

# ANSWERS TO THE QUESTIONS EMPLOYERS SHOULD BE ASKING REGARDING COVID-19 (CORONAVIRUS)

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# Agenda

## *Introductory Materials*

- Applicable Laws
- Current Landscape
- Government/Agency Orders/Guidelines



## *Maintaining Operations*

- Workplace Safety
- Medical Inquiries
- Benefits
- Remote Work
- Reduction in Pay/Hours

## *Reduction in Operations*

- Temporary Furloughs
- Layoffs

# Applicable Laws & Current Legal Landscape

- ❑ Occupational Safety and Health Act (“OSHA”) and Cal/OSHA
- ❑ Health Insurance Portability and Accountability Act (“HIPAA”)
- ❑ Americans with Disabilities Act (“ADA”)
- ❑ Fair Employment and Housing Act (“FEHA”)
- ❑ Fair Labor Standards Act (“FLSA”)
- ❑ Family and Medical Leave Act (“FMLA”) (and California equivalent)
- ❑ California Labor Code
- ❑ State and Local Paid Sick Leave Laws
- ❑ Families First / H.R. 6201\*\*

# Government/Agency Orders/Guidelines

## Federal

- Executive Orders
- CDC Guidelines
- EEOC Guidance
- OSHA Guidance
- DOL FAQs



## California

- Executive Orders
  - “strong recommendations”
- County Health Orders
  - Shelter in Place
  - Social Distancing
- Department of Public Health Guidance
- Cal/OSHA Guidance
- EDD Guidance
- DLSE FAQs
- LWDA – to be updated

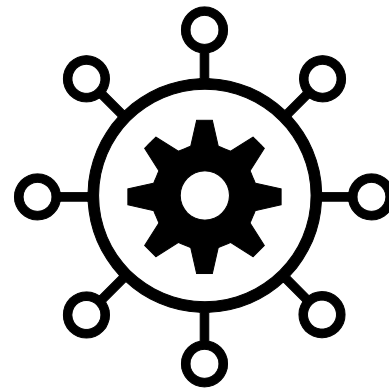
#socialdistancing

# Employers with Employees Still Working



# Workplace Health & Safety Issues

- Preventative / Protective Action
- OSHA Regulations and Guidance
- Pandemic Plan/Policy?



# Medical Inquiries

- Employee Inquiries
- Reasonable Accommodations Implicated?
- Required Medical Tests Permitted?
  - Medical Exams (including Temperature Readings) – Industry Specific
  - Medical Clearances to Return to Work



# Benefits for Impacted Employees

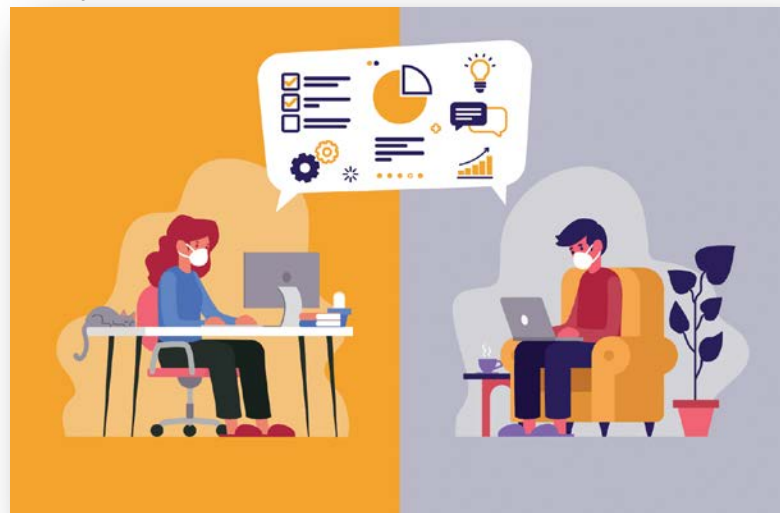
- Paid Sick Leave
- State Disability Insurance
- Paid Family Leave
- HR 6201
  - Already required: FLMA/CFRA, reasonable accommodations, school activities leave





# Remote Work

- Deciding Who Must Or May Work Remotely
- Remote Work Agreements
  - Involuntary
  - Voluntary
- OSHA and Workers' Compensation Requirements?
- Expense Reimbursement
- Wage and Hour
- Child Care Issues?



# Reduced Work Schedules & Rates of Pay

- Non-Exempt Employees

- Reduced hours but still full-time status
- Reduced hours but part-time status
- Reduced hourly rate

- Exempt Employees

- Reduction in salary
- Reduce workdays?

- Provide notice

- Document any changes in pay and reclassifications





# Employers in Need of Furloughs and/or Layoffs

# Temporary Furloughs: General

- Objective criteria (**matrix**)
- Select date range
- Staggering furloughs and rehires
- Discuss continuation of benefits with insurance broker
- Prepare message to employees
- Prepare *Notices of Change in Relationship*

# Temporary Furloughs: Nuanced Issues

- Final paycheck?
- EDD benefits
- Use of paid sick leave and vacation/PTO
  - County Health Orders **prohibit** requiring medical documentation
- Collection of insurance premiums
- Extension of furlough
- Exempt employees



# Layoffs

- Difference between furlough and layoff
  - Hybrid?
- Final paycheck
- COBRA-triggering event
- Objective criteria (**matrix**)
- WARN and Cal/WARN
  - **Governor's Executive Order**
- What if furlough extends into layoff?



# Practical Tips/Takeaways

- ✓ Use Reliable Information
- ✓ Regular Communications with Employees
- ✓ Ensure Sources of Regular Updates for Information
- ✓ Forza!



# Resources (Health Guidance and Executive Orders)

- Centers for Disease Control – Interim Guidance for Businesses and Employers

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

- California Governor's Executive Orders

<https://www.gov.ca.gov/category/executive-orders>

- Department of Public Health Guidance Documents

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>

- Check local county's department of public health for current versions of individualized orders



# Resources (Wage & Hour Issues)

- US Department of Labor (Wage and Hour FAQs)

<https://www.dol.gov/agencies/whd/flsa/pandemic>

- EDD (Unemployment Benefits)

[https://edd.ca.gov/about\\_edd/coronavirus-2019.htm](https://edd.ca.gov/about_edd/coronavirus-2019.htm)

- California Labor Commissioner (Wage and Hour FAQs)

<https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

- California Labor and Workforce Development Agency

<https://www.labor.ca.gov/coronavirus2019/>

# Resources (Workplace Safety & Medical)

- OSHA Guidance on Preparing Workplaces for COVID-19

<https://www.osha.gov/Publications/OSHA3990.pdf>

- Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus

<https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

- EEOC Bulletin - What You Should Know About the ADA, the Rehabilitation Act, and COVID-19

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

# Thank you!

## Questions? Please feel free to contact us any time for guidance.



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