: DOL Regulations Released](#) (April 2, 2020)
- [Nonprofit Legal Update: CARES Act](#) (March 31, 2020)
- [Legal Update: The CARES Act](#) (March 30, 2020)
- [Employment Law Update: New DOL Guidance on the FFCRA](#) (March 27, 2020)
- [Families First Coronavirus Response Act Notice](#) (March 26, 2020)
- [Families First Coronavirus Response Act: DOL Guidance](#) (March 25, 2020)
- [Families First Coronavirus Response Act](#) (March 22, 2020)
- [Employment Law Update: COVID-19 \(Updated\)](#) (March 18, 2020)

Additional Resources

Federal Legislation

- [Families First Coronavirus Response Act \(FFCRA\) – H.R. 6201](#)
- [Paid Leave Under the Families First Coronavirus Response Act \(Department of Labor Rules and Regulations\)](#)
- [CARES Act \(H.R. 748\)](#)

California State COVID-19 Orders

- [State of California Guidance of the Use of Face Coverings \(Mandatory Pursuant to Executive Order N-25-20\)](#)
- [State of California County Variance Information and County-by-County Guidance on Phases](#)
- [Public Meetings May Be Held by Teleconference \(Executive Order N-25-20\)](#)
- [Stay-at-Home Order \(Executive Order N-33-20\)](#)
- [Use of Video Chat and Telehealth Applications by Health Care Providers \(Executive Order N-43-20\)](#)
- [Paid Leave for Food Sector Employees Order \(Executive Order N-51-20\)](#)

Status of State and Federal Courts

- [California State Courts Media Updates](#)
- [California State Courts – Find My Court](#)
- [United States Federal Courts – Orders and Updates During COVID-19 Pandemic](#)

Local Orders and Ordinances

- [Sacramento Worker Protection, Health, and Safety Act](#)(Effective July 15, 2020)
- Sacramento County Shelter in Place Order ([Effective May 22, 2020](#))
- [Yolo County Shelter in Place Order \(Extended to May 1, 2020\) \(Extended to May 31, 2020\)](#)

Other Helpful Resources

- [Sacramento Metro Chamber Rapid Response Hub](#)
- [California Department of Public Health COVID-19 Page](#)
- [Centers for Disease Control and Prevention COVID-19 Page](#)
- [OSHA COVID-19 Page](#)
- [Cal/OSHA and Statewide Industry Guidance on COVID-19](#)