

# EMPLOYMENT LAW CONSIDERATIONS DURING THE COVID PANDEMIC

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# Agenda

- **COVID-19 Employment Laws**
  - Families First Coronavirus Response Act (FFCRA)
  - Coronavirus, Aid, Relief and Economic Security Act (CARES)
  - Stay at Home Orders
  - Occupational Safety and Health Administration (OSHA) Guidelines
  - Commonly Asked Questions
- **Mandatory Sexual Harassment Training**
- **Independent Contractor Agreements**

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## Families First Coronavirus Response Act (FFCRA)

- ▶ **FFCRA.** Signed into law on March 18, 2020.
- ▶ **What does the FFCRA provide?**
  - ▶ Two weeks of paid leave at the full time regular rate for employees who are unable to physically attend work because: (a) they are subject to a quarantine order from any local, state, or federal entity; (b) they have received advice to quarantine from a health care provider; or (c) they are experiencing COVID-19 symptoms and are seeking medical attention.
  - ▶ Or two weeks of paid leave at 2/3 the regular rate of pay for employees who are unable to physically go to work because of a bona fide need to: (a) care for an individual under quarantine; or (b) care for a child (under 18) who is unable to attend school, summer camp, or child care provider that is closed due to COVID related reasons.
  - ▶ Daily caps on the total amount that must be paid of \$511 for full pay and \$200 for 2/3 pay.
  - ▶ Part time employees are subject to a reduced pay schedule.
  - ▶ If an employee can telecommute (i.e., work from home), these benefits do not apply.

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# Families First Coronavirus Response Act (FFCRA)

- ▶ **What employees are covered?**
  - ▶ Employees who have been employed for at least 30 days.
- ▶ **Are there any other employee benefits provided under FFCRA?**
  - ▶ Yes. Employers must provide up to an additional 10 weeks of paid leave at 2/3 the regular rate of pay for employees who must continue providing childcare due to COVID related school, summer camp, and childcare provider closures.
- ▶ **Can the employee take intermittent leave?**
  - ▶ Yes, this is subject to the discretion of the employer. However, if the employee is on leave due to COVID symptoms, then the employee may not take intermittent leave.
- ▶ **What employers are covered by the FFCRA?**
  - ▶ Companies with fewer than 500 employees.
- ▶ **Can an employer apply for an exemption from the FFCRA?**
  - ▶ Yes. Employers with fewer than 50 employees may seek an exception if providing the paid leave may render their business no longer a "going concern," meaning the company cannot pay its bills as they come due.
  - ▶ If you believe you are eligible for this exception, you should document your situation and keep all records for at least 4 years

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# Families First Coronavirus Response Act (FFCRA)

## ▶ Are there any requirements for the employer?

- ▶ Yes. The employer must put up a poster in a conspicuous place, like the lunchroom, explaining the employee rights.
- ▶ That poster can be downloaded from the Department of Labor website at:
  - ▶ [https://www.dol.gov/sites/dolgov/files/WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WH1422_Non-Federal.pdf)

## ▶ Are there any restrictions for the employer?

- ▶ Yes. The Employer may not terminate or discipline any employee for taking paid leave under the FFCRA.

## ▶ How long does this last?

- ▶ Employee have until December 31, 2020, to seek leave. Congress may extend the program depending on progress of the fight against the virus.

## ▶ Does the Government help pay for the benefit?

- ▶ Yes. The IRS will provide a dollar for dollar tax credit for any money paid to employees under this program.

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# Coronavirus, Aid, Relief and Economic Security Act (CARES)

## ▶ CARES Act. Signed into law on March 27, 2020

- ▶ \$2.2 trillion stimulus package.
- ▶ The corner stone for small business is the Paycheck Protection Program (PPP).
- ▶ The Small Business Loan Administration administers the program, using national and local banks.
- ▶ Through legislative extension, small businesses have until August 8, 2020 to apply for a loan.
- ▶ **Program highlights:**
  - ▶ A maximum loan of up to \$10 million may be taken, based on a multiple of total employee salary costs.
  - ▶ Borrowers may spend 60% on payroll, and 40% on approved non payroll expenses like rent
  - ▶ The loan is less than 4% interest, interest is deferred for 6 months, you have up to 5 years to repay depending on when you borrow.
  - ▶ The loan is forgiven if spent in compliance with the 60-40 rule and the employer maintains employee head count.



## Stay at Home Orders – OSHA Guidelines

- ▶ State and local governmental entities passed Stay at Home Orders under guidance from the Federal Government.
- ▶ Authority for orders comes from emergency relief laws.
- ▶ Distinguish between essential and non-essential businesses.
- ▶ Los Angeles County has written protocols that must be filled out and posted before reopening. The county has scaled back the reopening.
- ▶ A list of businesses that may reopen can be found at:
  - ▶ <https://covid19.lacounty.gov/recovery/>
- ▶ OSHA guidelines for reopening based on CDC findings can be found at:
  - ▶ <https://www.osha.gov/Publications/OSHA3990.pdf>

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# Commonly Asked Questions

- ▶ **If an employee thinks she/he has COVID, what should I, the employer, do?**
  - ▶ The employee should be sent home immediately.
  - ▶ They can be required to take a COVID test, **and** should be instructed to do so.
  - ▶ This test must be paid for by the employer.
  - ▶ The employee should remain in quarantine for 14 days or obtain clearance with a negative test result.
  
- ▶ **What do I, the employer, do if an employee tests positive for COVID who has been on the job?**
  - ▶ While there are no clear guidelines, and advice may change depending on your industry, a few key points:
    - ▶ All employees exposed to the positive employee must be sent home to be tested and returning to work only if 14 days have passed or a negative test result obtained.
    - ▶ All employees should be informed that an employee has tested positive, but the name of the employee name not be given because that would breach the employees right to privacy.
    - ▶ The work site should be thoroughly cleaned with appropriate alcohol-based cleaning products.
    - ▶ An employer may consider shutting down the business for several days during the cleaning process.
    - ▶ If a multiple employee infection occurs, the employer should notify the local health authority.

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# Mandatory Sexual Harassment Training

- ▶ California law (Gov. Code section 12950.1) requires employers with more than five employees to, every two years.
  - ▶ One hour of sexual harassment and anti-bullying training to non-supervisory employees.
  - ▶ Two hours of training to supervisory employees
  - ▶ All employees must be trained by January 1, 2021



# Independent Contractor Agreements

- ▶ Independent contractors are not protected by wage and hour laws, meal and rest break laws, or anti-discrimination laws.
- ▶ On September 18, 2019, Governor Newsome sign AB5 (Labor Code section 2750.3) into law, which became effective January 1, 2020:
  - ▶ This new California law *redefines* who is an **employee** and who is an **independent contractor**
  - ▶ If a worker falls under a defined list of jobs, such as hairstylists , they will be subject to the "Borello" test:
    - ▶ Does the hiring party control the manner in which the worker performs the job
  - ▶ Otherwise, they are subject to the "Dynamex" test (AKA the **ABC test**)
    - ▶ The worker is free of control from the hirer in the manner in which they work
    - ▶ The worker performs work that is outside the usual course of the hiring entity's business
    - ▶ The worker is engaged in an independent trade
  - ▶ *The effect is to make is much more difficult to classify workers as independent contractors.*

# THANK YOU!

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