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# Newsletter

NEWS • SPEAKING ENGAGEMENTS • UPDATES • RESOURCES

## COVID-19

UPDATES FOR EMPLOYERS

*March 22, 2020*

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### ***Dear Clients and Friends,***

As we all adjust to this new reality, I wanted to check in and, first, let you know that I'm thinking of you and hoping that you and your families are safe and healthy.

Second, I wanted to share with you the recent employment-related legal updates so you have all the information you need to make important decisions in the weeks ahead. I know that employers have questions about which employees can lawfully report to work on Monday, so I am sending a rare weekend newsletter.



**EXECUTIVE ORDERS TO STAY HOME:  
WHO IS IMPACTED?**

*\*AND CAN MY NANNY STILL COME?*

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Within the last week, there have been many orders issued in cities and counties throughout California requiring residents to “stay at home” and/or “shelter in place” for certain periods of time. On Thursday, March 19th, Governor Newsom issued an Executive Order impacting all of California, which has been put in place indefinitely.

All of these orders have been put into place to protect the public health. However, they are all different. For example, in Los Angeles, employers and employees are governed by three different legal mandates: Governor Newsom’s Order for all of California, Mayor Garcetti’s Order for the City of Los Angeles, as well as the Order from the Los Angeles County Department of Public Health. Residents in other jurisdictions, such as in the Bay Area and Orange County, are also governed by multiple orders. Because the restrictions in the various orders are different but govern the same constituency, employers and employees are struggling to understand which order to follow when the rules conflict.

To answer that question, the State of California has created a [website](#) to provide further guidance as to what it means to “stay home except for essential needs.” With respect to how the statewide order interacts with local orders, it provides as follows:

***This is a statewide order. Depending on the conditions in their area, local officials may enforce stricter public health orders. But they may not loosen the state’s order.***

As such, people should first see if they are considered essential workers under the state order. A list of exempt sectors can be found [here](#). If a worker is permitted to work under the state order, they should then consult any applicable orders to see if they are also permitted to work under those.

***Now for the most important question:*** with conflicts between the orders, how do I know if my nanny can continue to come to work? The California website provides that “babysitters may...come to the house to care for minors of parents working in essential sectors.” So, if an individual is considered an essential worker, that person’s nanny can still report to work.

If anyone has any questions as to whether a particular worker is permitted to report to work, and/or which orders apply to their team, please [contact me](#) for an individualized assessment of your situation.



## PASSAGE OF THE FEDERAL BILL REGARDING COVID-19 RELIEF

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A few days ago, the Families First Coronavirus Response Act (the “Act”) was passed, which includes mandatory Paid Sick Leave and an expansion of the Family and Medical Leave Act. Unless the Secretary of Labor acts to exempt certain employers with fewer than 50 employees (which may still happen), as of April 2nd, **all** employers will be required to provide the following to their employees:

## ***Paid Sick Leave***

Employers must provide employees with the equivalent of two weeks of emergency paid sick leave benefits to be used for any of the following Coronavirus-related absences:

1. The employee is subject to a federal, state, or local quarantine or isolation order for Coronavirus;
2. The employee is advised by a health care provider to self-quarantine due to Coronavirus concerns;
3. The employee is experiencing symptoms of Coronavirus and seeking a medical diagnosis;
4. The employee is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine;
5. The employee is caring for a child whose school or child care has been closed due to Coronavirus;
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Employees using paid sick leave for purposes (1) - (3) above must be paid their “regular rate of pay” (as defined for purposes of calculating overtime compensation), subject to a cap of \$511/day and/or \$5,110 in the aggregate. Employees using leave for reasons (4)-(6) must be paid 2/3 of these amounts, subject to a cap of \$200 per day and/or \$2,000 in the aggregate.

The Department of Labor will be publishing a notice of this new paid sick leave, which employers are required to post in a conspicuous place in the workplace.

Please note that this leave is ***in addition*** to the required California state (and, in some places, local) sick leave policies. For any sick leave provided under this law on or after April 2nd, employers will receive a 100% payroll tax credit for the amounts paid.

## ***Family and Medical Leave Act***

The Family and Medical Leave Act (“FMLA”) has been temporarily expanded to provide up to 12 weeks of protected time off for any employee (who has been employed for at least 30 calendar days) who is unable to work or telework due to the need to care for a child under 18 if the child’s school or child care is closed, or if the child care provider is unavailable, due to Coronavirus-related concerns.

If an employee requests such a leave, the first two weeks can be taken on an unpaid basis. After that, the employer must provide paid leave of at least 2/3 of the employee’s regular rate of pay, with a cap of \$200/day and \$10,000 aggregate. These payments (up to the caps) will be credited at 100% on the employer’s quarterly payroll taxes.



The California Labor Commissioner has previously published Opinion Letters requiring employers to provide final pay (including payment of accrued but unused vacation time) if an employee is furloughed for an indefinite period of time. In this moment of extreme financial uncertainty, many employers will be considering how to sustain their businesses and will be considering whether it is prudent to reduce employee hours, furlough employees, or lay them off. If employers choose to furlough employees, they should be aware of these final pay obligations so as not to trigger waiting time penalties.

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*UPDATES & NEXT STEPS*

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I have been in touch with many of you over this past week, and I know that you have a lot on your minds as you figure out next steps. I will keep you apprised of any developments regarding the various stay-at-home orders and the Families First Coronavirus Response Act. If there are any other employment issues with which I can be helpful, please do not hesitate to [contact me](#). We will figure out how to best protect yourselves, and help your employees, as all of this unfolds.

***Warmly,***

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