Governor Signs Emergency Bills to Fight COVID-19

Executive Orders Address Other State Needs

President Signs Bill Expanding Paid Sick/Family Leave

This week, President Donald J. Trump signed legislation that expands employee benefits and protections related to COVID-19.

The additional emergency relief legislation known as the Families First Coronavirus Response Act (Families First Act) passed because of the escalating coronavirus (COVID-19) pandemic.

The Families First Act creates expanded employee benefits and protections related to COVID-19, including a new federal paid sick leave law, an emergency expansion of the Family and Medical Leave Act (FMLA) and expanded unemployment insurance provisions.

Emergency Paid Sick Leave

Employers with fewer than 500 employees will be required to provide full-time employees with an additional 80 hours of paid sick leave, or, for part-time employees, the number of hours equal to the hours worked during an average two-week period. For part-time employees with varying schedules, employees can base their calculation on the average number of hours the employee was scheduled per day over a six-month period, or, if they haven’t worked that long, the reasonable expectation of the average hours the employee is expected to be scheduled to work.

The leave is available for immediate use by the employee when the law
Labor Law Corner

Wage and Hour Considerations for Remote Workers

How do an employer’s pay obligations differ when an hourly/nonexempt employee is working remotely from home?

It’s important to keep in mind that when having a nonexempt employee work remotely, your obligations under California’s wage-and-hour laws remain the same, and you need to ensure you have measures in place to maintain accurate records of the employees’ hours worked.

In addition to accurately tracking all hours worked by your nonexempt remote employees, it’s critical to ensure they take required meal and rest breaks, get paid for any overtime hours, and are not engaging in “off-the-clock” work (there is no such thing in California).

Establishing a remote work/telecommuting policy is a great way to communicate your expectations to your remote employees, particularly when it comes to keeping an accurate record of their hours worked, including overtime, as well as taking their appropriate meal and rest breaks.

In addition to having a telecommuting policy, you may choose to have your remote employees sign a telecommuting agreement, acknowledging their work schedule and other parameters within the telecommuting policy itself, such as whether they need approval to work overtime.

Accurate Timekeeping

Many employers already use some type of software that allows them to accurately record hours worked by an employee, and this should be no different for an employee working remotely.

By making sure your remote employees have access to your software or timekeeping system on their remote devices, you can accurately track and monitor your remote employees’ daily and weekly hours worked.

Meal and Rest Breaks

In California, nonexempt employees’ uninterrupted meal break of at least 30 minutes must begin no later than 4 hours and 59 minutes into their shift. Additionally, a nonexempt employee whose total daily work time is at least 3.5 hours must be permitted a rest break of at least 10 “net” minutes for every four hours worked, or “major fraction thereof.”

Because remote employees aren’t supervised in the same way that an on-site employee is, there can be some added challenges to monitoring breaks; however, having a clearly written meal and rest break policy can help combat those challenges.

In addition to your standard meal and rest break policy, your telecommuting policy can reiterate that employees are expected to take their uninterrupted, off-duty meal and rest breaks.

Overtime

In addition to ensuring that your remote employees take their meal and rest breaks, you also need to track and pay for any overtime hours worked.

As a reminder, California law requires all overtime hours to be paid (1.5 times the employee’s regular rate of pay for all hours worked beyond 8 hours in a workday or 40 hours in a work week), even if that time was not approved.

Having a clearly written telecommuting policy and agreement in place can help you to manage your remote employees’ work schedules and expectations regarding overtime.

Business Expenses Reimbursements

Employers must reimburse employees (whether nonexempt or exempt) for all “necessary expenditures or losses incurred” in the performance of their job duties (Labor Code Section 2802). This could include an employee’s personal cell phone, computer equipment and other services and/or supplies required for a remote employee to work.

When looking at whether an employee is entitled to reimbursement, the question will be whether it is “necessarily incurred.” A clearly written telecommuting policy can help establish guidelines surrounding which expenses are reimbursable, as well as provide a method for employees to submit for reimbursement. Another approach might be to provide all necessary equipment for a remote worker, such as computers/laptops, printers and a phone—which could eliminate or reduce an employee’s need to use personal devices.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.
The Workplace

COVID-19: Preparing for Remote Work

Much has happened over the weekend on a national scale, and for California, there is rising concern among business owners and employers due to the rapidly changing issue of COVID-19. In Episode 53 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment law expert Jennifer Shaw discuss working remotely, the resources available for employees and Governor Gavin Newsom’s guidance on the state’s aging workforce.

Working Remotely

Employers should look at every employee position and decide what tasks to give the worker at home, Shaw explains. For some employers, this may be getting people set up remotely and ensuring they have what they need to work at home in case the office has to close.

“What I want to tell employers is that if people are working from home… it’s business as usual. They are just doing it from home,” she tells Frank.

From an employment law perspective, Shaw says, it is “calmly and rationally going through step by step… what are we going to do, what are my options [and] what can I afford to do…?”

Resources Available

The Labor Commissioner announced employees can use California Paid Sick Leave if they need to be home with their children because of school closures, Shaw reminds listeners.

“This is a really important point to emphasize because if you read the sick leave law, hanging out with your kids because [their school is] closed isn’t one of the permissible uses under the sick leave law,” Frank says.

This is why it’s really important to utilize the FAQs and information posted by different agencies, as mentioned in last week’s podcast. The California Chamber of Commerce HRWatchdog blog is a great resource too, Frank says.

Additionally, the Employment Development Department is allowing people to file for unemployment without having to go through a waiting period. There also is potential federal legislation, and a relief act that has passed the U.S House of Representatives, H.R. 6201: Families First Coronavirus Response Act, Shaw says.

Shaw’s advice is to follow the CalChamber coronavirus resource web page and a handful of other organizations to not get paralyzed from indecision because of information overload.

California’s Aging Workforce

On Sunday, March 15, Governor Newsom issued a directive guidance on individuals 65 years or older to stay in isolation, Frank reminds listeners.

Currently, there is no mandate for employers to follow the Governor’s recommendation, but California does have an aging workforce, which means a lot of employees are 65 or older.

The CalChamber Labor Law Help-line has been receiving a lot of questions about employers wondering what to do with this order and if they are allowed to send employees who are 65 years or older home, Frank explains.

The best approach, Shaw says, is if any of your employees, whether they are 21 years old or 81, are feeling vulnerable, they should go home. It doesn’t matter the age of the individual; tell your employees to take care of themselves and stay home, Frank adds.

Frank reminds listeners to just “take a deep breath and pause… everybody is in the same boat… This is a time for everybody to rise together and think a little bit outside the box and be compassionate to everyone.”

Subscribe to The Workplace

To listen or subscribe, visit www.calchamber.com/theworkplace.

CalChamber Seeks Nominations for Outstanding Small Business Leaders

The California Chamber of Commerce is seeking nominations for its annual Small Business Advocate of the Year Award.

The award recognizes small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

“Communicating how laws and regulations could affect small businesses is crucial to every advocacy program,” said Dave Kilby, CalChamber executive vice president, corporate affairs. “We encourage readers to nominate outstanding business spokespersons across the state so that the CalChamber can recognize them at our annual Capitol Summit.”

Application

The application should include information regarding how the nominee has significantly contributed as an outstanding advocate for small business in any of the following ways:

• Held leadership role or worked on statewide ballot measures;
• Testified before state Legislature;
• Held leadership role or worked on local ballot measures;
• Represented chamber before local government;
• Active in federal legislation.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Additional required materials:

• Describe in approximately 300 words why nominee should be selected.
• News articles or other supporting materials.
• Letter of recommendation from local chamber of commerce president or chairman of the board of directors.

Deadline: May 1

Nominations are due by May 1. The nomination form is available at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.
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the State Board of Education, and the California Health and Human Services Agency include information about distance learning and tools to promote remote learning.

Links to materials can be found on the Department of Education website, cde.ca.gov.

Goods Deliveries

The executive order signed March 18 aims to ease restrictions on commercial drivers supporting emergency relief efforts, and suspend certain existing laws for employers directly affected by COVID-19.

The order aims to address dwindling supplies of essential medical and sanitary items, and sudden changes in workforce needs that are affecting businesses across all industries.

In conjunction with the Federal Motor Carrier Safety Administration’s emergency waiver announced last week to ensure the free flow of critical supplies and equipment, the March 18 executive order exempts interstate motor carriers that have an active U.S. Department of Transportation number and interstate operating authority from the requirement to hold an active Motor Carrier Property Permit pursuant to California Vehicle Code Section 34620, while conducting intrastate transportation within California in support of emergency relief efforts.

In addition, drivers may be permitted or required to exceed the hours-of-service limits (California Vehicle Code Section 34501.2; California Code of Regulations, Title 14, Section 1212.5) while operating a vehicle engaged in interstate or intrastate transportation, in support of emergency relief efforts.

This includes, but is not limited to, transportation to meet immediate needs for:

• Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;
• Supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19, such as masks, gloves, hand sanitizer, soap and disinfectants;
• Food for emergency restocking of stores.

• Equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19;
• Persons designated by federal, state or local authorities for medical, isolation or quarantine purposes; and
• Persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

Notice of Layoffs/Closures

The March 18 executive order also recognizes that employers throughout the state have had to close rapidly without providing their workers the advance notice required under California law, either in response to local directives or in an effort to stem the spread of COVID-19.

In response, the executive order suspends, starting March 4, 2020, Labor Code Sections 1401 (a), 1402, and 1403 for an employer that orders a mass layoff, relocation or termination at a covered establishment on the condition that the employer:

• Gives the written notices specified in Labor Code Section 1401 (a)–(b);
• Gives as much notice as is practicable, and, at the time notice is given, provides a brief statement of the basis for reducing the notification period;
• Orders such a mass layoff, relocation, or termination that is caused by COVID-19-related “business circumstances that were not reasonably foreseeable as of the time that notice would have been required;” and
• For written notice given after the date of the executive order, in addition to the other elements detailed in Labor Code Section 1401(b), such written notice must contain the following statement: “If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at labor.ca.gov/coronavirus2019.”

The Labor and Workforce Development Agency is expected to provide further guidance by March 23, 2020.

More information about the portion of the executive order dealing with the Californian Worker Adjustment and Retraining Notification (WARN) Act is covered in the California Chamber of Commerce HRWatchdog blog, hrwatchdog.calchamber.com.

CalChamber Web Page

The CalChamber has put together a resources page for employers at www.calchamber.com/coronavirus. The web page, updated regularly, brings together relevant CalChamber articles and links to federal, state and local government resources.
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Unemployment Insurance

The Families First Act also provides $1 billion for emergency grants to states for activities related to processing and paying unemployment insurance benefits under certain conditions.

Half of the money will be used to provide immediate additional funding to all states for staffing, technology and other administrative costs. The other half will be reserved for emergency grants to states that experience at least a 10% spike in unemployment. Those states will be eligible to receive an additional grant to assist with costs related to the unemployment spike and must take steps to ease eligibility requirements.

This provision will remain in effect until December 31, 2020.

Emergency Family and Medical Leave Expansion

The Families First Act also temporarily provides emergency FMLA leave for a "qualified need related to public health emergency."

• Coverage and Eligibility: For specified COVID-19-related reasons, the current employee threshold for coverage is changed from covering employers with 50 or more employees to covering any workplace with fewer than 500 employees. Employee eligibility requirements for emergency FMLA are also lowered. Instead of working 1,250 hours in the preceding 12 months, the emergency FMLA provisions apply to any employee who has been employed for at least 30 days.

Reason: The employee may take emergency FMLA leave only when the employee is unable to work (or telework/remote work) due to a need to care for the employee’s child under 18 years of age if the school or place of care has been closed, or the child care provider is unavailable due to COVID-19 precautions; or

Employers should continue to consult regularly with their legal counsel on how to address this new complicated federal framework in addition to the already-existing leave laws in the context of their specific circumstances.

Staff Contact: James W. Ward
Disaster Assistance Available to Small Businesses Affected by COVID-19

The U.S. Small Business Administration (SBA) announced March 16 that it is offering low-interest federal disaster loans to small businesses in California “suffering substantial economic injury” due to the coronavirus (COVID-19).

Small businesses, private nonprofit organizations, and small agricultural and aquacultural enterprises facing considerable economic hardship may qualify for Economic Injury Disaster Loans of up to $2 million to help with financial obligations and operating expenses.

The Economic Injury Disaster Loans can be used to help pay fixed debts, payroll, accounts payable and any additional bills that cannot be paid due to the virus. Eligibility for the loans is predicated on the financial impact of COVID-19, according to the SBA. The interest rate is 3.75% for small businesses and 2.75% for nonprofit organizations. Long-term repayments up to a maximum of 30 years are available.

**Eligible Counties**

The SBA loans are currently available to the following California counties: Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Imperial, Kern, Lake, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Mono, Napa, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Ventura, and Yolo.

Application

The application for SBA’s Economic Injury Disaster Loans, as well as other disaster assistance information, can be found at https://disasterloan.sba.gov/ela. Applicants also may call SBA’s Customer Service Center at (800) 659-2955 or email disastercustomerservice@sba.gov for more information. Completed applications can be mailed to U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, Texas 76155.

The deadline to apply for an Economic Injury Disaster Loan is December 16, 2020.

Legislative Analyst Takes First Look at Coronavirus Impact on State Budget

In his March 18 post, Legislative Analyst Gabriel Petek describes both the strength of California’s fiscal position at the start of the year and the COVID-19-related developments that will counter the positives.

Lower capital gains tax returns due to the stock market drops could lower Governor Gavin Newsom’s proposed $20 billion reserve for 2021 by “several billion dollars,” Petek noted.

He pointed to the sudden “pullback in activity across wide swaths of the economy,” especially the service sectors, as “particularly problematic.”

The timing of the COVID-19 outbreak—between the January release of the Governor’s proposed budget and the May revision to that proposal—plus volatile financial markets and the rapidly changing economic picture “inject major uncertainty into the May revenue estimating process and budget wrap up,” Petek said.

Adding to the challenge of developing a state budget is the Governor’s executive order directing state tax agencies to extend the state tax filing deadline for an indefinite period; the time is left up to the tax agencies in their administrative authority.

“Given that it will take time to appraise the ultimate effects on the state, the Legislature may need to take incremental steps—like adopting a workload budget in the nearer term—to buy time beyond its constitutional deadline to pass the budget (June 15) to assess the state’s ultimate fiscal capacity,” Petek commented.

He further speculated: “After addressing immediate emergency funding needs, the Legislature likely will turn its attention to aiding the state’s recovery from the public health and economic effects of COVID-19. Out of necessity, the Legislature may have to prioritize assistance to adversely affected small businesses, nonprofit agencies, and individuals. Furthermore, it is now plausible that these efforts will have to take place with the state facing a budget problem in 2020–21.”
Canada OK of U.S.-Mexico-Canada Pact Could Lead to June Implementation Date

Automotive Associations Ask for More Time to Prepare

The Canadian Parliament approved the U.S.-Mexico-Canada Agreement (USMCA) last week, potentially kicking off a 90-day period before the pact takes effect.

Shortly after the Canadian Parliament’s March 13 ratification of the USMCA, however, associations representing automakers and automobile dealers urged the Trump administration to delay a reported June 1 implementation date.

The California Chamber of Commerce supports the USMCA based on an assessment that the agreement serves the employment, trading and environmental interests of California, the United States, Mexico and Canada, and is beneficial to the business community and the California and national economies.

The USMCA is a necessary modernization to the North American Free Trade Agreement (NAFTA) that recognizes the impacts of technology on the three countries’ economies.

The objectives of the USMCA are to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection of intellectual property rights, establish effective procedures for implementing and applying the agreements and resolving disputes, and to further trilateral, regional and multilateral cooperation.

Reactions

U.S. Trade Representative Robert Lighthizer said in a statement: “Now that the USMCA has been approved by all three countries, an historic new chapter for North American trade has begun... USMCA is the gold standard by which all future trade agreements will be judged and citizens of all three countries will benefit for years to come.”

Mexico President Andrés Manuel López Obrador said the Canadian Parliament’s action was good news because the USMCA guarantees his country can maintain economic and commercial relations with the most important, strongest market in the world at a time of economic and financial uncertainty.

Automotive Industry

In a joint release, the automotive industry groups said they were “gravely concerned” that there were so few weeks before a June 1 entry-into-force date for the USMCA, citing the need for more information on the new automotive rules of origin.

“We are in the midst of a global pandemic that is significantly disrupting our supply chains, and the industry is throwing all available resources into managing production through this crisis for our employees and for the broader U.S. economy. Even if it were reasonable to divert our attention to USMCA compliance, the United States, Canada and Mexico have yet to issue, even in draft form, the uniform automotive rules of origin regulations. Without them, many questions remain unanswered regarding how to interpret the new rules,” the groups stated.

They pointed out that additional time will be needed once the uniform regulations are available “to solicit the necessary information throughout the supply chain to certify that our cars and trucks qualify under USMCA.” The groups asked that the entry-into-force date of the uniform automotive rules of origin regulations occur “after an adequate adjustment period is provided.”

Trade Highlights

Approximately 14 million American jobs rely on trade with Canada and Mexico. In California alone, trade among the three countries supports 1,470,700 jobs.

Mexico and Canada are California’s top export partners. Mexico is the state’s No. 1 export market, with California exports to Mexico totaling $27.8 billion in 2019, a decrease from $30.7 billion in 2018. Mexico purchases 16% of all California exports.

California’s exports to Mexico are driven by computers and electronic products, which account for 21.1% of all California exports to Mexico. Other top categories include transportation equipment, nonelectrical machinery, and electrical equipment, appliances and components.

Canada is California’s second largest export market, purchasing 9.6% of all California exports. In 2019, California exported more than $16.6 billion to Canada.

Computers and electronic products remained California’s largest exports, accounting for 28.6% of all California exports to Canada.

Staff Contact: Susanne T. Stirling
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