

2019-2020 Webinar Series

Thursday May 28, 2020 2:00 – 3:00 p.m. ET



Returning to the Workplace

A free webinar

Join our speakers for a free live video webinar on **May 28 at 2:00 – 3:00 p.m. ET.**





MODERATOR
JOE SMITH
Executive Director of Human
Resources, Archdiocese Of
Baltimore

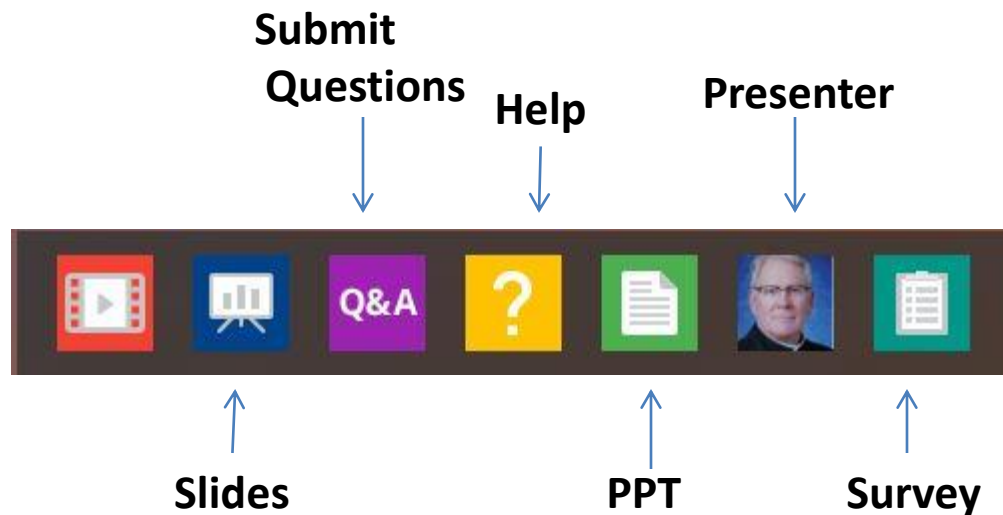
Thank You



Archdiocese of Los Angeles

Housekeeping Items

- Audio will stream through the computer-make sure to have the volume turned up
- Download presentation
- Q&A
- 5 question survey



Panelists



Annabelle Baltierra
Sr. Director of
Human Resources



Deidra A. Nguyen
Employment Attorney



Karimah J Lamar
Labor and Employment Law



Cathi Farr
Director of Human Resources

Topics

- Returning Employee Concerns
- Safe Environment
- Policy
- The Future of Teleworking



Returning Employee Concerns

THREE AREAS OF CONCERN

- Preparing the building—cleanliness and safety protocols
- Decisions to be made by executive management – employee schedules, continuing remote work, redesign of work areas
- What concerns employees may have upon returning to work; what instructions employees will be given to express their concerns

BUILDING SAFETY

Employees are asking:

- Has the building been deep cleaned and disinfected?
- Have air filters been changed?
- Has air circulation in the building been improved?

BUILDING SAFETY (cont.)

Employees are asking:

- Will disinfecting wipes and disinfecting spray be provided?
- How often is maintenance cleaning high touch areas?
- Will the lunchrooms and bathrooms be cleaned more often?

STAYING SAFE

- I'm not comfortable working in our open office space set-up, how will social distance be possible?
- Do we have to wear masks in the office, while working at our desks, while walking around the building or outside the building?
- Have signs been posted about social distancing?

STAYING SAFE

- Will the company take the temperatures of those entering the building?-
- Will the company provide COVID-19 testing?
- Our lunchrooms are so small. What is being done about implementing social distancing rules for the lunchrooms?
- What social distancing rules are being implemented if meetings will be held in a conference room?
- Will employees be disciplined if they are not following the safety rules?

STAYING AT HOME

- I'm scared. I don't want to get sick. I don't want to bring germs or the virus back home to my family. I don't want to come back to the office. I just can't. Can I continue to work from home?
- I still have children who have to stay home because their school or daycare is closed due to COVID-19. Can I continue to work from home?

STAYING AT HOME

- I have elderly parents I have to care for. Their adult daycare center remains closed due to COVID-19. Can I continue to work from home?
- I have been asking for a flexible work schedule to better enjoy a work/life balance. I want to work from the office some days and work remotely other days. Can we work something out?

QUESTIONS FROM SUPERVISORS

- What type of schedule should I implement to ensure social distancing is achieved?
- How do I handle an essential employee's concerns who must return to work in the office and they prefer to continue to work remotely?
- Half my staff is working remotely, half are in the office. How will I be able to have productive staff meetings, plan workloads, address last minute requests, handle critical situations?

QUESTIONS FROM SUPERVISORS

- An employee can't return to work because their child's school or day care is closed due to COVID-19 but they have exhausted the 12 weeks available to them under the Emergency Family Medical Leave Expansion Act?
- What if an employee requests FMLA to care for a sick family member ?
- I have a staff member that takes 3 buses to get to work and is very afraid to be on public transport. How can I accommodate them?

QUESTIONS FROM SUPERVISORS

- Can I counsel an employee who has not been productive while working at home?
- What is the policy for determining what positions are essential, and who may and may not work from home?
- We have been given notice to prepare for furloughs and/or layoffs. What policies or laws do I need to be aware of?

OTHER AREAS OF CONCERN

- Some employees will be happy to return to the office as they have missed seeing and interacting with the colleagues in person.
- Some employees will be fearful and resentful they have been assigned to work from the office.
- Supervisors will have to check in more often with all staff members, especially those that are fearful and resentful in order to help them overcome their fears.

OTHER AREAS OF CONCERN

- Supervisors will need to be prepared for employees to not be as productive as before.
- How you manage performance and what counseling steps you take may have to be modified.



OTHER AREAS OF CONCERN

- For the past several weeks or months, a lot of employees have been able to sleep in. Their bodies are on different sleep cycles.
- They have gotten used to not having a 1.5 or longer commute each way and not having the stress that comes with it.
- Financial pressures due to a spouse being laid-off.
- Employees may be out of shape mentally and physically, unable to concentrate.
- Both employees and supervisors will be struggling with adjusting to their previous work routines and expectations.

OTHER AREAS OF CONCERN

- What resources does the organization have to help employees cope?
- If an employee is offered their job back after Stay at Home ordinances are lifted, and they refuse to come back to work, then technically the employer is supposed to notify their state employment commission that the person refused work that is available to them and they are considered to have voluntarily resigned.



Safe Environment Considerations for Employers

Safety Measures for Return to Work in Light of COVID-19

Questions to consider when deciding what safety measures to implement at work in response to the virus:

- What is the nature of your employment setting?
- What is required by the applicable state or local order?
- What is required by the Occupational Safety and Health Act (OSHA)? <https://www.osha.gov/>
- What about conflicts between CDC, OSHA, and state orders?
- Other legal considerations?

How Is COVID-19 Spread?

- According to guidance from the Department of Labor and CDC, COVID-19 spreads by person-to-person transmission during close (within 6 feet) contact with a person with COVID-19, primarily from respiratory droplets produced when an infected person coughs or sneezes.
- These droplets, when aerosolized, can be deposited in the mouth, nose or eyes of nearby people or be inhaled into the lungs.
- People can also become infected with COVID-19 by touching surfaces or objects contaminated with the virus, and then touching their mouths, noses or eyes.
- COVID-19 may remain viable for hours to days on a variety of surfaces.

OSHA Recommended Practices for All Workers

All workers, regardless of specific exposure risks to COVID-19, should be directed to:

- Frequently wash hands with soap and water for at least 20 seconds. When soap and running water are unavailable, use an alcohol-based hand rub with at least 60% alcohol. Always wash hands that are visibly soiled.
- Avoid touching eyes, nose or mouth with unwashed hands.
- Practice good respiratory etiquette, including covering coughs and sneezes.
- Avoid close contact with people who are sick without appropriate PPE.
- Stay home if sick. Monitor for fever by taking temperature twice a day and remain alert for symptoms of COVID-19 (e.g., cough, shortness of breath, sore throat, shaking, muscle pain, headache, loss of taste or smell, confusion, pain or pressure in chest, etc.).
- Note known personal risk factors for complications from COVID-19.

Personal Risk Factors for Complications from COVID-19

- According to OSHA and CDC, risk factors for serious complications from COVID-19 include:
 - Adults 65 and over.
 - Those who live in a nursing home or long-term care facility.
 - Those with underlying conditions such as heart or lung disease, diabetes, or moderate to severe asthma; those who are immunocompromised due to factors, including, but not limited to cancer treatment, smoking, bone marrow or organ transplantation; those who are severely obese (BMI of 40 or higher); those who have chronic kidney or liver disease.
- Anyone who has any of these personal risk factors should not perform work where he/she may be exposed to suspected or confirmed cases of COVID-19 without consulting with a physician.

Job Duties Can Bring Risk of Exposure

According to OSHA, workers who may be at increased risk of exposure of to COVID-19 include:

- Healthcare workers
- Morgue and mortuary workers
- High population density work environments
- Research or production laboratory workers
- Airline operations
- Retail operations, particularly those in critical and/or high-customer-volume environments
- Solid waste and wastewater management

Job Duties Can Bring Risk of Exposure (cont.)

According to OSHA, workers who may be at increased risk of exposure of to COVID-19 include:

- Environmental (i.e., janitorial) services
- In-home repair services
- Travel to areas where the virus is spreading
- Pastoral, social or public health workers in jobs requiring contact with community members who may spread the virus
- Transit and delivery drivers, depending on their degree of close contact with the public

This list is not intended to be comprehensive, and employers should always rely on thorough hazard assessments to identify if and when their workers are at increased risk of exposure to the virus on the job.

Tailor Practices to Reduce Exposure Risk

- Engineering controls
- Administrative controls

Engineering Controls

Considerations include:

- Physical barriers and work space changes
- Ventilation
- Isolation room
- Signage (“Keep 6 feet or more away from others”
“Must wear a mask”, etc.)
- Other—hand sanitizer, wipes, etc.

Administrative Controls

Considerations Include:

- Applicable safety rules and enforcement
- Reduce contacts by multiple individuals to the same phone, supplies and work areas
- Implement policy for disinfecting frequency for work areas and items with anticipated common contact—
third party contractors
- Adjust work schedules to reduce crowding
- Adjust break schedules to reduce crowding
- Are masks required? If yes, who provides them?
- Other—those who can will work from home, etc.

Employee Reports of COVID-19

- Note state obligations, as applicable.
- Note OSHA obligations and ADA privacy issues.
- Note employee's or representative's rights to:
 - Exposure records to the extent necessary to reasonably indicate amount and nature of toxic substances or harmful physical agents in workplace.

➤ 29 CFR 1910

Potential COVID-19 Related Claims

- Workers' compensation
- Employer Intentional tort
- Third-party actions based upon theories of negligence, premises liability, tort
- OSHA regulatory violations
- OSHA whistleblower claims
- State law violations
- Other employment claims

Logistical Considerations for Reopening

The key is to COMMUNICATE with your workforce. Let them know:

- What is currently required by applicable governmental orders
- Rules regarding social distancing and any facility reconfiguration
- Who is reporting to work and who is working from home
- Employee work schedules and building office hours
- Enhanced cleaning/sanitization—special steps being taken
- How common areas will be addressed
- Any additional safety protocols in place—temperature checks, daily symptom assessment, etc.



Policy Changes

Agenda

- Teleworking
- COVID-19 Safety and Health Policy
- Leave Policies

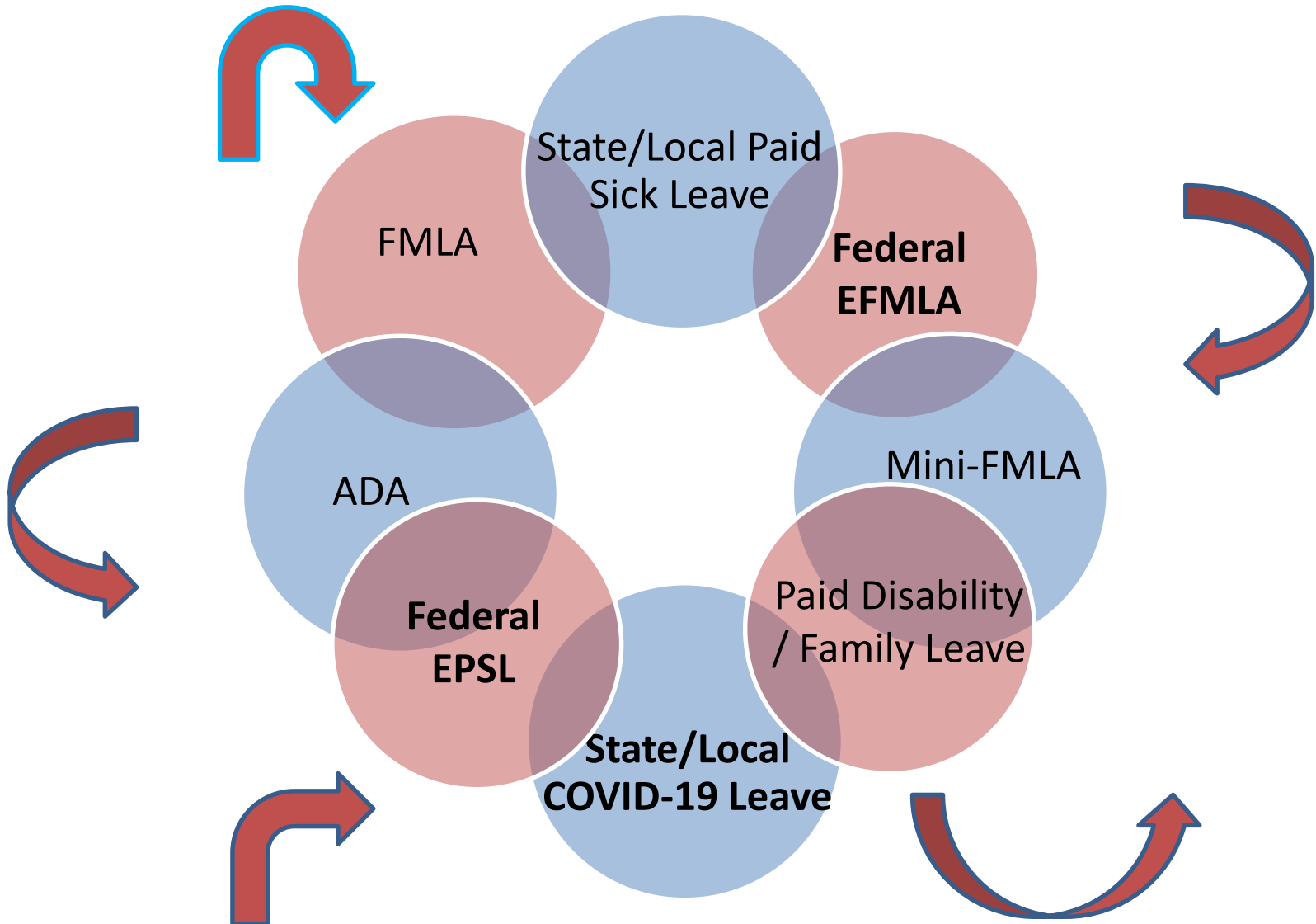
Telecommuting Policies

- Written telecommuting agreements and protocols
- Avoiding time theft
- Wage and hour compliance
- Information security, confidential information, and trade secrets
- Expense reimbursement

COVID-19 Safety and Health Policy

- Outline the steps the organization is taking to reduce the risk of COVID-19 exposure
- Critical for workplaces remaining open during the outbreak and for return to work
- Key Elements:
 - Steps employees should take to protect themselves
 - Workplace protections and social distancing measures and expectations
 - Expectations for employees with symptoms, who test positive, who have close contact with an individual who has tested positive, etc.
 - Instructions specific to critical infrastructure workers

COVID-19 Time off Requests: Where Leave Laws Converge



The Families First Coronavirus Response Act (FFCRA)—H.R. 6201

- Enacted March 18, 2020—effective April 2 – December 31, 2020
- Components of the Final Law
 - A. Appropriations
 - B. Nutrition Waivers
 - C. **Emergency Family and Medical Leave Expansion Act (emergency FMLA)**
 - D. Emergency Unemployment Insurance Stabilization and Access Act of 2020
 - E. **Emergency Paid Sick Leave Act (emergency Paid Sick Leave)**
 - F. Health Provisions
 - G. **Tax Credits for Paid Sick and Paid Family and Medical Leave**
 - H. Budgetary Effects
- DOL published a model notice that all covered employers must post

Overview of Paid Leave Provisions

FFCRA

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graph TD; FFCRA[FFCRA] --- EPSS[Emergency Paid Sick Leave]; FFCRA --- EPFMLA[Emergency Paid FMLA];
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Emergency Paid Sick Leave

- Up to 80 hours (~first 10 days)
 - 6 different reasons
- Full pay or 2/3 pay (depending on reason)—subject to caps

Emergency Paid FMLA

- Up to 12 weeks (~Days 11 – 60)
 - 1 reason only
 - Weeks 1-2: unpaid
- Weeks 3-12: 2/3 pay—subject to caps

Employer Coverage for Both EPSL and FMLA+

- Which Employers are Covered?
 - A private employer with *fewer* than 500 employees;
 - A public agency (federal/state governments, political subdivisions, schools); and
 - *[for EPSL only]* “Any other entity that is not a private entity”

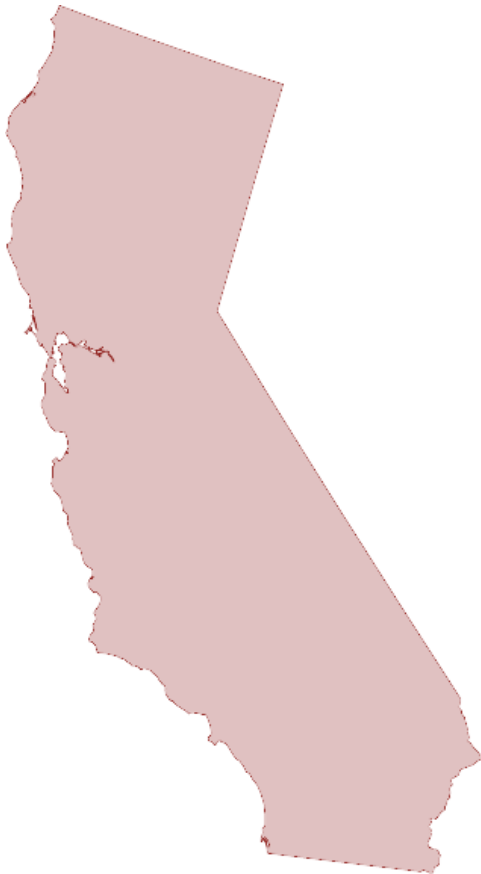
But Wait, I Heard Somewhere Employers Under 50 Are Off the Hook?

- This is an exemption to be affirmatively claimed and proven, not an overall opt-out for small employers, and not all aspects of FFCRA are off the table
- 29 CFR § 826.40(b). Employers (including religious organizations and nonprofits), with fewer than 50 employees are exempt from providing EPSL and FMLA+ due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern (*i.e.*, you still have to provide EPSL for reasons #1, 2, 3, 4 and 6)
- This exemption appears has to be elected by an employer with regard to particular employees—from the DOL’s Preamble: “...the employer may deny paid sick leave or expanded family and medical leave only to those otherwise eligible employees whose absence would cause” the employer to meet the criteria in the Rule

More on Relief for Small Business (Under 50 Employees)

- An authorized officer of the business has to be able to document that the employer meets the Rule’s criteria for the exemption with regard to a particular employee to whom leave is being denied (and retain records of that to support the denial—but don’t send to DOL now)
- You **still have to post the poster**, even if you plan to claim this exemption as to some employees
- 29 CFR § 826.151(b): Private litigation cover for claims under FMLA+ for small employers not otherwise subject to “classic” FMLA (doesn’t bar DOL action)

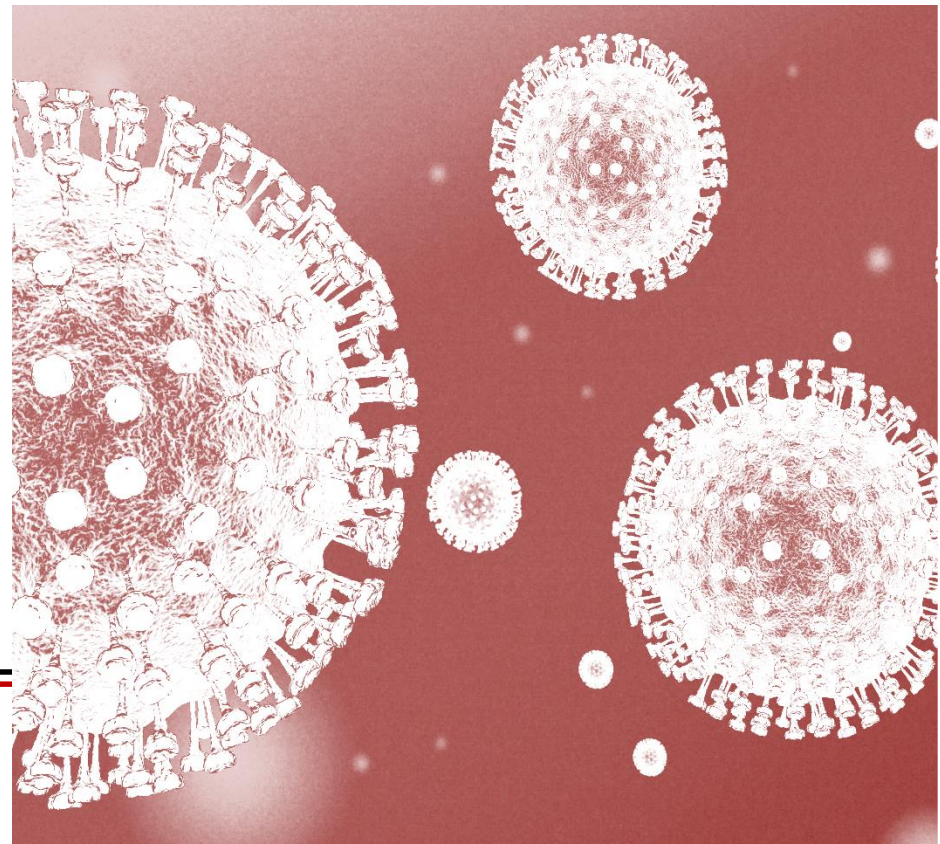
California State and Local COVID-19 Paid Sick Leave Laws



- California Executive Order N-51-20
 - 80 hours of supplemental paid sick leave for food sector workers (workers for company with food facility)
 - Applies to private companies with 500+ employees in the United States
- Oakland COVID-19 Supplemental Paid Sick Leave Ordinance
 - 80 hours of COVID-19 emergency paid sick leave
 - Applies to all private employers but exemption for "small" employers (fewer than 50 employees between 2/3/2020 through 3/4/2020)
- San Francisco Public Health Emergency Paid Leave Ordinance
 - 80 hours of public health emergency paid leave
 - Applies to private employers with 500+ employees
- San Jose
 - 80 hours of emergency paid sick leave
 - Applies to employers that are not required to provide paid sick leave under the FFCRA
- The City of Los Angeles
 - 80 hours of supplemental paid sick leave
 - Applies to employers with either 500 or more employees in L.A. or 2,000 or more employees in the U.S.
- Unincorporated Los Angeles County
 - 80 hours of supplemental paid sick leave
 - Applies to employers with 500 or more employees nationally

Other State and Local COVID-19 Paid Sick Leave Laws

- Colorado Health Emergency Leave with Pay
- DC Emergency Paid Sick Leave
- New York



Reminders!

- Many preexisting paid sick leave and (paid) family and medical leave laws cover COVID-19-related uses
- Many jurisdictions have expanded uses of pre-existing leave entitlements to address COVID-19
- Legal entitlements may not be enough



Quick Leave Laws Guide

State/Local PSL

YES

NO



EFMLA

YES

NO



Employer Policies

YES

NO



- Fewer than 500 employees/employed for at least 30 calendar days
- Up to 12 weeks of leave (no more than 12 total with FMLA)
- Qualifying Reason: employee unable to work or telework because of need to care for minor child whose school or place of care closed/unavailable due to COVID-19

- Employer-Specific
- Leave time will vary
- Intersection with other leave depends on (1) type of leave; and (2) language contained in policy or collective bargaining agreement

FMLA

YES

NO



ADA/
Local Human
Rights Law

YES

NO



State/Local COVID-19 Leave

YES

NO



- At least 50 employees within 75 miles of worksite
- Up to 12 weeks
- Qualifying Reason: (1) new child bonding; (2) serious health condition; (3) spouse, child, parent with a serious health condition; (4) military-related exigency or leave

- Leave time will vary case-by-case
- Qualifying Reason: leave as accommodation if reasonable and no undue hardship to employer

EPSL

YES

NO



Disability

YES

NO



Mini-FMLA/
PFL/SDI

YES

NO



- Fewer than 500 employees
- Up to 2 weeks (Reason 1-3, full pay; Reason 4-6, 2/3 pay)
- Qualifying Reason: employee unable to work or telework because of these COVID-19-related reasons: (1) government isolation or quarantine order; (2) health care provider advises isolation/quarantine; (3) symptoms and seeking diagnosis; (4) caring for person subject to isolation/quarantine; (5) school or child care provider is closed/unavailable; (6) substantially similar condition

Additional Resources

- www.littler.com/coronavirus
- <https://www.littler.com/covid-19/return-to-work>
- [California Extends COVID-19 Paid Sick Leave to Essential Food Sector Workers](#)
- [Bay Bridge Series: Oakland Enacts COVID-19 Supplemental Paid Sick Leave Ordinance](#)
- [Knowing the Way to San Jose's Emergency Paid Sick Leave Ordinance](#)
- [San Francisco Expected to Require Employers with 500 or More Employees to Provide Paid Public Health Emergency Leave](#)
- [The L.A. Story of Supplemental Paid Sick Leave](#)
- [Supplemental Paid Sick Leave \(Immediately\) Required in Unincorporated Los Angeles County, California](#)
- [Colorado Expands Coverage and Amount of Leave under Health Emergency Leave with Pay \(HELP\) Rules](#)
- Return to Work Guide and Policy
- Temperature and Symptom Screening Toolkit
- Stay on Top of “Stay At Home” – A List of Statewide Orders
- Facing Your Face Mask Duties – A List of Statewide Orders
- [This Won't Hurt a Bit: Employee Temperature and Health Screenings – A List of Statewide Orders](#)
- [Bouncing Back: A List of Statewide Return to Work Protocols](#)
- [The Next Normal: A Littler Insight on Returning to Work – Recalling Furloughed Employees and the Rehire Process](#)
- [The Next Normal: A Littler Insight on Returning to Work – Handling Concerns about Hesitant or “High-Risk” Employees](#)



The Future of Teleworking

1. What does the future of telework look like for us?
 - Diocese, Parishes and Schools
2. What questions should we be asking ourselves?
 - Roles - Staff and Management
3. What will the technological investments be?
4. Opportunities in the vineyard for new workers



Is this right for us?



Panelists-Thank You!



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