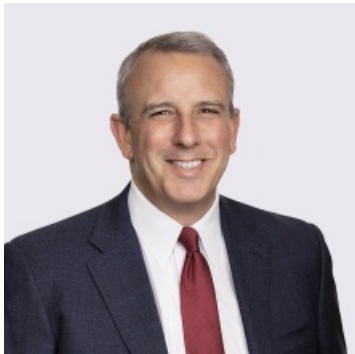


California Moves Toward Reopening, But Employers Will Still Have COVID-19 Obligations

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While California has announced tentative plans to lift COVID-19 restrictions by June 15, 2021, the difficulties for employers are not over.

For much of the COVID-19 pandemic, California struggled to get infection rates under control, and businesses grappled with compliance with a multitude of COVID-19-specific statutes and regulations. Employers also were tasked with navigating existing California employment laws, which did not contemplate a worldwide pandemic.

Workplace Safety

In November 2020, California's Division of Occupational Safety and Health (Cal OSHA) passed the [COVID-19 Emergency Temporary Standard \(ETS\)](#). The ETS imposed certain minimum requirements for covered workplaces, including:

- Implementation of written COVID-19 prevention programs and measures
- Reporting and recordkeeping requirements
- Worker exclusion when employees have COVID-19 or been exposed
- Management of COVID-19 infections and outbreaks
- Investigation of COVID-19 cases and outbreaks

Though COVID-19 rates are decreasing in California, the requirements of the ETS remain in place for employers.

The overlapping state and county health orders on health and safety in the workplace is another issue. California's Labor & Workforce Development Agency, in conjunction with the Department of Industrial Relations has [an employer portal](#) that allows employers to locate county and industry-specific guidance for COVID-19 workplace protocols and requirements.

Leave and Accommodation

While the federal government's Family First Coronavirus Response Act (FFCRA) granting emergency COVID-19 Paid Sick Leave expired December 31, 2020, a tax credit remains for the voluntary continuance of the Emergency Paid Sick Leave. Initially, California allowed its 2020 COVID-19 supplemental sick leave law to expire, which resulted in many local supplemental sick leave laws being extended into 2021. Then, on March 29, 2021, California passed an [expanded statewide supplemental paid sick leave requirement](#) under Senate Bill 95. The expanded paid sick leave applies to employers with more than 25 employees and requires additional time off in 2021 for COVID-19-related reasons beyond the prior law's covered reasons (*e.g.*, vaccine-related absences). The 2020 law applied to employers with at least 500 employees, but the new law applies to small employers and created an added complexity for employers that have been providing FFCRA sick leave and taking advantage of the federal tax credits.

The California [labor commissioner has released an FAQ](#) and [required poster](#) for the new

supplemental paid sick leave. The paid leave requirements under the supplemental paid sick leave remain in place until the end of September 2021.

In conjunction with the ETS issued by Cal OSHA, employers must maintain an employee's compensation when they are excluded due to a work-related COVID-19 exposure or possible work-related exposure and remain available to work. However, the California labor commissioner has indicated an employer may require an employee to use supplemental paid sick leave before providing Cal OSHA exclusion pay.

DFEH Guidance

The California Department of Fair Employment and Housing (DFEH), the agency charged with administering the state's employment discrimination statute and regulations, has issued [updated COVID-19 guidance](#). The new guidance includes how employers should handle:

- COVID-19 Inquiries and Protective Equipment
- Employees with COVID-19 Symptoms or Infection
- Job-Protected Leave
- Reasonable Accommodations for Employees with Disability/Vulnerable Populations
- Vaccination

The vaccination guidance from the DFEH indicates that an employer may require employees to receive an FDA-approved COVID-19 vaccine if certain criteria are met, including:

- The employer may not discriminate against or harass employees or job applicants based on protected characteristics.
- The employer must provide reasonable accommodations as required by applicable law.
- The employer may not retaliate against anyone for engaging in protected activity, such as requesting a reasonable accommodation.
- The employer properly handles any medical information obtained from employees.

California's new COVID-19 supplemental sick leave law provides paid time off to attend a vaccine appointment or if an employee cannot work or telework because of vaccine-related symptoms.

Wage and Hour

California has been at the forefront of providing premium pay to employees, especially grocery workers and other industries in 2021. This new "[hero pay](#)" development has spread across California with more than 20 localities implementing their own ordinances and still more under consideration. Typically, the ordinances require a wage increase of \$3 to \$5 above the minimum wage for covered employees for a specific period. Employers must review if any of their locations are affected by hero pay ordinances.

While there has been no statewide statute mandating additional pay, the [Health Care Workers Recognition and Retention Act](#) is pending in the state senate. If passed, it would mandate additional premium pay for healthcare workers.

Return to Work

Employers will be faced with a number of compliance issues as offices and other

worksites open or expand capacity. This includes, but is not limited to, ensuring compliance with all state and local guidelines, returning employees from furlough, work-from-home arrangements, reduced schedule, or other employment actions, as well as the proper handling of accommodation requests.

Though California does not have a statewide right of reemployment, several cities have such reemployment requirements in place. The local ordinances require employers to offer positions to employees who were laid off due to COVID-19 closures first before hiring new employees. Usually, the ordinance requires that employees with more seniority be given priority in rehiring. Regardless of whether any such ordinance applies, employers should establish an objective process for making decisions about returning employees to the workplace.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with state-specific or multistate-compliant plans.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our COVID-19 team.

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