

Stronger Together Webinar Series

Returning to the Workplace: California Law Considerations – A Leader's Guide



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Recording & slides (English/Spanish) will be available at cvnl.org



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Returning to the Workplace: California Law Considerations – A Leader's Guide



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Over the past year, organizations have faced major disruptions caused by the coronavirus pandemic, affecting employees, clients, partners, and others. Now, as organizations plan to reopen, they face a new challenge: how to prepare to return to a changing workplace.



Topics Covered:

- 1) Cal. Sick Leave Resurrection and Expansion
- 2) Vaccines
- 3) Discrimination/Harassment/Retaliation issues
- 4) OSHA Regulations


California Paid Sick Leave: It's Back!

- SB 95 (Signed 3/19/2021, Effective 3/29/2021) Resurrects California Paid Sick Leave relating to COVID-19 and fills the gap left by the sunset of FFCRA
- Applies to employers of 25 or more employees
- Leave for employee who cannot work or telework due to:
 1. They are subject to isolation or quarantine order
 2. Attending an appointment to receive a COVID-19 vaccine
 3. Experiencing symptoms related to receiving a COVID-19 vaccine
 4. Experiencing COVID-19 symptoms and seeking out medical diagnosis
 5. Caring for a family member who is subject to isolation or quarantine order
 6. Caring for a child whose school or childcare is closed due to COVID-19 on the premises

- 80 hours of sick leave for:
 - Full time employees or
 - Worked or scheduled to work at least 40 hours per week in the last two weeks prior to leave
- Pro rata two weeks leave based on normal weekly schedule or average weekly hours, averaged over the last 6 months
- This leave is in addition to any non-COVID related sick leave already provided to employees

- Retroactive: applies to any covered leave from 1/1/2021.
 - Employees must ask, verbally or in writing for retro-coverage
 - Payment is due on the next payroll date after request



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- Pay: Sick leave is paid at the employee's regular rate of pay up to a maximum of \$511/day, and \$5,110 total
 - Employers cannot require the use of unpaid leave or other available leave before using PSL
 - This PSL is payable first before OSHA-required paid leave
 - Expires 9/30/2021

- Notice requirement: Employers must notify employees of this new right and report the amount of leave available on employee pay statements.
 - If an employee's schedule is such that it is not clear what they may be entitled to, the employer can estimate and write *variable next to the amount on the pay statement
- Post notice or email out notice. The model notice is available on the DLSE website right now

Relation to FFCRA

- **Optional**, but you get the same tax credits
- You get **credit** for the California obligation, for time given under FFCRA
- The leave bank for 80 hours of sick leave **renewed** on April 1, 2021. If you opt in, that is mandatory
- The FMLA leave was **expanded** to 12 weeks which means employees may take up to 14 weeks off for any of the 6 reasons (including time off for vaccination and recovery). The FMLA portion is tied to how many weeks have already been used in a 12 month period, so it did not automatically renew time available.
- *Who here is opting in to the FFCRA?*



VACCINES

Employers can require employees to get vaccines in order to be in the workplace.



- You should consider the consequences of this policy:
 - ❖ What if a valued employee refuses to get the vaccine?
Are you in a position to fire them? You have to apply your policies equally among staff.
 - ❖ You can require some employees to be vaccinated but not others. This should be based on their working conditions.
- What if an employee is unable to get the vaccine because of a disability?
You must determine if they pose a sufficient risk to the rest of the employees that you cannot employ them.
- You must engage in the interactive process to determine if they can remain employed with a reasonable accommodation.

You should also consider the impact on morale.

- I have heard many employers were surprised with how many employees go the vaccine just with small encouragement rather than mandatory policy.



Employers may educate and encourage vaccination.

- There is no legal guidance regarding how much encouragement is too much.
- The new California Paid Sick Leave answers one major question: you are now required to pay for employees to get the vaccine and pay if they are sick due to the vaccine.
 - ❖ Previously, it was assumed that if you gave employees time off for vaccination, you had to give employees who could not get the vaccine comparable time off to be fair.

- Your staff is vaccinated, for the most part, now what?
- Fully vaccinated people can resume domestic travel and do not need to get tested before or after travel or self-quarantine after travel.
- “Visit with other fully vaccinated people indoors without wearing masks or physical distancing” but also “avoid medium- and large-sized in-person gatherings”(CDC guidance)
- No specific guidance on vaccinated workforces
- According to the CDPH, by June 15th, all of California “may return to usual operations in compliance with **ETS/Cal OSHA** and other statewide agency guidelines and standards with limited public health restrictions, such as masking, testing, and testing or vaccination verification requirements for large-scale higher-risk events.”
- *Are you going to mandate vaccines?*



Discrimination | Harassment | Retaliation Issues

Reminders and new angles in which
discrimination can creep into the workplace

Discrimination: Different treatment in the terms or benefits of employment, because of (substantially motivated by) the person's protected status.

- Race, (inclusive of traits historically associated with race, including but not limited to, hair texture and protective hairstyles [e.g., braids, dreadlocks and twists])
- color, creed,
- religion (including dress and grooming practices),
- national origin, citizenship, ancestry,
- sex (includes pregnancy, childbirth, breastfeeding or related medical conditions), gender,
- sexual orientation,
- gender identity, gender expression,
- marital status,
- age,
- mental and physical disability, medical condition, genetic information,
- military and veteran status,
- protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act),
- domestic violence and other crime victim status,
- political affiliation

Discrimination

- Example: Employee does not want to return to the workplace due to fear of contracting COVID-19.
- Employees may refuse to work based on
 - (i) a genuine belief that an imminent danger exists,
 - (ii) a reasonable person would agree that there is a real danger of death or serious injury,
 - (iii) the employee has asked the employer to eliminate the danger and the employer failed to do so, and
 - (iv) there is not enough time to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Employees whose refusal to return to the workplace stems from a mental health condition, such as anxiety disorder, depression, obsessive-compulsive disorder or post-traumatic stress disorder, however, may be entitled to reasonable accommodation under applicable law.

Retaliation

Retaliation: treating an employee differently in the terms or benefits of their employment in reaction to a person's changed circumstances (becoming a member of a protected class) or due to their assertion of legal rights.

- Example: Employee complains that the organization is not doing enough to protect against COVID exposure.



- The employee is protected under OSHA and the Labor Code from retaliation for asserting rights to workplace safety and asserted *perceived* legal rights.

Harassment

Harassment: words or conduct that create a hostile or abusive working environment that is sufficiently severe or pervasive to interfere with the employee's work performance.

- Example: jokes or comments about particular employees that insinuates or accuses employees of bringing COVID to the workplace just because of their age/ ethnicity/national origin/ etc.
- Employers must be aware and prohibit this kind of conduct.

Harassment Prevention Training: still required! Every 2 years, all supervisors get 2 hours of training, all other employees get 1 hour of training. New employees must receive training within the first 6 months of hire, or if they are a short term hire, within 30 days or 100 hours of work, whichever is sooner.



Cal/OSHA Regulations



What Are the Cal/OSHA Regulations?

- ❖ Creates rules applicable to nearly all California employers concerning prevention, testing, and response to exposure and outbreaks in the workplace.
- ❖ With some exceptions, all employers are now required to establish and implement an effective written COVID-19 Prevention Program (CPP) pursuant to an Emergency Temporary Standard in place for COVID-19 (California Code of Regulations (CCR), Title 8, section 3205(c)). These regulations took effect November 30, 2020.

<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

What is Required by Cal/OSHA Regulations?

I. Written COVID-19 Prevention Program

- ❖ You have a duty to ensure the workplace is safe and healthy for your employees. You must adopt and implement guidelines for best practices to minimize spread at work.
- ❖ Guidelines by industry: <http://sonomaedb.org/Business-Assistance/Coronavirus/Industry/>

II. Cal/OSHA Emergency Guidelines: Exclusion and Pay Obligations

The new emergency regulations require employers:

1. To notify employees who have been exposed to someone with COVID within **1 day** of the exposure;

- EEOC and HIPAA rights: notice to employees must not include identification of the employee who tested positive. This is a sample notice from the EEOC:
 - “[Employer] has learned that a worker at [office location] tested positive for COVID-19. The worker received tested results on [date]. This email is to notify you that you may have been exposed to the novel virus. You should contact your local public health department for guidance and any potential actions to take based on individual circumstances or if you develop COVID-19 symptoms.”

Exclusion and Pay Obligations

2. Send all exposed employees home for 10 days plus negative test or 14 days to quarantine;
3. Pay employees who are required to stay home and cannot work from home. The pay requirement will come after the employer pays out Cal Paid Sick Leave and any local or federal pay requirements;
 - ✓ Paid leave can come from available sick and vacation pay. Additional pay is only required after all other available paid time off is exhausted.
4. Clean the workplace and assess if changes can be made to minimize the likelihood of another occurrence



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5. Notify the County if necessary

AB 685 (in effect 1/1/2021 – 1/1/2023) requires notice to the County Health Officials when there is an “outbreak”
Outbreak is defined by the California Department of Public Health as “At least 3 probable or confirmed COVID-19 cases* within a 14-day period in people who are from different households and are not identified as close contacts of each other in any other case investigation.”

6. Notify Workers Compensation carrier if necessary

SB 1159 (Takes effect immediately through 1/1/2023) Codifies presumption that, under certain circumstances, employees with COVID-19 are entitled to Workers’ Compensation benefits.

Creates a rebuttable presumption that the employee was infected at work for:

- first responders and healthcare workers AND
- any employee who tests positive during an “outbreak at work”

An outbreak exists if within 14 days one of the following occurs at a specific place of employment: (1) 4 employees test positive if the employer has 100 employees or fewer; (2) four percent (4%) of the number of employees who reported to the specific place of employment test positive if the employer has more than 100 employees; or (3) a specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection of COVID-19.

Final Thoughts

- Now is the time to subscribe to legal websites to get up to date information
- With so many obligations, make decisions thoughtfully
- Give yourself grace, you are doing the best you can!



Additional Resources

Center for Volunteer & Nonprofit Leadership

cvnl.org/covid-landing-page

California Paid Sick Leave 2021 FAQs: <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>

EEOC COVID FAQs (regarding the provision of vaccines and COVID related questions of employees):
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Cal/OSHA COVID FAQs: <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>



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Upcoming Opportunities

Peer Learning Networks

Convened and facilitated virtually by CVNL staff members, these are supportive networks of like-minded nonprofit professionals.

Finance & HR Managers smartin@cvnl.org

- April 28, 9:00-10:30am

Fundraising & Marketing – bell@cvnl.org

- April 28, 1:00-2:00pm

Volunteer Services - etokolahi@cvnl.org

- May 5, 10:00-11:00am

Learn more at: cvnl.org/peer-learning-networks

Are you a member? Learn more about membership benefits here.
cvnl.org/membership/overview

Learning & Leadership Programs

Board Governance Boot Camp Sessions

- *Structures, Committees, Assessment*
April 28, 9:00am-10:30am - [Register Here](#)
- *Board Development*
May 19, 9:00am-10:30am - [Register Here](#)

May Lunch and Learn: (Free!)

Exploring Gretchen Rubin's The Four Tendencies

May 14, 12:00pm-1:30pm - [Register Here](#)

June Sneak Peek: **Storytelling Workshop**

Improve Your Communication Using the Science of Story
June 9, 9:00am – 12:00pm. [Register Here](#)

1st Annual Heart of Sonoma County Awards



Nominations are now open!

Does your organization operate or provide services in Sonoma County? Honor your leaders, volunteers, board members, or business partners by nominating today!

- Eight award categories
- The opportunity to receive \$5,000
- Spread awareness about your mission

Nominations due April 30th, online by 5pm

cvnl.org/heart-of-sonoma-county



Service Enterprise



80% of **Service Enterprise** organizations report an increase in both volunteers and skills-based volunteers, leading to increased capacity to deliver on their mission.



CVNL has partnered with **Points of Light**, the world's largest organization dedicated to volunteer service, to offer the Service Enterprise, a **national change management program** that helps organizations gain a greater return on volunteer investment to better achieve their mission.

Learn more about the program at our website:
cvnl.org/service-enterprise.

Funding available to cover the cost of this training.



Thanks for Joining Us!



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CMPR

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A T T O R N E Y S

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The background is composed of several overlapping geometric shapes. On the left, there is a large green shape with a curved edge. To its right is a dark red shape. Further right is a large red shape with a diagonal split. On the far right, there is a vertical blue strip. The text "CHANGE STARTS HERE" is centered horizontally across the middle of these shapes.

CHANGE STARTS HERE